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Agenda Date: 12/4/2019

Agenda Placement: 7B

## Napa County Planning Commission Board Agenda Letter

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**TO:** Napa County Planning Commission

**FROM:** Brian Bordona for David Morrison - Director  
Planning, Building and Environmental Services

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

**SUBJECT:** Renewable Energy Systems Ordinance

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### **RECOMMENDATION**

#### **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:** Conclude public hearing and make recommendation to Board of Supervisors for approval of the ordinance.

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

***CONTINUED FROM NOVEMBER 20, 2019 REGULAR PLANNING COMMISSION MEETING***

**EXECUTIVE SUMMARY**

**Proposed Actions:**

1. That the Planning Commission recommends the Board of Supervisors adopt the Renewable Energy Systems Ordinance and find it exempt from the California Environmental Quality Act.

**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.

This December 4, 2019 hearing is a continued hearing from November 20, 2019 where the Planning Commission initially reviewed the proposed ordinance and provided general comments. The Airport Land Use Commission also considered the proposal on November 20, 2019 and found the version presented to them consistent with the Airport Land Use Compatibility Plan (ALUCP). For the December 4, 2019 hearing a revised tracked-change ordinance has been included in response to comments received from interested parties and the Planning Commission. Comments are also addressed in the Background section of this staff report.

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.

Staff is requesting the Planning Commission complete its public hearing at this meeting, and forward a recommendation for adoption to the Board of Supervisors.

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

The proposed ordinance contains the follow notable components. Underlined text below highlights updates to the draft ordinance based on the Planning Commission and public feedback received to date:

**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.
- 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.
- The draft ordinance was revised to allow commercial facilities to collocate on developed industrial sites without a use permit provided the commercial solar proposal is consistent with the use permit for the existing development. See discussion below under public input.
- Draft ordinance design criteria were updated to further address site security, clarify site reclamation, and adjust security bonding for inflation. See discussion below under public input

**Public Utility Exception Revision** –The ordinance updates 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.

## COMMISSION AND PUBLIC INPUT

Prior to and at the November 20, 2019 hearing comments were received from several interested parties as well members of the Planning Commission. Some of the public comments expressed concern that the ordinance was overly restrictive regarding commercial solar facilities. Other comments sought to expand and/or clarify criteria required for a use permit for commercial facilities. Responses to comments received to date are as follows:

**Renewable Properties**, the applicant of a pending 20-acre commercial solar facility, 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. The draft ordinance excludes commercial renewable energy facilities from residential and agricultural lands based on the direction that was provided by the Board of Supervisors at their Study Session in June 2019. Commercial renewable energy systems are excluded from agricultural zones because the Napa County General Plan prohibits the establishment of new non-agricultural uses on agriculturally zoned land. The recently approved project on American Canyon Road referenced in Renewable Properties letter was processed under existing code language that permits 'other public utility uses' in any zoning district. During processing of that application, and subsequent to its approval, questions were raised whether a private company that sells power to a public utility qualifies as an 'other public utility use'. This uncertainty ultimately led to the Board of Supervisors scheduling the June 2019 Study Session and directing staff to update the code.

In response to concerns that the initial draft ordinance is too restrictive on location, staff are not recommending expansion of allowable zoning designations in which commercial solar facilities could be located. While recognizing that the General Plan calls for Napa County to act sustainably on energy use and climate change, the overarching core tenet of the General Plan is to preserve agricultural land for agricultural use and therefore staff do not support allowing non-agricultural uses within agricultural areas.

Renewable Properties indirectly suggests that commercial renewable energy facilities not be subject to a use permit if developed within the built environment, such as on rooftops or parking lots. In response the ordinance has been amended to allow commercial renewable energy facilities to collocate on developed properties within the industrial areas without a use permit. Development standards contained in the draft ordinance are geared primarily toward mitigating potential impacts resulting from development of vacant land, which would have limited applicability to a developed site. Therefore, collocating on a developed site shouldn't necessitate processing of a new use permit, and the project could move forward with only a building permit if it is consistent with the existing industrial project use permit (or site plan approval), or trigger only a use permit modification. Staff recommends this approach to encourage efficient and maximum use of the industrial park lands.

Renewable Properties objects to the design requirement to minimize views from public roads and adjacent residences. Staff appreciate that the wording lacked clarity and can be interpreted to mean that facility must be completely screened from view, which was not the intended purpose. Therefore, ordinance language has been updated to clarify that projects include design features to limit views from public roads, which ostensibly mirrors viewshed requirements applied to other developments.

Renewable Properties is critical of the ordinance because they feel it does not expedite review or provide other incentives to developers. Staff believe the ordinance as originally drafted is consistent with the Board's direction at the Study Session, but has modified it to allow commercial renewable energy facilities to collocate without a use permit at developed industrial sites as previously noted. This process would require only a building permit in most cases, similar to the expedited process for all accessory renewable energy systems that are allowed for all legally established primarily land uses throughout the County.

Renewable Properties questions the ground coverage requirements and how it is measured, which are contained in Section 18.117.040.A(2). This section requires ground mounted accessory systems to not exceed 10 percent or 2 acres of a site, whichever is less. This is interpreted as meaning that 10 percent of the land area of a property may be covered with ground mounted solar panels, but in no case exceed 2 acres of land area which would apply to parcels 20 acres or larger. This would mean that a ground mounted system could occupy 500 sq. ft. of a 5,000 sq. ft. lot, or 4,356 sq. ft. of a 1 acre lot, which should be ample land area to meet the on-site power generation needs of primary uses. However, in the event that on-site power generation needs are high, solar systems could be placed on existing structures like a carport or building roof and not be counted toward the allowable amount of ground coverage.

During the Airport Land Use Commission meeting, it was suggested that solar facilities be permitted within Airport Land Use Compatibility Zone B. Also, the Renewable Properties letter suggests that airport buffer land is underutilized and should be considered for additional development. Airport Land Use Compatibility Zone B is the Inner Approach/Departure Zone, and is an area of substantial risk where aircraft will be below 100 ft. above the ground. Although the publicly owned land within Zone B is vacant, it is not considered underutilized because it is a runway protection zone and is intentional free of obstructions. However, if the Planning Commission wishes to include Zone B within the available land, staff could develop language requiring any proposal within Zone B to first gain approval from the airport manager of the affected airport, and require hazard analysis to be performed in accordance with Federal Aviation Authority (FAA) standards. It should be noted as well that the FAA does not evaluate or approve projects located off airport property, and therefore if an off-airport project is proposed in Zone B (as there are several properties adjoining Napa County Airport that lie within Zone B), then technical studies for aviation hazards need to be scoped and approval by the airport manager because that required function will not be performed by the FAA as occurs for on-airport projects.

**Eileen Pereira** submitted written comments that were included in the November 20, 2019 staff report. Staff's email response to those comments are included in the attachments, and updates to the ordinance occurred as noted above. At the meeting Ms. Pereira requested a requirement be included that mandates undergrounding of all utility lines associated with the commercial solar facility. The ordinance requires undergrounding of utilities on a project site but not off-site, because the County Code does not require undergrounding of off-site utilities for any other uses.

**Laura Tinthoff** expressed numerous concerns about solar technology and its long-term viability given the pace at which new technology is developed. Staff believe the ordinance strikes a balance of meeting State and County objectives to enable local renewable energy production, while providing detailed design criteria to ensure protection of public health, safety and welfare including protection of sensitive environmental resources.

**Eve Khan** requested clarification on the provision that would allow improvements buried at a depth greater than three feet to remain after decommissioning and suggested additional requirements and clarification about process for repairing and replacing facilities. In response, the ordinance has been modified to remove the language referencing three foot of depth such that all underground improvements would be addressed during decommission. Facilities would be subject to the same maintenance and upkeep requirements of all other developments.

Ms. Kahn expressed concerns about the pending application from Renewable Properties and whether it would comply with this draft ordinance, or if application processing should be delayed for this ordinance to take effect. The pending project is located within the NVBPSP and is being processed under the requirements of that specific plan, which allows use permits to be granted for industrial uses that are not otherwise specifically listed as allowed uses but are similar in character to other industrial uses. Staff believe the pending project could comply with this pending ordinance if this ordinance was in effect.

Additionally, Ms. Kahn inquired about the term "quasi-public use" within current County Code. That term is defined

in Section 18.08.497, and is not proposed for update with this ordinance. A quasi-public use means a use serving the public at large, and operated by a private entity under a franchise or other similar governmental authorization designed to promote the interests of the general public or operated by a recognized civic organization for the benefit of the general public. It does not pertain to renewable power generation facilities.

**Gary Margadant** cautioned against allowing solar facilities to be able to remove trees, and encouraged solar on rooftops. The ordinance identifies that both accessory and commercial projects are subject to the Conservation Regulations, which contains tree protection and mitigation requirements. The ordinance encourages rooftop and parking lot solar applications.

## **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) – Complete hearing and recommend to the Board of Supervisors adoption of the updated version of the draft ordinance.

If the Commission support the ordinance with Staff's tracked-changes updates depicted in Attachment A with yellow highlighted text, a recommendation for adoption may be forwarded to the Board of Supervisors. The item is tentatively scheduled for the Board's December 17, 2019 regular meeting.

Option 2 – Recommend adoption of a ordinance with minor revisions to Staff's draft 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, such as inclusion of facilities within Airport Land Use Compatibility Zone B, the ordinance should be continued and return to future meetings before the Commission and Airport Land Use Commission before advancing to the Board of Supervisors.

## **SUPPORTING DOCUMENTS**

A . Draft Renewable Energy Systems Ordinance Tracked Changes

B . Renewable Energy Systems Ord. Correspondence

Napa County Planning Commission: Approve

Reviewed By: Brian Bordona