HEARING DATE: October 17, 2013

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

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

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

Section 2. Section 84.29.020, Applicability and Land Use Zoning Districts of the San
Bernardino County Development Code is amended to read as follows:
This Chapter provides findings and development standards for commercial wind and
solar renewable energy facilities. The Land Use Zoning Districts that allow commercial
renewable energy facilities are limited to the following:
RC (Resource Conservation)
AG (Agricultural)
FW (Floodway)
RL (Rural Living)
IN (Institutional)

Section 3. Section 84.29.035 of Chapter 84.29, Renewable Energy Generation
Facilities of the San Bernardino County Development Code is hereby added to read as follows:
84.29.035 Required Findings for Approval of a Commercial Solar Energy Facility
In addition to the findings required under Section 85.06.040 (a) of the San Bernardino County Development Code, in order to approve a commercial solar energy generation facility, the Planning Commission shall determine that the location of the proposed commercial solar energy facility is appropriate in relation to the desirability and future development of communities, neighborhoods, and rural residential uses, and will not lead to loss of the scenic desert qualities that are key to maintaining a vibrant desert tourist economy by making each of the findings of fact. In making the following findings of fact, the Planning Commission shall consider the characteristics of the commercial solar energy facility development site and its physical and environmental setting, as well as the physical layout and design of the proposed development in relation to nearby communities, neighborhoods, and rural residential uses. In making the following findings, the Planning Commission shall also consider the location of other commercial solar energy generation facilities that have been constructed, approved, or applied for in the vicinity.

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

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

(3) The siting and design of the proposed commercial solar energy generation facility will either be: (a) unobtrusive and not detract from the natural features, open space and visual qualities of the area as viewed from communities, rural residential uses, and major roadways
and highways\(^1\), or (b) located in such proximity to already ‘disturbed’ lands -- such as electrical substations, surface mining operations, landfills, wastewater treatment facilities, etc. – that it will not further detract from the natural features, open space and visual qualities of the area as viewed from communities, rural residential uses, and major roadways and highways.

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

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

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

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

(8) The proposed commercial solar energy generation facility is located in proximity to existing electrical infrastructure such as transmission lines, utility corridors and roads such that: (a) minimal ground disturbance and above ground infrastructure is required to connect to 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.
capacity of the transmission grid, (b) new electrical generation tie lines have been co-located on existing power poles whenever possible, and (c) existing rights-of-way and designated utility corridors have been utilized to the extent practicable.

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

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

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

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

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

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

(15) All on-site solar panels, switches, inverters, transformers and substations are located at least one foot above the base flood elevation as shown on the Flood Insurance Rate Maps.
(16) For development sites proposed on or adjacent to undeveloped alluvial fans, the commercial solar energy generation facility has been designed to avoid potential channel migration zones as demonstrated by a geomorphic assessment of the risk of existing channels migrating into the proposed development footprint, resulting in erosion impacts,

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

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

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

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

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

(22) All clearing, grading, earth moving, and excavation activities will cease during period of winds greater than 20 miles per hour (averaged over one hour), or when dust plumes of 20 percent or greater opacity impact public roads, occupied structures, or neighboring property, and in conformance with AQMD regulations.
(23) For sites where the boundary of a new commercial solar energy generation facility is located within one-quarter mile of a primary residential structure, an adequate wind barrier will be provided to reduce potentially blowing dust in the direction of the residence during construction and ongoing operation of the commercial solar energy generation facility.

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

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

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

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

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

(29) For proposed facilities within two (2) miles of the boundaries of any active military base, the location, design, and operation of the proposed commercial solar energy facility will not substantially impair the mission of the facility.
When located within a City’s sphere of influence, the proposed commercial solar
energy facility is consistent with relevant City requirements that would be applied to similar
facilities within the City.

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

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

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

(d) Special Use Permit. Prior to the start of construction, the developer of an
approved commercial renewable energy generation facility shall submit for review and gain
approval for a Special Use Permit (SUP) from County of San Bernardino Code
Enforcement. Thereafter, the SUP shall be renewed annually subject to annual inspections. The
annual SUP inspections shall review and confirm continuing compliance with the performance
standards included in the Planning Commission’s findings of fact and the listed conditions of
approval, including all mitigation measures. This comprehensive compliance review shall include
evaluation of the operation and maintenance of the entire renewable energy facility solar
facilities. Failure to comply shall cause enforcement actions against the operator of the
facility. Such actions may cause a hearing or an action that could result in revocation of the
facility’s conditional use permit approval and imposition of additional sanctions and/or penalties
in accordance with established County of San Bernardino land use enforcement
procedures. Any additional inspections that are deemed necessary by the County of San
Bernardino Code Enforcement Supervisor shall constitute a special inspection and shall be
charged at a rate in accordance with the County Fee Schedule, including travel time, not to exceed three (3) hours per inspection.

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

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

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

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

**Commercial Solar Energy Generation Facility.** The components and subsystems that, in combination, convert solar energy into electric or thermal energy primarily for the purpose of off-site consumption, and may include other appurtenant structures and facilities. The definition includes, but is not limited to, photovoltaic power systems and solar thermal systems.
Section 6. This ordinance shall become effective thirty (30) days after its adoption.

____________________________________

JANICE RUTHERFORD, Chair
Board of Supervisors

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

____________________________

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

____________________________
STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

I, LAURA H. WELCH, Clerk of the Board of Supervisors of the County of San Bernardino, State of California, hereby certify that at a regular meeting of the Board of Supervisors of said County and State, held on the _____ day of _____________, 2013 at which meeting were present Supervisors:__________________________, and the Clerk, the foregoing ordinance was passed and adopted by the following vote, to wit:

AYES:

NOES:

ABSENT:

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

LAURA H. WELCH,
Clerk of the Board of Supervisors of the County of San Bernardino, State of California

________________________________
Deputy

Approved as to Form:
JEAN-RENE BASLE
County Counsel

By:________________________
KENNETH C. HARDY
Deputy County Counsel

Date:______________________