

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 84.29, RENEWABLE ENERGY GENERATION FACILITIES, AND CHAPTER 810.01, DEFINITIONS, OF THE SAN BERNARDINO COUNTY DEVELOPMENT CODE, RELATING TO THE REGULATION OF COMMERCIAL SOLAR ENERGY GENERATION FACILITIES.

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 and 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 desires to guide new commercial solar energy generation facilities to areas that can accommodate such facilities with fewer human and environmental resource conflicts.

(d) In order 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 in areas that are both (1) less desirable for the

1 development of communities, neighborhoods and rural residential use and (2) less
2 environmentally sensitive.

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

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

11
12 SECTION 2. Section 84.29.020 of the San Bernardino County Code is amended
13 to read:

14 **84.29.020 Applicability and Land Use Zoning Districts.**

15 This Chapter provides findings and development standards for commercial wind
16 and solar renewable energy facilities.

17 The Land Use Zoning Districts that allow commercial renewable energy facilities
18 are limited to the following:

19 RC (Resource Conservation)

20 AG (Agricultural)

21 FW (Floodway)

22 RL (Rural Living)

23 CR (Rural Commercial)

24 CN (Neighborhood Commercial)

25 CO (Office Commercial)

26 CG (General Commercial)

27 CS (Service Commercial)

28 CH (Highway Commercial)

- 1 IC (Community Industrial)
- 2 IR (Regional Industrial)
- 3 IN (Institutional)
- 4

5 SECTION 3. Section 84.29.035 is added to Chapter 84.29 of Division 4 of Title 8
6 of the San Bernardino County Code to read:

7 **84.29.035 Required Findings for Approval of a Commercial Solar Energy**
8 **Facility.**

9 (a) In order to approve a commercial solar energy generation facility, the
10 Planning Commission shall, in addition to making the findings required under Section
11 85.06.040(a) of the San Bernardino County Development Code, determine that the
12 location of the proposed commercial solar energy facility is appropriate in relation to the
13 desirability and future development of communities, neighborhoods, and rural
14 residential uses, and will not lead to loss of the scenic desert qualities that are key to
15 maintaining a vibrant desert tourist economy by making each of the findings of fact in
16 subdivision (c).

17 (b) In making these findings of fact, the Planning Commission shall consider:
18 (1) the characteristics of the commercial solar energy facility development site and its
19 physical and environmental setting, as well as the physical layout and design of the
20 proposed development in relation to nearby communities, neighborhoods, and rural
21 residential uses; and (2) the location of other commercial solar energy generation
22 facilities that have been constructed, approved, or applied for in the vicinity, whether
23 within a city or unincorporated territory, or on state or federal land.

24 (c) The finding of fact shall include the following:
25 (1) The proposed commercial solar energy generation facility is either
26 (A) sufficiently separated from existing communities and
27 existing/developing rural residential areas so as to avoid adverse effects, or
28 (B) of a sufficiently small size, provided with adequate setbacks,

1 designed to be lower profile than otherwise permitted, and sufficiently screened from
2 public view so as to not adversely affect the desirability and future development of
3 communities, neighborhoods, and rural residential use.

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

8 (3) The siting and design of the proposed commercial solar energy
9 generation facility will be either:

10 (A) unobtrusive and not detract from the natural features, open
11 space and visual qualities of the area as viewed from communities, rural residential
12 uses, and major roadways and highways,¹ or

13 (B) located in such proximity to already disturbed lands, such as
14 electrical substations, surface mining operations, landfills, wastewater treatment
15 facilities, etc., that it will not further detract from the natural features, open space and
16 visual qualities of the area as viewed from communities, rural residential uses, and
17 major roadways and highways.

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

21 (5) The proposed commercial solar energy generation facility will not
22 adversely affect the feasibility of financing infrastructure development in areas planned
23 for infrastructure development or will be located within an area not planned for future
24 infrastructure development (e.g., areas outside of water agency jurisdiction).

25 (6) The proposed commercial solar energy generation facility will not
26 adversely affect to a significant degree the availability of groundwater supplies for

27 _____
28 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.

1 existing communities and existing and developing rural residential areas.

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

7 (8) The proposed commercial solar energy generation facility will be
8 located in proximity to existing electrical infrastructure, such as transmission lines, utility
9 corridors, and roads, so that:

10 (A) minimal ground disturbance and above ground infrastructure
11 will be required to connect to the existing transmission grid, considering the location of
12 the project site and the location and capacity of the transmission grid,

13 (B) new electrical generation tie lines will be co-located on
14 existing power poles whenever possible, and

15 (C) existing rights-of-way and designated utility corridors will be
16 utilized to the extent practicable.

17 (9) The proposed commercial solar energy generation facility will be
18 sited so as to avoid or minimize impacts to the habitat of special status species,
19 including threatened, endangered, or rare species, Critical Habitat Areas as designated
20 by the U.S. Fish and Wildlife Service, important habitat/wildlife linkages or areas of
21 connectivity designated by County, state or federal agencies, and areas of Habitat
22 Conservation Plans or Natural Community Conservation Plans that discourage or
23 preclude development.

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

27 (11) The proposed commercial solar energy generation facility will be
28 located so as to avoid or mitigate impacts to significant cultural and historic resources,

1 as well as sacred landscapes.

2 (12) The proposed commercial solar energy generation facility will be
3 designed in a manner that does not impede flood flows, avoids substantial modification
4 of natural water courses, and will not result in erosion or substantially affect area water
5 quality.

6 (13) The proposed commercial solar energy generation facility will not
7 be located within a floodway designated by the Federal Emergency Management
8 Agency (FEMA), has been evaluated for flood hazard impacts pursuant to Chapter
9 82.14 of the Development Code, and will not result in increased flood hazards to
10 upstream or downstream properties.

11 (14) All on-site solar panels, switches, inverters, transformers, and
12 substations shall be located at least one foot above the base flood elevation as shown
13 on the Flood Insurance Rate Maps.

14 (15) For development sites proposed on or adjacent to undeveloped
15 alluvial fans, the commercial solar energy generation facility has been designed to avoid
16 potential channel migration zones as demonstrated by a geomorphic assessment of the
17 risk of existing channels migrating into the proposed development footprint, resulting in
18 erosion impacts.

19 (16) For proposed facilities located on prime agricultural soils or land
20 designated by the California Farmland Mapping and Monitoring Program as Prime
21 Farmland, Unique Farmland, or Farmland of Statewide Importance, where use of the
22 land for agricultural purposes is feasible, the proposed commercial solar energy
23 generation facility will not substantially affect the agricultural viability of surrounding
24 lands.

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

28 (18) The proposed commercial solar energy generation facility will not

1 preclude access to significant mineral resources.

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

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

10 (21) All clearing, grading, earth moving, and excavation activities will
11 cease during period of winds greater than 20 miles per hour (averaged over one hour),
12 or when dust plumes of 20 percent or greater opacity impact public roads, occupied
13 structures, or neighboring property, and in conformance with Air Quality Management
14 District (AQMD) regulations.

15 (22) For sites where the boundary of a new commercial solar energy
16 generation facility will be located within one-quarter mile of a primary residential
17 structure, an adequate wind barrier will be provided to reduce potentially blowing dust in
18 the direction of the residence during construction and ongoing operation of the
19 commercial solar energy generation facility.

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

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

25 (25) For proposed commercial solar energy generation facilities within
26 two (2) miles of the Joshua Tree National Park boundaries, the location, design, and
27 operation of the proposed commercial solar energy generation facility will not be a
28 predominant visual feature along the main access roads to the park (Park Boulevard

1 and Utah Trail), nor will it substantially impair views from hiking/nature trails,
2 campgrounds, and backcountry camping areas within the National Park.

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

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

11 (28) For proposed facilities within two (2) miles of the boundaries of a
12 County, state or federal agency designated wilderness area, the location, design, and
13 operation of the proposed commercial solar energy facility will not be a predominant
14 visual feature of, nor substantially impair views from, the designated wilderness area.

15 (29) For proposed facilities within two (2) miles of the boundaries of any
16 active military base, the location, design, and operation of the proposed commercial
17 solar energy facility will not substantially impair the mission of the facility.

18 (30) When located within a city's sphere of influence, in addition to other
19 County requirements, the proposed commercial solar energy facility will also be
20 consistent with relevant city zoning requirements that would be applied to similar
21 facilities within the city.

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

26
27 SECTION 4. Section 84.29.040 of the San Bernardino County Code is amended
28 to read:

1 **84.29.040 Solar Energy Development Standards.**

2 ...

3 (c) **Night Lighting.** Outdoor lighting within a commercial solar energy
4 generation facility shall comply with the provisions of Chapter 83.07 of this Development
5 Code.

6 (d) **Public Safety Services Impact Fees.** The developer of an approved
7 commercial solar energy generation facility shall pay a fee on an annual basis according
8 to the following schedule:

9

10 Parcel Size	Fee Per Acre
11 0-4.99 acres	\$580
12 5-14.99 acres	\$280
13 15 acres or greater	\$157

14

15 Alternatively, the developer of an approved commercial solar energy generation
16 facility shall pay an annual public services impact fee on a per acre basis based on a
17 project-specific study of the project's public safety services impacts, which study shall
18 be paid at the developer's expense, using a consultant approved by the County.

19 Whether based on the above schedule or on the basis of the project-specific
20 study, the per acre annual impact fee shall be adjusted annually based on the
21 Consumer Price Index for All Urban Consumers (CPI-U) for the Los Angeles-Riverside-
22 Orange County, California area.

23 (e) **Special Use Permit.** Prior to the start of construction, the developer of an
24 approved commercial solar energy generation facility shall submit for review, and gain
25 approval for, a Special Use Permit (SUP) from County of San Bernardino Code
26 Enforcement. Thereafter, the SUP shall be renewed annually subject to annual
27 inspections and the payment of fees required in paragraph (d) of this section. The
28 annual SUP inspections shall review and confirm continuing compliance with the

1 performance standards included in the Planning Commission’s findings of fact and the
2 listed conditions of approval, including all mitigation measures. This comprehensive
3 compliance review shall include evaluation of the operation and maintenance of the
4 entire commercial solar energy generation facility. Failure to comply shall cause
5 enforcement actions against the operator and owner of the facility. Such actions may
6 cause a hearing or an action that could result in revocation of the facility’s conditional
7 use permit and imposition of additional sanctions and/or penalties in accordance with
8 established County of San Bernardino land use enforcement procedures. Any
9 additional inspections that are deemed necessary by the County of San Bernardino
10 Code Enforcement Supervisor shall constitute a special inspection and shall be charged
11 at a rate in accordance with the County Fee Schedule, including travel time, not to
12 exceed three (3) hours per inspection.

13 (f) **Project Notices.** Notice of an application for approval of a commercial
14 solar energy generation facility shall be provided to the Municipal Advisory Council
15 (MAC) for the area, any Community Service District or water agency serving the project
16 site, and to all property owners, whether located in a city or in the unincorporated area
17 of the County, within the following parameters:

18 (1) **Area to be Notified:** Owners of property located within 1,000 feet
19 of the external boundaries of the parcel of the proposed site, or owners of property
20 located up to 20 separate parcels away but not to exceed one quarter mile (1,320 ft.),
21 whichever is greater.

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

27
28 SECTION 5. Subsection 810.01.050(dddd) of the San Bernardino County Code

1 is added to read:

2 **810.01.050 Definitions, C.**

3 ...

4 (dddd) **Commercial Solar Energy Generation Facility.** The components and
5 subsystems that, in combination, convert solar energy into electric or thermal energy
6 primarily for the purpose of off-site consumption, and may include other appurtenant
7 structures and facilities. The definition includes, but is not limited to, photovoltaic power
8 systems and solar thermal systems.

9
10 SECTION 6. This ordinance shall become effective thirty (30) days after its
11 adoption.

12
13 SECTION 7. The Board declares that it would have adopted this Ordinance and
14 each section, subsection, sentence, clause, phrase, or portion of it irrespective of the
15 fact that any one or more sections, subsections, clauses, phrases or portions of it be
16 declared invalid or unconstitutional. If for any reason any portion of this Ordinance is
17 declared invalid or unconstitutional, then all other provisions of it shall remain valid and
18 enforceable.

19
20 _____
JANICE RUTHERFORD, Chair
Board of Supervisors

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

24 LAURA H. WELCH, Clerk of the
25 Board of Supervisors

26 _____

27
28

1 STATE OF CALIFORNIA)
2) ss.
3 COUNTY OF SAN BERNARDINO)

4 I, LAURA H. WELCH, Clerk of the Board of Supervisors of the County of San
5 Bernardino, State of California, hereby certify that at a regular meeting of the Board of
6 Supervisors of said County and State, held on the _____ day of _____, 2013,
7 at which meeting were present Supervisors: _____

8 and the Clerk, the foregoing ordinance was passed and adopted by the following vote,
9 to wit:

10 AYES: SUPERVISORS:

11 NOES: SUPERVISORS:

12 ABSENT: SUPERVISORS:

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

15 LAURA H. WELCH, Clerk of the
16 Board of Supervisors of the
17 County of San Bernardino,
18 State of California

19 _____
20 Deputy

21 Approved as to Form:

22 JEAN-RENE BASLE
23 County Counsel

24 By: _____
25 KENNETH C. HARDY
26 Deputy County Counsel

27 Date: _____
28