

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

623



FROM: County Counsel

SUBMITTAL DATE:
May 15, 2013

SUBJECT: Revised Board of Supervisors Policy No. B-29 pertaining to Solar Power Plants

RECOMMENDED MOTION: That the Board of Supervisors:

- (1) Adopt Revised Board Policy No. B-29 pertaining to Solar Power Plants as set forth in Attachment A; and
- (2) Find Revised Board Policy No. B-29 exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3).

Departmental Concurrence

BACKGROUND: On November 8, 2011, the Board adopted General Plan Amendment No. 1080 ("GPA"), Land Use Ordinance Amendment No. 348.4705 ("Zoning Amendment"), and Board of Supervisors Policy No. B-29 entitled "Solar Power Plants" ("Existing Policy B-29"). These three legislative actions were adopted as part of a comprehensive, integrated legislative program. Together, the GPA, Zoning Amendment, and Policy B-29 comprise the Riverside County Solar Power Plant Program (the "Solar Power Plant Program").

(continued on page 2)

Tiffany North, Deputy County Counsel for
Pamela J. Walls, County Counsel

FINANCIAL DATA	Current F.Y. Total Cost:	\$ NA	In Current Year Budget:	NA
	Current F.Y. Net County Cost:	\$ NA	Budget Adjustment:	NA
	Annual Net County Cost:	\$ NA	For Fiscal Year:	NA

SOURCE OF FUNDS:	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:
Denise C. Harden

County Executive Office Signature

Policy

Consent

Dept's Recomm.:
Per Exec. Ofc.:

2013 MAY 12 PM 2:35
 RECEIVED CLERK OF SUPERVISOR OFFICE

Prev. Agn. Ref.: 11/8/11; 16.2 | District: ALL | Agenda Number:

3-24

Existing Policy B-29 includes several provisions regarding the development of solar power plants. It provides, among other things:

- No encroachment permit shall be issued for a solar power plant unless the Board first grants a franchise to the solar power plant owner.
- No interest in the County's real property, or the real property of any special district governed by the County, shall be conveyed for a solar power plant unless the Board first approves a real property interest agreement with the solar power plant owner.
- No approval required by Ordinance Nos. 348 or 460 shall be given for a solar power plant unless the Board first approves a development agreement with the solar power plant owner and the development agreement is effective.

Existing Policy B-29 further requires that all such agreements shall include a term requiring a solar power plant owner to make an annual payment to the County of \$450 for each acre involved in the power production process and a term requiring a solar power plant owner to secure the payment of sales and use taxes. The annual payment may be reduced by up to 50% through the use of incentives and credits set forth in Existing Policy B-29.

On November 8, 2011, the Board declared that the purposes of Existing Policy B-29 "are to implement . . . [the] General Plan . . . , to ensure that the County does not disproportionately bear the burden of solar energy production, to ensure the County is compensated in an amount it deems appropriate for the use of its real property, and to give solar power plant owners certainty as to the County's requirements."

On February 3, 2012, the Independent Power Producers Association, dba Independent Energy Producers Association and the Large-Scale Solar Association filed suit against the Board and the County challenging Existing Policy B-29 on behalf of themselves and their members (Riverside Superior Court Case No. INC1200838).

Now, the parties to the litigation believe their mutual interests will be best served if any and all legal disputes between them are resolved without further litigation by the Board considering adoption of a Revised Board Policy No. B-29 ("Revised Policy B-29"). Accordingly, the parties have entered into agreement requiring the Board's consideration of Revised Policy B-29, consideration of public comment, and then action by the Board on the Revised Policy B-29. It is understood and acknowledged by the parties that the Board has discretion and that the agreement cannot restrict or bind the Board's legislative decision-making authority.

REVISED BOARD POLICY B-29

Revised Policy B-29, as set forth in Attachment A, makes the following revisions to Existing Policy B-29:

Payment: The solar power plant owner shall pay annually to the County \$150 for each acre of land involved in the power production process ("net acreage"). For solar power plants that are built in phases, the annual payments shall be based on net acreage of each defined phase.

Annual Increase: The initial payment and each subsequent payment shall increase by two percent each year from and after 2013.

Incentives and Credits: All incentives and credits have been removed from Existing Policy B-29 given the lower payment amount.

Sales and Use Taxes: Revised Policy B-29 states that each franchise, real property interest agreement or development agreement shall include all necessary provisions and construction contract requirements, consistent with law, to ensure the sales and use taxes payable in connection with the construction of the solar power plant are allocable to the County to the maximum extent possible under the law. Revised Policy B-29 further requires that the solar power plant owner reimburse the County for the County's use of a private sales tax consultant to assist in implementing and enforcing compliance with the sales and use tax provisions of the agreement.

Expedited Processing: Revised Policy B-29 states that the County shall establish a program to expedite review and approval of any agreements, permits, or other approvals from the County necessary to site, develop, and operate solar power plants.

All other terms and provisions of Existing Policy B-29 shall remain unchanged and shall remain in full force and effect.

Revised Policy B-29 is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) in that it can be seen with certainty there is no possibility the policy may have a significant effect on the environment. The policy merely establishes a discretionary process for solar power plants in the County. To perform any environmental analysis at this early stage would require the County to speculate as to which parcels might be involved, what type of solar technology might be used, and what impacts a future solar power plant project might have. As a result, such analysis would be premature and meaningless. "Determining whether a project qualifies for the common sense exemption need not necessarily be preceded by detailed or extensive fact-finding. Evidence appropriate to the CEQA stage in issue is all that is required." *Muzzy Ranch Co. v. Solana County Airport Land Use Commission* (2007) 41 Cal.4th 372, 388. There is no specific development application connected with Revised Policy B-29 and it does not commit the County to any development. Accordingly, the County's approval of the policy does not create a reasonably foreseeable physical change in the environment. Before development occurs on any particular site, all environmental issues will be analyzed in site-specific environmental impact reports or other environmental documents. The conclusions expressed herein are consistent with CEQA Guidelines section 15004(b) which provides: "Choosing the precise time for CEQA compliance involves a balancing of competing factors. EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design and yet late enough to provide meaningful information for environmental assessment."

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Purpose:

The Board supports solar energy and acknowledges its benefits. The benefits of solar power plants, however, occur on a national, statewide and regional level. The County wants to contribute its fair share to meet renewable energy goals, but not at the expense of its residents. At the local level, solar power plants permanently alter the landscape. They also permanently commit vast areas of the County to energy production and preclude all other potential uses, including, but not limited to, agricultural, recreational, commercial, residential and open space uses. The amount of land required to operate these facilities is significantly greater than the amount of land required to operate other renewable energy facilities and conventional energy facilities. Because Riverside County is one of fastest growing counties in the state and because it is expected to be the second most populous county in the state by 2044, the commitment of so much land to a single use has serious consequences.

There are currently such a large number of solar power plants approved and pending in the County that the fundamental values of the County expressed in its General Plan are in jeopardy. These fundamental values include "sustainability", pursuant to which the County has an expectation that its future residents will inherit communities offering them a reasonable range of choices (General Plan pg. V-7); and the "natural environment", pursuant to which the County is committed to maintaining sufficient areas of natural open space and sustaining the permanent viability of unique landforms and ecosystems (General Plan pg. V-6).

The vision of the County expressed in its General Plan is also in jeopardy. Corridors and areas may not be preserved for distinctive purposes, including multi-purpose open space; economic development; agriculture; residences; and public facilities (General Plan pg. V-11). The rich diversity of the County's environmental resources may not be preserved and enhanced for the enjoyment of present and future generations (General Plan pg. V-11). The public may not have access to recreation opportunities (General Plan pg. V-11). There may not be expanded local employment opportunities (General Plan pg. V-12). Development may not occur where appropriate and where adequate public facilities and services are available (General Plan pg. V-15). Agricultural lands may not remain as a valuable form of development (General Plan pg. V-22).

The following General Plan Policies will be affected by the large number of approved and pending solar power plants:

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- Land Use Element Policy LU 2.1.c. - the County shall provide a broad range of land uses, including a range of residential, commercial, business, industry, open space, recreation and public facility uses (General Plan pg. LU-20).
- Land Use Element Policy LU 5.1- the County shall ensure that development does not exceed the ability to adequately provide supporting infrastructure and services (General Plan LU-24).
- Land Use Element Policy LU 7.1 - the County shall accommodate the development of a balance of land uses that maintain and enhance the County's fiscal viability, economic diversity and environmental integrity (General Plan LU-26).
- Land Element Policy LU 8.1 - the County shall provide for the permanent preservation of open space lands that contain important natural resources and scenic and recreational values (General Plan LU-28).
- Land Use Element Policy LU 13.1 - the County shall preserve and protect outstanding scenic vistas and visual features for the enjoyment of the traveling public (General Plan LU-31).
- Land Use Element Policy LU 15.15 - the County shall permit and encourage, in an environmentally and fiscally responsible manner, the development of renewable energy resources and related infrastructure, including but not limited to, the development of solar power plants in the County of Riverside (General Plan LU-37).

The purposes of this Board policy are to implement these and other General Plan provisions, to ensure that the County does not disproportionately bear the burden of solar energy production, to ensure the County is compensated in an amount it deems appropriate for the use of its real property, and to give solar power plant owners certainty as to the County's requirements.

Policy:

To secure public health, safety and welfare, a solar power plant shall be subject to the requirements of this policy as well as the requirements of any applicable ordinance, state or federal law.

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No encroachment permit shall be issued for a solar power plant unless the Board first grants a franchise to the solar power plant owner. No interest in the County's real property, or the real property of any special district governed by the County, shall be conveyed for a solar power plant unless the Board first approves a real property interest agreement with the solar power plant owner. No approval required by Ordinance Nos. 348 or 460 shall be given for a solar power plant unless the Board first approves a development agreement with the solar power plant owner and the development agreement is effective.

Notwithstanding the foregoing, the County may waive the requirement for multiple agreements where otherwise two or more agreements would be required.

Each such franchise, real property interest agreement or development agreement shall include provisions consistent with the following requirements:

Payment. The solar power plant owner shall annually pay the County \$150 for each acre of land involved in the power production process (hereinafter "net acreage"). The initial payment shall be due within five business days of the commencement of project construction. Subsequent payments shall be due by September 30 of each year. For solar power plant projects that are built in defined phases approved prior to, or concurrent with, approval of an agreement called for in this policy, the annual payments shall be based on net acreage of each defined phase.

Annual Increase. The initial payment of \$150, and each subsequent payment shall increase annually by two percent from and after 2013.

Suspension of Operations. If the County causes a solar power plant to stop operating for longer than 90 days for a reason not related to a violation of the terms of any applicable agreement or a violation of the project conditions of approval, the base payment may be reduced by up to 50 percent upon written request of the solar power plant owner for the period of time the solar power plant remains inoperative.

Sales and Use Taxes. Solar power plant owners have substantial control with respect to sales and use taxes payable in connection with the construction of a solar power plant and a corresponding responsibility to assure that such sales and use taxes are reported and remitted to the California State Board of Equalization (BOE) as provided by law. Each franchise, real property interest agreement or development agreement required by this policy shall include all necessary provisions and construction contract requirements, consistent with law, to ensure allocation directly to the County, to the maximum extent possible under the law, of the sales and use taxes payable in

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connection with the construction of the solar power plant including, without limitation, provisions and requirements consistent with the following:

- 1) Each solar power plant owner who meets the criteria set forth in applicable BOE regulations and policies must obtain a BOE permit, or sub-permit, for the solar power plant jobsite and report and remit all such taxable sales or uses pertaining to construction of the solar power plant using the permit or sub-permit for that jobsite to the maximum extent possible under the law.
- 2) Each solar power plant owner shall contractually require that all contractors and subcontractors whose contract with respect to the solar power plant exceeds \$100,000.00 ("Major Subcontractors") who meet the criteria set forth in applicable BOE regulations and policies must obtain a BOE permit, or sub-permit, for the solar power plant jobsite and report and remit all such taxable sales or uses pertaining to construction of the solar power plant using the permit or sub-permit for that jobsite to the maximum extent possible under the law.
- 3) Prior to the commencement of any grading or construction of a solar power plant, each solar power plant owner shall deliver to the County a list that includes, as applicable and without limitation, each contractor's and Major Subcontractor's business name, value of contract, scope of work on the solar power plant, procurement list for the solar power plant, BOE account numbers and permits or sub-permits specific to the solar power plant jobsite, contact information for the individuals most knowledgeable about the solar power plant and the sales and use taxes for such solar power plant, and, in addition, shall attach copies of each permit or sub-permit issued by the BOE specific to the solar power plant jobsite. Said list shall include all the above information for the solar power plant owner, its contractors, and all Major Subcontractors. The solar power plant owner shall provide updates to the County of the information required under this section within thirty (30) days of any changes to the same, including the addition of any contractor or Major Subcontractor.
- 4) Each solar power plant owner shall certify in writing that they understand the procedures for reporting and remitting sales and use taxes in the State of California and will follow all applicable state statutes and regulations with respect to such reporting and remitting.
- 5) Each solar power plant owner shall contractually require that each contractor or Major Subcontractor certify in writing that they understand the procedures for reporting and remitting sales and use taxes in the State of California and will follow all applicable state statutes and regulations with respect to such reporting and remitting.

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- 6) Each solar plant owner shall deliver to the County or its designee (as provided in section 7 below) copies of all sales and use tax returns pertaining to the solar power plant filed by the solar power plant owner, its contractors and Major Subcontractors. Such returns shall be delivered to the County or its designee within thirty (30) days of filing with the BOE. Such returns may be redacted to protect, among other things, proprietary information and may be supplemented by additional evidence that payments made complied with this policy.
- 7) The County may, in its sole discretion, select and retain the services of a private sales tax consultant with expertise in California sales and use taxes to assist in implementing and enforcing compliance with the provisions of the agreement and that each solar power plant owner shall be responsible for all reasonable costs incurred for the services of any such private sales tax consultant and shall reimburse the County within thirty (30) days of written notice of the amount of such costs.

Term. The appropriate agreement shall be for a term coextensive with the operation of the solar power plant.

Expedited Review and Approval.

The County shall establish a program to expedite review and approval of any agreements, permits or other approvals from the County necessary to site, develop and operate solar power plants. In the interim, permits for solar power plants subject to this policy shall be eligible for an expedited entitlement process in accordance with applicable County ordinances, policies, and state law to the extent feasible.

Exemption:

This policy shall not apply to a solar power plant that has a rated production capacity of 20 or fewer megawatts; provided, however, this exemption shall not apply if the County determines that a solar power plant owner, or an affiliated company, filed separate applications so as to obtain the exemption.

Exception:

A solar power plant owner may make a written request to be excepted from this policy at the time the solar power plant owner files an application for a permit or approval described in this policy or any time thereafter. The Board may grant the exception request upon a finding of special circumstances. Special circumstances shall include, but not be limited to, a determination that the solar power plant has a substantial benefit to the County above and beyond the payment of required taxes or the implementation of

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mitigation measures identified in any applicable environmental document. Special circumstances shall not include financial or economic hardship.

Definitions:

As used in this policy, the following terms shall have the following meanings:

“Net Acreage.” All areas involved in the production of power including, but not limited to, the power block, solar collection equipment, areas contiguous to solar collection equipment, transformers, transmission lines and/or piping, transmission facilities (on and off-site), service roads regardless of surface type – including service roads between panels or collectors, structures, and fencing surrounding all such areas. Net acreage shall not include off-site access roads or areas specifically set aside either as environmentally sensitive or designated as open space, and shall not include the fencing of such set aside areas.

“Solar Power Plant.” A facility used to generate electricity from solar energy where the power plant will be connected to the power grid and the electricity will be used primarily (i.e. more than 50 percent) at locations other than the site of the solar power plant. Solar power plants include power plants using both solar thermal systems and photovoltaic systems to convert solar energy to electricity. Solar thermal systems concentrate heat to drive a turbine which is then used to create electricity from generators and include systems using solar troughs, solar dishes, and solar power towers. Photovoltaic systems use a technology such as solar cells which generates electricity directly from sunlight. A solar power plant does not include a solar energy system as defined in Ordinance No. 348.

“Solar Power Plant Owner.” A person or entity developing, owning or operating a solar power plant.

Integration:

Board of Supervisors Policy No. B-29, as adopted on November 8, 2011 and as amended on [DATE], is approved as part of a comprehensive, integrated legislative program which also includes the adoption of General Plan Amendment No. 1080 (Land Use Policy LU 15.15) and Ordinance No. 348.4705. The Board of Supervisors declares that it would not have adopted Board of Supervisors Policy No. B-29 unless General Plan Amendment No. 1080 (Land Use Policy LU 15.15) and Ordinance No. 348.4705 were also adopted and effective. In the event that any provision of Board of Supervisors Policy No. B-29, General Plan Amendment No. 1080 (Land Use Policy LU

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15.15) or Ordinance No. 348.4705 is determined to be invalid or unenforceable, in whole or in part, by a court of competent jurisdiction, then Board of Supervisors Policy No. B-29, General Plan Amendment No. 1080 (Land Use Policy LU 15.15) and Ordinance No. 348.4705 shall be deemed invalid in their entirety and shall have no further force or effect.

Reference:

Minute Order 16.2 of 11/08/2011