



BOARD OF SUPERVISORS  
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors  
105 East Anapamu Street, Room 407  
Santa Barbara, CA 93101  
(805) 568-2240

**Department Name:** Planning & Development  
**Department No.:** 053  
**For Agenda Of:** 5/19/2009  
**Placement:** Set hearing  
**Estimated Tme:** 60 minutes (on 6/23/2009)  
**Continued Item:** No  
**If Yes, date from:**  
**Vote Required:** Majority

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**TO:** Board of Supervisors  
**FROM:** Department Director John Baker (805. 568.2085)  
Contact Info: Dianne Black, Development Services Director (805.568.2086)  
**SUBJECT:** Solar Energy Systems Permit Requirements Ordinance Amendment

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**County Counsel Concurrence**  
As to form: Yes

**Auditor-Controller Concurrence**  
As to form: N/A

**Other Concurrences:** N/A

**Recommended Actions:**

That the Board of Supervisors set for hearing of June 23, 2009 to:

- A. Case No. 09ORD-00000-00001:** Consider the recommendation of the County Planning Commission and:
1. Adopt findings for approval of the proposed ordinance (Attachment A);
  2. Find that the adoption of this ordinance is categorically exempt from the California Environmental Quality Act in compliance with Section 15061(b)(3) of the Guidelines for Implementation of CEQA (Attachment B);
  3. Consider the introduction (first reading) of an ordinance amending Section 35-1, the Santa Barbara County Land Use and Development Code, of Chapter 35, Zoning, of the County Code (Attachment C) to revise the permitting requirements for solar energy systems; and,
  4. Set for July 7, 2009 the adoption (second reading) of an ordinance amending Section 35-1, the Santa Barbara County Land Use and Development Code, of Chapter 35, Zoning, of the County Code (Attachment C) to revise the permitting requirements for solar energy systems.
- B. Case No. 09ORD-00000-00002:** Consider the recommendation of the Montecito Planning Commission and:
1. Adopt findings for approval of the proposed ordinance (Attachment F);
  2. Find that the adoption of this ordinance is categorically exempt from the California Environmental Quality Act in compliance with Section 15061(b)(3) of the Guidelines for Implementation of CEQA (Attachment G);

3. Consider the introduction (first reading) of an ordinance amending Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the County Code (Attachment H) to revise the permitting requirements for solar energy systems; and,
4. Set for July 7, 2009 the adoption (second reading) of an ordinance amending Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the County Code (Attachment H) to revise the permitting requirements for solar energy systems.

**C. Case No. 90ORD-00000-00011:**

1. Find that the adoption of this ordinance is categorically exempt from the California Environmental Quality Act in compliance with Section 15061(b)(3) of the Guidelines for Implementation of CEQA (Attachment K);
2. Consider the introduction (first reading) of an ordinance amending Section 10-2.6, Permits, inspections and fees, of Chapter 10, Building Regulations, of the County Code (Attachment L) to add a new Subsection (g) to add procedures for the processing of a Solar Use Permit; and,
3. Set for July 7, 2009 the adoption (second reading) of an ordinance amending Section 10-2.6, Permits, inspections and fees, of Chapter 10, Building Regulations, of the County Code (Attachment L) to add a new Subsection (g) to add procedures for the processing of a Solar Use Permit.

**Summary Text:**

**1. Background.**

The County zoning ordinances currently provide that solar energy systems are exempt from planning permits if they are located on the roof of a structure, but require a Coastal Development Permit (if located in the Coastal Zone) or a Land Use Permit (if located in the Inland area) if they are freestanding. All solar energy systems are exempt from design reviews. Building permits (especially in the case of roof mounted systems), electrical permits and plumbing permits, depending on the type of system, are typically required.

In response to impetus from Salud Carbajal, First District Supervisor, the Planning and Development Department began investigating ways to streamline the permit process for freestanding solar energy systems. Additionally, the Planning and Development Department updated a brochure on solar energy to increase the public's awareness of the benefits of solar energy (Attachment N).

In order to streamline the permit process the Planning and Development Department discussed with the County and Montecito Planning Commissions the idea of shifting the permit requirement for freestanding systems in the Inland area from a Land Use Permit (with notice and the possibility for appeal) to a Zoning Clearance (no notice, no appeal) provided the project complied with all other zoning requirements (e.g., height, setbacks) and a specific set of development standards designed to address compatibility issues such as location and visibility.

However, after an extensive review of California Government Code Section 65850.5 (Attachment M), which imposes strict limitations on the ability of local governments to regulate the installation of solar energy systems, County Counsel and the Planning and Development Department concluded that this proposed permit scheme did not fully comply with Section 65850.5. In summary, Section 65850.5:

- Requires that solar energy systems be approved through the issuance of a building permit or similar nondiscretionary permit.
- Limits the building official's review of the system to whether it meets health and safety requirements of local, state, and federal law.
- Limits local regulations to those that are necessary to ensure that the system will not have a specific, adverse impact upon the public health or safety.
- Allows the building official to require a "use permit" if he has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety.
- Provides that a "use permit" may not be denied unless there are written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact; the findings shall include the basis for the rejection of potential feasible alternatives of preventing the adverse impact.
- Allows for an appeal of both the decision by the building official to require a use permit and the decision to approve, conditionally approve or deny the use permit.
- Restricts any conditions imposed on an application to install a solar energy system to those designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

Government Code Section 65850.5 does not appear to be consistent with the requirements the Coastal Act (which is embodied in the Public Resources Code) that requires the approval of a Coastal Development Permit for all development proposed in the Coastal Zone. Therefore, the Planning and Development Department prepared ordinances for consideration by the County and Montecito Planning Commissions that comply with the limits of Section 65850.5 yet also maintains the requirements of the Coastal Act for the installation of solar energy systems in the Coastal Zone. The ordinance presented to the Montecito Planning Commission included allowing freestanding systems as accessory uses in the Resource Management Zone without the necessity of a Development Plan which is typically required for development in the Resource Management Zone.

On April 8, 2009, by a unanimous vote, the County Planning Commission adopted a resolution (Attachment D) recommending that your Board adopt the proposed ordinance amending the County LUDC regarding revisions to the permit requirements for solar energy systems located outside of the Montecito Community Plan area.

On April 22, 2009, by a vote of three to two, the Montecito Planning Commission adopted a resolution (Attachment I) recommending that your Board adopt the proposed ordinance amending the Montecito LUDC regarding revisions to the permit requirements for solar energy systems located within the Montecito Community Plan area.

The Planning Commissions did not review the proposed amendment to Chapter 10 (Attachment L) as they do not have any review authority over that portion of the County Code.

Please refer to Attachment E, the County Planning Commission staff report, and Attachment J, the Montecito Planning Commission staff report, for further background information and analysis.

## **2. Project Description.**

### **2.1 Proposed permit process, Coastal Zone.**

As noted above, solar energy systems located within the Coastal Zone are exempt from planning permits if located on the roof of an existing structure but require a Coastal Development Permit

(CDPs) if located on the ground. This amendment maintains these permit requirements; however, it also deletes the public hearing requirement for CDPs for freestanding systems that normally require a hearing due to their location in order to comply with Section 65850.5 that requires that solar energy systems be permitted in a nondiscretionary manner. The pending action on all CDPs would be noticed, and the CDP could be appealed to the applicable Planning Commission. CDPs for freestanding systems that normally require a public hearing could also be appealed to the Coastal Commission.

This process for freestanding systems that normally require a hearing is the same approach the County presently uses for residential second units that are required by the Government Code to be processed in a ministerial manner.

## **2.2 Proposed permit process, Inland area.**

Also as noted above, solar energy systems located in the Inland area are currently exempt from planning permits if located on the roof of an existing structure but require a Land Use Permit if located on the ground. This amendment specifies that all solar energy systems, regardless of location, are exempt from planning permits and only require the issuance of a building permit, electrical permit or plumbing permit as applicable. The approval of such a permit could be appealed to the Board of Building Appeals (as is the case with all other building permits) however the scope of the appeal is limited by Section 65850.5 to whether it the system complies with all health and safety requirements of state and federal laws, and local regulations necessary to ensure that the solar energy system will not have a specific, adverse impact upon the public health or safety. Any conditions imposed on an application to install a solar energy system are restricted to those that mitigate any specific, adverse impact upon the public health and safety at the lowest cost possible.

As allowed by Section 65850.5, the proposed amendment also provides a process whereby the Building Official may require the applicant to additionally apply for a Solar Use Permit if he has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety. The decision to require a Solar Use Permit could be appealed to the Planning Commission; however, the grounds for such an appeal are restricted to a demonstration that the solar energy system would not have a specific, adverse impact upon the public health and safety.

In compliance with Section 65850.5, in order to deny an application for a Solar Use Permit the Building Official would have to make written findings based upon substantial evidence in the record that the proposed installation would have a specific, adverse impact upon the public health or safety, and there is no feasible method to satisfactorily mitigate or avoid the specific, adverse impact. If applicable the findings shall also include the basis for the rejection of potential feasible alternatives of preventing the adverse impact. Any conditions imposed on a Solar Use Permit must be designed to mitigate any specific, adverse impact upon the public health and safety at the lowest cost possible.

The decision of the Building Official on the Solar Use Permit would be noticed and could be appealed to the Planning Commission. However, the decision by the Planning Commission on an appeal would need to be in compliance with the restrictions imposed by Section 65850.5 on the decision of the Building Official (e.g., requirement for written findings to deny the permit, limitation on the scope of any conditions imposed on the permit).

## **2.3 Proposed Solar Use Permit.**

The proposed amendments to the County and Montecito Land Use and Development Codes, which are part of Chapter 35 (Zoning) of the County Code, requires amending Chapter 10

(Building Regulations) of the County Code so that Chapter 10 and Chapter 35 are consistent with each other. The proposed amendment to Chapter 10 (Attachment L) provides for the ability of the Building Official to require the submission of an application for a Solar Use Permit when he has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, and references the processing requirements for a Solar Use Permit contained in the County and Montecito Land Use and Development Codes discussed above.

**Fiscal and Facilities Impacts:**

Budgeted: Yes.

**Fiscal Analysis:**

Funding for this ordinance amendment work effort is budgeted in the Planning Support program of the Administration Division on page D-295 of the adopted Planning and Development Department's budget for fiscal year 2008-09. There are no facilities impacts.

**Staffing Impact(s):**

<b>Legal Positions:</b>	<b>FTEs:</b>
0	0

**Special Instructions:**

1. The Planning and Development Department will satisfy all noticing requirements.
2. The Clerk of the Board will send a copy of the signed and numbered ordinance and minute order to the Planning and Development Department, attention Noel Langle.

**Attachments:**

- A. Case No. 09ORD-00000-00001 Findings
- B. Case No. 09ORD-00000-00001 CEQA Notice of Exemption
- C. Case No. 09ORD-00000-00001 Ordinance
- D. Case No. 09ORD-00000-00001 Planning Commission Resolution No. 09-05
- E. Case No. 09ORD-00000-00001 4/8/2009 County Planning Commission report (w/o attachments)
- F. Case No. 09ORD-00000-00002 Findings
- G. Case No. 09ORD-00000-00002 CEQA Notice of Exemption
- H. Case No. 09ORD-00000-00002 Ordinance
- I. Case No. 09ORD-00000-00002 Montecito Commission Resolution No. 09-06
- J. Case No. 09ORD-00000-00002 4/22/2009 Montecito Planning Commission report (w/o attachments)
- K. Case No. 09ORD-00000-00011 CEQA Notice of Exemption
- L. Case No. 09ORD-00000-00011 Ordinance
- M. Government Code Section 65850.5
- N. Solar Brochure

Authored by:

Noel Langle (805.568.2067)