

ATTACHMENT D: PLANNING COMMISSION RESOLUTION NO. 09 - 05

**RESOLUTION OF THE SANTA BARBARA COUNTY PLANNING COMMISSION
COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA**

IN THE MATTER OF RECOMMENDING TO THE)
BOARD OF SUPERVISORS THE ADOPTION OF)
AN AMENDMENT TO SECTION 35-1 OF) RESOLUTION NO.: 09 - 05
CHAPTER 35 OF THE COUNTY CODE, THE)
SANTA BARBARA COUNTY LAND USE AND) CASE NO.: 09ORD-00000-00001
DEVELOPMENT CODE, REGARDING THE)
PERMITTING OF SOLAR ENERGY SYSTEMS.)

WITH REFERENCE TO THE FOLLOWING:

- A. On November 27, 2007, by Ordinance 4660, the Board of Supervisors adopted the Santa Barbara County Land Use and Development Code, Section 35-1 of Chapter 35 of the Santa Barbara County Code; and
- B. The County Planning Commission now finds that it is in the interest of the orderly development of the County and important to the preservation of the health, safety and general welfare of the residents of the County to recommend that the Board of Supervisors adopt an ordinance (Case No. 09ORD-00000-00001) amending Section 35-1 of Chapter 35 of the Santa Barbara County Code, the Santa Barbara County Land Use and Development Code, to revise the procedures for permitting solar energy systems.

Said Ordinance is attached hereto as Exhibit 1 and is incorporated herein by reference.

- C. The proposed Ordinance is consistent with the Coastal Act of 1976, the Santa Barbara County Coastal Plan, the Santa Barbara County Comprehensive Plan including applicable regional Community plans, and the requirements of the State Planning, Zoning and Development Laws.
- D. The proposed Ordinance is in the interest of the general community welfare, since it will implement both Government Code Section 65850.5 which requires that a city or county shall administratively approve applications to install solar energy systems through the issuance of a building permit or similar nondiscretionary permit and the stated intent of Government Code Section 65850.5 to promote and encourage the use of solar energy systems and to limit obstacles to their use by providing a more efficient permitting process for solar energy systems without the public health and safety.
- E. This Commission has held a duly noticed public hearing, as required by Section 65854 of the Government Code, on the proposed Ordinance at which hearing the proposed Ordinance was explained and comments invited from the persons in attendance.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

- 1. The above recitations are true and correct.

2. In compliance with the provisions of Section 65855 of the Government Code, this Commission recommends that the Board of Supervisors of the County of Santa Barbara, State of California, following the required noticed public hearing, approve and adopt the above mentioned recommendation of this Commission.
4. A certified copy of this resolution shall be transmitted to the Board of Supervisors.
5. The Chair of this Commission is hereby authorized and directed to sign and certify all maps, documents, and other materials in accordance with this resolution to show the above mentioned action by the Planning Commission.

PASSED, APPROVED AND ADOPTED this April 8, 2009 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

DANIEL BLOUGH, Chair
Santa Barbara County Planning Commission

ATTEST:

DIANNE MEESTER BLACK
Secretary to the Commission

APPROVED AS TO FORM:

DENNIS A. MARSHALL
COUNTY COUNSEL

By _____
Deputy County Counsel

EXHIBITS:

1. 09ORD-00000-00001

EXHIBIT 1

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 35-1, THE SANTA BARBARA COUNTY LAND USE AND DEVELOPMENT CODE, OF CHAPTER 35, ZONING, OF THE COUNTY CODE, BY AMENDING ARTICLE 35.2, ZONES AND ALLOWABLE LAND USES, ARTICLE 35.3, SITE PLANNING AND OTHER PROJECT STANDARDS, ARTICLE 35.10, LAND USE AND DEVELOPMENT CODE ADMINISTRATION, AND ARTICLE 35.11, GLOSSARY, AND MAKE OTHER MINOR REVISIONS AS NECESSARY TO REVISE THE PROCEDURES FOR PERMITTING SOLAR ENERGY SYSTEMS.

Case No. 09ORD-00000-00001

The Board of Supervisors of the County of Santa Barbara, State of California, ordains as follows:

SECTION 1:

Article 35.2, Zones and Allowable Land Uses, of Section 35-1, the Santa Barbara County Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Subsection 1, Activities and structures exempt both within the Inland area and the Coastal Zone, of Subsection B., Exempt activities and structures, of Section 35.20.040, Exemptions from Planning Permit Requirements, of Chapter 35.20, Development and Land Use Permit Requirements, to amend Subsection m., Solar energy collectors, read as follows:

- m. Solar energy collectors systems.** The addition of solar energy ~~collection~~ systems to the roofs of existing structures. See Section 35.30.160 (Solar Energy Systems) and Section 35.102.040 (Appeals to the Commission) for special permit, notice and appeal procedures.

SECTION 2:

Article 35.2, Zones and Allowable Land Uses, of Section 35-1, the Santa Barbara County Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Subsection 2., Activities and structures exempt within the Inland area, of Subsection B., Exempt activities and structures, of Section 35.20.040, Exemptions from Planning Permit Requirements, of Chapter 35.20, Development and Land Use Permit Requirements, to add a new Subsection h. to read as follows and to re-number existing Subsection h. through Subsection j. as Subsection i. through Subsection k.:

- h. Solar energy systems.** The installation of freestanding solar energy systems. See Section 35.30.160 (Solar Energy Systems) and Section 35.102.040 (Appeals to the Commission) for special permit, notice and appeal procedures.

SECTION 3:

Article 35.3, Site Planning and Other Project Standards, of Section 35-1, the Santa Barbara County Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Section 35.30.160 (Solar Panels) of Chapter 35.30, Standards for All Development and Land Uses, to read as follows:

35.30.160 - Solar Panels Energy Systems

A. Coastal Zone.

- 1. Roof mounted.** Solar ~~panels~~ energy systems located on the roof of an existing structure are exempt from design review and do not require planning permit approval.

2. Freestanding. Freestanding solar energy systems shall require the issuance of either a Coastal Development Permit in compliance with Section 35.82.050 (Coastal Development Permits) or a Land Use Permit in compliance with Section 35.82.110 (Land Use Permits) as applicable.

a. Development that may be appealed to the Coastal Commission. Applications for Coastal Development Permits for development which is defined as appealable development in compliance with State law (Public Resources Code Section 30603) that would normally be processed in compliance with Section 35.82.050.D.2 (Coastal Development Permit for development that is appealable to the Coastal Commission in compliance with Chapter 35.35.102 (Appeals)) shall, in compliance with Government Code Section 65805.5(b), instead be processed in compliance with Section 35.82.050.D.1 (Coastal Development Permit for development that is not appealable to the Coastal Commission in compliance with Chapter 35.35.102 (Appeals) or is not processed in conjunction with a Conditional Use Permit, Minor Conditional Use Permit, or Final Development Plan).

(1) Notwithstanding the language of Section 35.106.020 (Notice of Public Hearing and Review Authority Action) and Section 35.106.030 (Coastal Development Permits and Land Use Permits within the Coastal Zone), notice of the application and pending decision on the application shall be in compliance with Section 35.106.020 (Notice of Public Hearing and Review Authority Action).

(2) The action of the Director is final subject to appeal in compliance with Chapter 35.102 (Appeals), and shall also be subject to appeal to the Coastal Commission in compliance with Section 35.102.060 (Appeals to the Coastal Commission).

b. Development that may not be appealed to the Coastal Commission. Applications for Coastal Development Permits for development which is not defined as appealable development in compliance with State law (Public Resources Code Section 30603) shall be processed in compliance with Section 35.82.050.D.1 (Coastal Development Permit for development that is not appealable to the Coastal Commission in compliance with Chapter 35.35.102 (Appeals) or is not processed in conjunction with a Conditional Use Permit, Minor Conditional Use Permit, or Final Development Plan).

(1) Notice of the application and pending decision on the application shall be in compliance with Section 35.106.030 (Coastal Development Permits and Land Use Permits within the Coastal Zone).

(2) The action of the Director is final subject to appeal in compliance with Chapter 35.102 (Appeals).

B. Inland area. Solar panels located on the ground shall be classified as accessory structures, and shall require the issuance of a Coastal Development Permit in compliance with Section 35.82.050 (Coastal Development Permits) or a Land Use Permit in compliance with Section 35.82.110 (Land Use Permits). Solar energy systems located on the roof of an existing structure and freestanding solar energy systems are exempt from design review and do not require planning permit approval, however such systems do require the issuance of a Building Permit, Electrical Permit, Plumbing Permit and/or Solar Use Permit, as applicable, in compliance with Chapter 10 (Building Regulations) of the County Code.

1. Solar Use Permit. If the Building Official has a good faith belief that the solar energy system could have a specific, adverse impact upon the public health and safety, the

Building Official may require the applicant to additionally apply for a Solar Use Permit in compliance with this Subsection. The decision of the Building Official to require the applicant to apply for a Solar Use Permit may be appealed to the Commission in compliance with Chapter 35.102 (Appeals).

a. Contents of application. An application for a Solar Use Permit shall be submitted in compliance with Chapter 35.80 (Permit Application Filing and Processing).

b. Processing.

(1) The Building Official shall review the Solar Use Permit application for compliance with this Development Code and approve, conditionally approve, or deny the request.

(a) The Building Official shall not deny an application for a Solar Use Permit unless he makes 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.

(2) The action of the Building Official to approve, conditionally approve, or deny an application for a Solar Use Permit is final subject to appeal in compliance with Chapter 35.102 (Appeals).

(3) No entitlement for development (e.g., building permit) shall be granted prior to the effective date of the Solar Use Permit. A Solar Use Permit shall not be issued and deemed effective:

(a) Prior to the expiration period of the appeal period, or, if appealed, prior to final action on the appeal by the review authority in compliance with Chapter 35.102 (Appeals).

(b) Until all conditions of the Solar Use Permit that are required to be satisfied prior to issuance of the Solar Use Permit have been satisfied.

(c) Until all necessary prior approvals have been obtained.

(4) Notice of the approval or conditional approval of a Solar Use Permit shall be given in compliance with Section 35.106.050 (Land Use Permits).

c. Findings required for approval. A Solar Use Permit application shall be approved or conditionally approved only if the Building Official first makes all of the following findings. In compliance with the limitation on the ability of the Building Official to deny an application for a Solar Use Permit contained in Subsection B.1.b, the Building Official may approve the application subject conditions that will provide the basis for making the following findings.

(1) The proposed installation will not have a specific, adverse impact upon the public health or safety.

(2) The proposed installation conforms with the applicable provisions of this Development Code or falls within the limited exception allowed in compliance with Chapter 35.101 (Nonconforming Uses, Structures, and Lots).

(3) The proposed installation is on a legally created lot.

(4) The subject property is in compliance with all laws, regulations, and rules pertaining to uses, subdivisions, setbacks, and any other applicable provisions of this Development Code and any applicable zoning violation enforcement and processing fees have been paid. This Subsection shall not be interpreted to impose new requirements for legal nonconforming uses and structures in compliance with Chapter 35.101 (Nonconforming Uses, Structures, and Lots).

d. Permit expiration.

(1) A Solar Use Permit shall remain valid only as long as compliance with all applicable provisions of this Development Code and the Solar Use Permit conditions continues.

4. Conditions. Any conditions imposed on an application to install a solar energy system, including a Solar Use Permit, which are required to mitigate a specific, adverse impact upon the public health and safety shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

SECTION 4:

Article 35.10, Land Use and Development Code Administration, of Section 35-1, the Santa Barbara County Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Section 35.102.040 (Appeals to the Commission) of Chapter 35.102, Appeals, to read as follows:

35.102.040 - Appeals to the Commission

A. Decisions appealed to the Commission. The following decisions may be appealed to the Commission provided the appeal complies with the requirements of Subsections 35.102.020.C through Subsection 35.102.020.E above.

- 1. Board of Architectural Review decisions.** The following decisions of the Board of Architectural Review may be appealed to the Commission:
 - a. Any decision of the Board of Architectural Review to grant or deny preliminary approval.
 - b. Any decision of the Board of Architectural Review to grant or deny final approval in compliance with Section 35.102.020.C.2.c (Appeals of final decisions of the Board of Architectural Review).
- 2. Building Official decisions.** The following decisions may be appealed to the Commission.
 - a. The decision of the Building Official to require an applicant for a solar energy system to apply for a Solar Use Permit. The grounds for an appeal of a decision to require a Solar Use Permit are restricted to a demonstration that the solar energy system would not have a specific, adverse impact upon the public health and safety.
 - b. Any decision of the Building Official to approve, conditionally approve, or deny an application for a Solar Use Permit.
- 3. Director decisions.** The following decisions of the Director may be appealed to the Commission:
 - a. Any determination on the meaning or applicability of the provisions of this Development Code.

- b. Any determination that a discretionary permit application or information submitted with the application is incomplete as provided by Government Code Section 65943.
- c. Any decision of the Director to revoke an approved or issued Coastal Development Permit or Land Use Permit.
- d. Any decision of the Director to approve or deny an application for a Coastal Development Permit or Land Use Permit except as follows:
 - (1) Land Use Permits approved in compliance with Section 35.42.260 (Temporary Uses and Trailers) not including Subsection 35.42.260.G (Trailer Use).
- e. Any decision of the Director to revoke an issued Zoning Clearance.
- f. Any decision of the Director to approve, conditionally approved, or deny an application for a Development Plan.
- g. Any decision of the Director to approve, conditionally approved, or deny any other discretionary application where the Director is the designated review authority.
- h. Any other action, decision, or determination made by the Director as authorized by this Development Code where the Director is the review authority, except when specifically provided that the action, decision, or determination is final and not subject to appeal.

34. Zoning Administrator decisions. The following decisions of the Zoning Administrator may be appealed to the Commission:

- a. Any decision of the Zoning Administrator to approve, conditionally approve, or deny an application for a Coastal Development Permit, Conditional Use Permit, Development Plan, Lot Line Adjustment, Modification, Overall Sign Plan, Sign Modification, Variance, or other discretionary application where the Zoning Administrator is the applicable review authority, except when specifically provided that the action, decision, or determination is final and not subject to appeal.
- b. Any other action, decision, or determination made by the Zoning Administrator as authorized by this Development Code where the Zoning Administrator is the review authority, except when specifically provided that the action, decision, or determination is final and not subject to appeal.

B. Report to the Commission. The Department shall transmit to the Commission copies of the permit application including all maps and data and a statement identifying the reasons for the decision by the Board of Architectural Review, Director, or Zoning Administrator before the hearing on an appeal.

C. Scope of appeal hearings. The hearings on the appeal shall be de novo.

D. Action on appeal. The Commission shall affirm, reverse, or modify the decision of the Board of Architectural Review, Director, or Zoning Administrator.

1. Decision on the appeal of Solar Use Permits. The action of the Commission, and the action of any subsequent County review authority, shall not have the effect of denying the application to install the solar energy system unless it makes 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.

- a. Any conditions imposed by the Commission on an application to install a solar energy system shall be designed to mitigate the specific, adverse impact upon the public health and safety at the lowest cost possible.

E. Additional findings required for Economically Viable Use Determinations. A decision by the Director to deny a Coastal Development Permit for a lot within the Coastal Zone of the Toro Canyon Planning Area that has been appealed by the appellant, where the appellant asserts that the denial of the Coastal Development Permit constitutes a taking of private property, shall be reversed or modified by the Commission only if all of the following findings are first made in addition to the findings contained within Section 35.82.050 (Coastal Development Permits).

1. Based on the economic information provided by the applicant, as well as any other relevant evidence, each use allowed by the Local Coastal Program policies and/or standards would not provide an economically viable use of the applicant's property.
2. Application of the Local Coastal Program policies and/or standards would unreasonably interfere with the applicant's investment-backed expectations.
3. The use proposed by the applicant is consistent with the applicable zoning.
4. The use and project design, siting, and size are the minimum necessary to avoid a taking.
5. The project is the least environmentally damaging alternative and is consistent with all provisions of the certified Local Coastal Program other than the provisions for which the exception is requested.
6. The development will not be a public nuisance. If it would be a public nuisance, the development shall be denied.

SECTION 5:

Article 35.11, Glossary, of Section 35-1, the Santa Barbara County Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Section 35.110.020, Definitions of Specialized Terms and Phrases, of Chapter 35.110, Definitions, to add a new definition of Solar Energy Collection System read as follows:

Solar Energy System. Solar energy system means either (a) any solar collector or other solar energy device whose primary purpose is to provide for the collection, storage, and distribution of solar energy for space heating, space cooling, electric generation, or water heating, or (b) any structural design feature of a building, whose primary purpose is to provide for the collection, storage, and distribution of solar energy for electricity generation, space heating or cooling, or for water heating. Additionally, the following terms and phrases are defined for the purposes of permitting solar energy systems:

- 1. Feasible method to satisfactorily mitigate or avoid the specific adverse impact.** A "feasible method to satisfactorily mitigate or avoid the specific, adverse impact" includes any cost-effective method, condition, or mitigation imposed by the County on another similarly situated application in a prior successful application for a permit. The County shall use its best efforts to ensure that the selected method, condition, or mitigation meets the conditions of subparagraphs (A) and (B) of paragraph (1) of subdivision (d) of Section 714 of the Civil Code.
- 2. Specific, adverse impact.** A "specific, adverse impact" means a significant, quantifiable, direct, and unavoidable impact, based on objective, identified, and written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.

SECTION 6:

Except as amended by this Ordinance, Chapter 35.2, Chapter 35.3, Chapter 35.10 and Chapter 35.11 of Section 35-1, the Santa Barbara County Land Use and Development Code, of Chapter 35, Zoning, of the County Code, shall remain unchanged and shall continue in full force and effect.

SECTION 7:

Within the Coastal Zone portion of Santa Barbara County, this ordinance and any portion of this ordinance approved by the Coastal Commission shall take effect and be in force 30 days from the date of its passage or upon the date that it is certified by the Coastal Commission pursuant to Public Resources Code 30514, whichever occurs later; and before the expiration of 15 days after its passage a summary of it shall be published once together with the names of the members of the Board of Supervisors voting for and against the same in the Santa Barbara News-Press, a newspaper of general circulation published in the County of Santa Barbara.

SECTION 8:

Within the non-Coastal Zone portion of Santa Barbara County, this ordinance shall take effect and be in force 30 days from the date of its passage and before the expiration of 15 days after its passage a summary of it shall be published once together with the names of the members of the Board of Supervisors voting for and against the same in the Santa Barbara News-Press, a newspaper of general circulation published in the County of Santa Barbara.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this ____ day of _____, 2009, by the following vote:

AYES:
NOES:
ABSTAINED:
ABSENT:

JOSEPH CENTENO
Chair, Board of Supervisors
County of Santa Barbara

ATTEST:

MICHAEL F. BROWN
Clerk of the Board of Supervisors

By _____
Deputy Clerk

APPROVED AS TO FORM:

DENNIS A. MARSHALL
County Counsel

By _____
Deputy County Counsel