



PLANNING COMMISSION STAFF REPORT

To: Planning Commission – Study Session
From: Community Development Director
For Commission Meeting Of: November 16, 2011

SUBJECT: PC 11-72 – Guidance on a new Development Code Section to address the standards and criteria applicable to development of Alternative Energy Generating Facilities (such as Solar Fields and Wind Farms).

RECOMMENDATION

Staff recommends that the Planning Commission resume its Study Session, open to the public, of Alternative Energy Generating Facilities (such as Solar Fields and Wind Farms) within all zoning districts, except the Multi-family Residential District.

ORDER OF PROCEDURE

- Request Staff Report (Charles LaClaire presenting)
- Commission Questions of Staff
- Receive Public Comment
- Commission Discussion
- Direction to staff

PROJECT DESCRIPTION

A Study Session to provide guidance to staff on the creation of new standards and criteria for the development of Solar Farms/Fields within any zone (except Multi-family residential) within the City of Twentynine Palms.

BACKGROUND

At its regularly scheduled meeting of November 2, 2011, the Commission was provided with another in a series of Study Session reports addressing the issue of Alternative Energy Generating Facilities (Solar Fields and Wind Farms). At that meeting, material was presented for consideration that provided both a fundamental Commission position on the question of whether Alternative Energy Generating Facilities should be allowed within the community at all and, per Council direction, possible Development Standards to be discussed, placed within a Code Amendment and forwarded to the Council for its consideration and possible action. Provided below is a repeat of the new material presented at the November 2nd meeting.

It is noted that within the “Analysis” portion of this report (presented below) are possible Code standards (those introduced on November 2nd) in a format similar to that which could be placed within the Development Code as a Code Amendment. Following this rough draft language (which is provided as a starting point in the Commission’s discussion of possible standards to forward to the Council for consideration), the question of the fundamental benefit to the community is again posed to afford the Commission the opportunity to discuss and confirm whether or not it, as a body, wishes to forward that position/comment to the Council with its recommended standards. (This is being asked so that if that direction is the decision of the Commission, then staff shall place appropriate language within the draft Planning Commission

Resolution that would be presented with the draft standards at the necessary Public Hearing for a Code Amendment.)

It is also noted that although the information contained within the November 2nd Study Session report is not repeated herein, copies of that material can be obtained from the Community Development Department if individual Commission members wish to review or re-raise any of the questions or comments contained therein.

November 2nd comments:

“With all due respect to the task that the Council has given the Commission, I move that the Commission forward a recommendation to the City Council that Alternative Energy Generating Facilities such as solar fields and wind farms, should be discouraged and/or expressly prohibited within this community as it cannot be demonstrated that such uses shall provide a direct, tangible benefit to the community through the provision of enhanced land use, provision of improved community infrastructure, increased personal, sales or property taxes, or provide reasonable and sustainable, long term employment to residents or visitors to our community, whereas these uses can be shown to have direct, adverse impacts to the aesthetic quality of the desert vistas the community now enjoys, deleterious effects to the tourist industry that the community depends upon, potential decreases in property values for properties adjoining or surrounding such facilities, potential decreases in the quality of life for those individuals that reside within properties adjacent to or surrounding such facilities, and potential serious impacts to the biologic, cultural and social resources of our community.

That said, however, as the action of the Council appears to have been direction that the Commission forward its recommendations on a Code Amendment to allow for the development of Alternative Energy Generating Facilities within the community under approval of a Conditional Use Permit, my motion shall include direction that staff return at an advertised Public Hearing with simple language to require the following:

1. Identify that all Alternative Energy Generating Facilities must be approved under a Conditional Use Permit;
2. That a specific overlay be adopted comprised of land that may be located no further than one-quarter mile from an existing electrical transmission line;
3. That all projects shall be not less than twenty (20) acres in size;
4. That a minimum setback from any property line for the placement of energy generating devices shall not be less than twenty-five (25) feet;
5. That all adjoining rights-of-way shall be improved to full City standards;
6. That notification of such facilities shall extend to 1,000 feet from the perimeter of such requests;
7. That no on-site structure shall exceed a height of twenty-five (25) feet;
8. That no other land use may occur upon the site at the same time as the Alternative Energy Generating Facility without express approval by the Planning Commission under its review of a Conditional Use Permit;
9. That screening eight (8) feet in height consisting of a solid wall, chain link fencing with slates covering at least eighty percent (80%) of the visibility through the fencing, or landscaping of sufficient maturity and density to achieve the same eighty percent (80%) opaque level shall be required around the entire perimeter of the project;

10. That a minimum maintenance standard should be established wherein if panels, equipment or fencing, visible from off-site, are broken or deteriorated they must be repaired or replaced within thirty (30) days of written notice from the City;
11. That a fully executed Power Purchase Agreement (PPA) and Connection Agreement shall be submitted with the Conditional Use Permit application;
12. That a detailed Reclamation Plan shall be submitted with the Conditional Use Permit application, which must be approved by the Commission;
13. That an appropriate surety, in a form acceptable to the City Manger, assigned to fulfill the requirements of the Reclamation Plan, shall be submitted to and approved by the City prior to the issuance of any Building Permit for any activity on the site, or installation of any equipment or apparatus on site;
14. That a standard be created that once the field cannot, or simply does not, produce electricity at a minimum of fifty percent {50%} of the solar panel's maximum rated potential output, then the field is declared an underperformer that must be repaired, upgraded or removed, and that to assure such performance an annual inspection shall be required (with payment of a specified annual inspection fee); and
15. That any such facility shall conform to and not be in conflict with any applicable County, State or Federal law, statue or regulation."

>>>>

Please note that the City Attorney was provided a draft copy of this report. The Attorney has provided questions regarding paragraphs 5, 7 and 11 and suggested areas of new discussion which may result in additional paragraphs being added to the draft material. Regarding paragraph #5, the question of physically improving rights-of-way through the project is raised. In paragraph #7, clarification of height limits pertaining to "Wind Farms" (verses "Solar Fields") is suggested. In paragraph 11, the Attorney suggests that in lieu of requiring the Power Purchase Agreement and Connection Agreement with the initial CUP application, which may be difficult, the City could require the submission of such agreements within six (6) or twelve (12) months of any CUP approval. The final two suggestions pertain to addressing changes to the technology deployed within the fields/farms (changes to the solar panels for example) and the establishment of a legal means to require fulfillment of all conditions and mitigation requirements.

The City Attorney notes that any Conditional Use Permit application must be considered with an appropriate environmental review under the requirements of the California Environmental Quality Act (CEQA). This analysis would address land use and planning, considering the nature of the proposed use verses the existing uses in the area where the proposal would be developed. If it is assumed that future applications to the City for solar fields or wind farms would locate adjacent to or under existing power transmission lines, then these uses would be proposed within existing low density residential areas. The CEQA review must assess whether the proposal will or will not physically divide such an established community (evaluating whether the existing area surrounding an application site can be considered an established residential community). This assessment must take into consideration the City's long-term interest in making the area surrounding the existing transmission lines as residential and commercial areas (especially along Lear Avenue), and must evaluate whether future residents and/or businesses would be willing to locate near a power generating facility that may have limited community accountability, after its life span, for addressing hazardous waste issues, if accountability and assurances of mitigation are not identified and established under appropriated Conditions, Mitigations and Agreements.

This evaluation must be taken in light of the fact that current local residents or possible future residents, or simply members of the public in general, may consider a proposed alternative energy generating project (and its related facilities) as being industrial in nature, which may be considered to compromise, and conflict with, the project area's rural and open space character and the City's policies to protect and enhance local resources and lifestyles. A proposed project's industrial appearance and above-ground electrical distribution lines would also create significant and unavoidable impacts that may be considered in conflict with some adopted policies and standards related to the protection of visual resources, open space areas, rural residential land uses and candid scenic corridors.

As another example, although the principal road network between residential units within a project area may be maintained, a future project could create physical barriers between existing residential uses and/or existing and future residential uses, thereby disrupting and dividing the overall connectivity of a localized rural residential community for the duration of the project's operational lifetime. Thus, long-term residential land use impacts would be significant and unavoidable. Feasible mitigation measures must be identified, and a mechanism established to enforce the mitigation, to reduce the impact to less than significant.

In summary, relative to a CEQA review, by its very nature as a quasi industrial facility, a proposed alternative energy generating facility may create immediate land use conflicts given that the residential community surrounding the area would diminish in function given the nature, location and operating characteristics of such a land use. These impacts, and the related "blight" the project may create, must be adequately addressed and mitigated within any environmental review. *(Please see comment under Paragraph "R", of Section 19.60.020 "Requirements" below.)*

In anticipation that the Commission may concur with the Attorney's questions/comments, language has been added to the rough draft language below in an attempt to address the various questions and comments.

ANALYSIS

Within the information above, standards are suggested that will address the possibility of reviewing and approving Alternative Energy Generating Facilities within the community such as solar fields and wind farms. It is proposed that a new Chapter (Chapter 19.60 "Alternative Energy Generating Facilities - Solar Fields and Wind Farms") be suggested to the Council for inclusion within the Development Code. Provided below is rough draft language for such a Code Amendment to assist the Commission in framing and conducting its discussion on the issue. Please note that the language has been changed from that above to facilitate its presentation and use as Code language and to make it consistent with other Chapters (addressing such issues as a stated "Purpose" to the Chapter, imposing Conditions, assurances that Conditions/Mitigations can be met, lighting requirements, landscaping and revocation). While staff understands that the Commission's preference is for brevity and clarity in Code Amendments, staff endeavored to be as brief as possible with the language presented, while conforming to other portions of the Code and presenting the requirements in a manner that would be easily understandable and enforceable.

In considering the language below, the Commission may wish to keep the following questions in mind: Is twenty (20) acres to big or small? Should screening be limited to only a solid block wall (instead of allowing fencing with slates or other alternatives)? Should the applicant be required to disclose current and known future investors (as this may illustrate the stability,

backing and experience of the company asking for the approval)? And, should Habitat Corridors be considered along with the one-quarter mile proximity to transmission lines?

As with any Study Session discussion, staff is seeking Commission guidance on how the Commission would like to proceed. If the Commission can come to a consensus on the material presented below, staff can advertise a Public Hearing for a Code Amendment (closest date to meet advertising requirements would be December 7, 2011) and present a Code Amendment at that meeting. If the Commission cannot come to a consensus, but can provide guidance to staff on desired changes to the draft language, again, a Public Hearing can be scheduled. And, as with any Study Session, if the Commission wishes more review, information or discussion, this item can be returned at a future regularly scheduled meeting once again as a Study Session.

Finally, it has been made clear in past reports that the creation of any Code Amendment should address the essential concerns held by the Commission. Clearly, the most obvious issues are the impact any such facility would have upon the community and what benefits it would bring to the community. Both possible impacts (aesthetic, affects on wildlife, loss of land to other possible land uses, limitations to possible future uses, surrounding property values, reduced property tax receipts, infrastructure, vandalism and cleaning up of abandoned facilities) and benefits (such as co-location with other uses, jobs and taxes created) have been discussed at past meetings and may again be addressed by the Commission. And as a final word, while there is no specific time constraints associated with the Commission's review, at least two (2) individuals have expressed a desire to submit Conditional Use Permit applications for solar fields within the community.

The following is rough draft language presented for Commission consideration based upon the information distributed at the November 2nd Study Session and City Attorney comments.

>>>>>

Chapter 19.60

ALTERNATIVE ENERGY GENERATING FACILITIES – SOLAR FIELDS AND WIND FARMS

19.60.010 Purpose.

19.60.020 Requirements.

19.60.030 Operating Conditions.

19.60.040 Penalty for Non-Compliance.

19.60.010 Purpose. The purpose of this chapter is to permit and establish the regulations for Alternative Energy Generating Facilities (Solar Fields and Wind Farms) which may, by their nature, require an increased level of regulation to ensure that such uses do not become a detriment to the health, safety and public welfare of the community of Twentynine Palms within all land use districts except the Multi-Family Residential (RM) district, wherein such uses shall be expressly prohibited.

19.60.020 Requirements. No use mentioned in this Chapter shall be permitted, engaged in or commenced unless first approved by the City of Twentynine Palms Planning Commission under a Conditional Use Permit in compliance with the procedures established within Chapter 19.30 "Conditional Use Permits".

In addition to approval of a Conditional Use Permit, and subject to any Conditions of Approval that the Commission may apply, the following requirements shall be applicable to all Alternative Energy Generating Facilities.

- A. A Solar Field or Wind Farm may be established with approval of a Conditional Use Permit in any land use zoning district, except the Multi-Family Residential (RM) district, wherein such uses shall be expressly prohibited.
- B. No Solar Field or Wind Farm shall be allowed except where such facility is located no further than one-quarter mile from an existing electrical transmission line.
- C. No project shall be not less than twenty (20) acres in size.
- D. There shall be a minimum setback from any property line for the placement of energy generating devices of not less than twenty-five (25) feet to the nearest property line.
- E. All adjoining rights-of-way shall be improved to full City standards. All roadways adjacent or through a proposed project listed upon the adopted Circulation Element map shall be installed as defined upon that map. For all other roadways, the logical extension of existing roadways through a proposed development shall be installed at the discretion of the City Council upon recommendation of the City Engineer.
- F. All property owners within one thousand (1,000) feet of the exterior perimeter of the property whereupon the Solar Field or Wind Farm will be located shall be notified of the proposed Conditional Use Permit Public Hearing as provided in Chapter 19.44 "Public Hearings and Notices".
- G. No on-site structure within a Solar Field shall exceed a height of twenty-five (25) feet. No on-site structure within a Wind Farm shall exceed the maximum height allowed within the underlying zoning district unless otherwise specifically approved by the City Council in consideration of the Conditional Use Permit.
- H. No other land use may occur upon the site at the same time as the Alternative Energy Generating Facility without first receiving the express approval by the Planning Commission under its review of a Conditional Use Permit.
- I. All such facilities shall be screened a minimum of eight (8) feet in height consisting of a solid wall, chain link fencing with slates covering at least eighty percent (80%) of the visibility through the fencing, or landscaping of sufficient maturity and density to achieve the same eighty percent (80%) opaque level shall be required around the entire perimeter of the project.
- J. All such facilities shall be maintained in good physical condition at all times. If panels, equipment or fencing, visible from off-site, are broken or deteriorated they must be repaired or replaced within thirty (30) days of written notice from the City.
- K. A fully executed Power Purchase Agreement (PPA) and Connection Agreement shall be submitted with the Conditional Use Permit application. *Alternatively:* A fully executed Power Purchase Agreement (PPA) and Connection Agreement shall be submitted within six (6) months of any approval of a Conditional Use Permit application; failure to submit said Power Purchase Agreement and Connection Agreement shall be grounds for revocation of the approved Conditional Use Permit in conformance to the procedures established in Code Section 19.30.110 "Revocation".
- L. The applicant shall submit with the Conditional Use Permit application a detailed Reclamation Plan, which must be approved by the Commission.
- M. An appropriate surety, in a form acceptable to the City Manager, assigned to fully fulfill the requirements of the Reclamation Plan, shall be submitted to and approved by the City prior to the issuance of any Building Permit for any activity on the site, or the installation of any equipment or apparatus on site.

- N. In addition to being maintained in good condition, any approved Solar Field or Wind Farm, once established, must maintain a reasonable level of performance. Once the field cannot, or simply does not, produce electricity at a minimum of fifty percent {50%} of the solar panel's or wind turbine's maximum rated potential output, then the field/farm is declared an underperformer that must be repaired, upgraded or removed, and that to assure such performance an annual inspection shall be required (with payment of a specified annual inspection fee as established by the City Council).
- O. Any and all Alternative Energy Generating Facilities shall conform to, and not be in conflict with, any applicable County, State or Federal law, statute or regulation."
- P. The Planning Commission may impose any Conditions of Approval that it deems appropriate and necessary to assure that said Conditional Use Permit shall not adversely affect uses on-site, on adjoining properties, the surrounding neighborhood or any public right-of-way or the health safety and general welfare of the community of Twentynine Palms.
- Q. Any lights used to illuminate a site used for an Alternative Energy Generating Facility shall be designed so as to reflect away from adjoining properties, all public rights-of-ways and shall comply with Chapter 19.70 "Lighting Standards".
- R. The applicant shall provide assurances to the City, in a manner approved by the City Manager, to demonstrate that all imposed Conditions of Approval and any required Mitigation Measures can and will be adhered to. *(Note, a common tool, one of a few, that can be used to achieve this requirement would be a "Development Agreement" between the City and the applicant for the CUP. This would assure that both the applicant and the City have clearly defined what is expected and allowed from each. This section does not specifically require entering into a "Development Agreement" because such a requirement would presume impacts and/or other requirements, and such a circumstance or stipulation may not be legal.)*
- S. The Conditional Use Permit application shall include a clear and concise detailed description of the technology (apparatus and devices used to generate the power created) being proposed within the applicant facility. Modifications to the technology, apparatus and/or devices used within an approved facility must first undergo review and approval of a new Conditional Use Permit, subject to possible new Conditions and appropriate environmental review under the applicable requirements of the California Environmental Quality Act (CEQA) in effect at the time of review. Said CEQA analysis shall explicitly review the potential unique new health and safety hazards that may arise from or be associated with the use of the new technology, apparatus and/or devices. Where appropriate, a modification to the Reclamation Plan may be necessary under the proposed new technology, apparatus and/or devices, in which case a new Plan shall be submitted to the City for review and approval, along with new surety in a form and amount to the satisfaction of the City Manager.
- T. The operator shall submit to the City of Twentynine Palms, for review and approval by the Community Development Director, a Business Emergency/Contingency Plan for emergency release or threatened release of hazardous materials and wastes or a letter of exemption

19.60.030 Operating Conditions.

Failure to comply and/or conform with the following Operating Conditions shall constitute a violation of the City of Twentynine Palms Municipal Code and shall be grounds to revoke an approved Conditional Use Permit for an approved Alternative Energy Generating Facility.

- A. The property owner and/or entity in control of said property shall keep or cause to be kept the property utilized for any Alternative Energy Generating Facilities in a neat, clean and

orderly manner at all times. The property owner and/or entity in control of said property shall provide the City of Twentynine Palms Community Development Department with written permission that specifies that following the expiration of a written notice from the City to return the Facility to its required neat, clean and orderly manner under the provisions and requirements of this Code and the Conditions of Approval of the Conditional Use Permit approved by the Planning Commission, that the City shall have the right to enter and clean, or cause to be cleaned, said property and the cost of such cleaning shall be the responsibility of the property owner and/or entity in control of said property. If the property owner and/or entity in control of said property fails to reimburse the City for the actual cost of cleaning the property as noted above, the costs of said cleaning shall be placed as a lien against the property for the remaining balance owed the City.

- B. All landscaping on site shall be maintained in a neat, clean, weed and disease free manner at all times. Where a property is not maintained as specified herein, the property owner and/or entity in control of said property shall be required to restore the property and/or landscaping to its required neat, clean, weed and disease free manner under the provisions and requirements of this Chapter and Code Section 19.92 "Nuisance Abatement".
- C. In accepting the right to operate an Alternative Energy Generating Facility, as approved by the Planning Commission under a Conditional Use Permit, if the property owner and/or entity in control of said property fails to restore the property and/or landscaping to its required neat, clean and orderly manner, the property owner and/or entity in control of said property with acceptance of the Conditional Use Permit declares and provides an express permission and consent to the City of Twentynine Palms, or agents acting on its behalf, to enter the property to restore the property and/or landscaping to its required neat, clean and orderly manner as prescribed in Code Section 19.92 "Nuisance Abatement". All costs of said restoration shall be paid by the property owner or entity in control of said property. If the property owner or entity in control of said property fails to provide sufficient funds to reimburse the City for the actual costs of the required restoration, a lien shall be placed against the property for the balance owed the City.

19.60.040 Penalty for Non-Compliance. The Approval Authority may revoke or void any Conditional Use Permit for noncompliance with the conditions set forth within this Chapter and/or under the approved Conditional Use Permit in conformance to the procedures established in Code Section 19.30.110 "Revocation", and shall give notice of such action to the permittee.

>>>>>

As noted above, the Commission is requested to confirm its direction to include the following paragraph within any Commission Resolution that would be forwarded to the City Council for final action on a proposed Code Amendment.

"With all due respect to the task that the Council has given the Commission, I move that the Commission forward a recommendation to the City Council that Alternative Energy Generating Facilities such as solar fields and wind farms, should be discouraged and/or expressly prohibited within this community as it cannot be demonstrated that such uses shall provide a direct, tangible benefit to the community through the provision of enhanced land use, provision of improved community infrastructure, increased personal, sales or property taxes, or provide reasonable and sustainable, long term employment to residents or visitors to our community, whereas these uses can be shown to have direct, adverse impacts to the aesthetic quality of the desert vistas the community now enjoys, deleterious effects to the tourist industry that the community depends upon, potential decreases in property values for properties adjoining or

surrounding such facilities, potential decreases in the quality of life for those individuals that reside within properties adjacent to or surrounding such facilities, and potential serious impacts to the biologic, cultural and social resources of our community.”

With Commission confirmation, slight changes to the language (such as “I move that...”) would be needed for inclusion within the Resolution, but the vast majority of the language would remain as written (unless changes by consensus of the Commission).

Findings

Under the provisions of the Development Code, no “Findings” are required to be made for the Commission to undertake a Study Session review of the Development Code. If, however, the Commission progresses to a Code Amendment wherein suggestions for alternative standards applicable to Solar Farms/Fields are discussed, then pursuant to Section 19.22.050 “Findings” (listed below) of the City’s Development Code, both the Planning Commission and City Council are required to make four (4) “Findings” of approval in a positive manner prior to recommending or adopting a Development Code Amendment. At such time as the Public Hearing report is prepared, staff shall provide the Commission with comments to address each “Finding” for consideration and possible adoption, forwarding its recommendation to the City Council.

- A. The Zone Change or Development Code Amendment is consistent with the intent of the goals and policies of the General Plan; and
- B. The Zone Change or Development Code Amendment prescribes reasonable controls and standards to ensure compatibility with other established uses; and
- C. The Zone Change or Development Code Amendment provides reasonable property development rights while protecting environmentally sensitive land uses and species; and
- D. The Zone Change or Development Code Amendment ensures protection of the general health, safety, and welfare of the community.

CEQA Environmental Review

Pursuant to the State Guidelines to Implement the California Environmental Quality Act (CEQA), the Study Session of a possible future Code Amendment has been reviewed for its potential to impact the environment. It has been determined that the proposal, consisting of a discussion of possible future standards and regulations for inclusion within the existing Development Code, cannot, by itself, have a direct impact upon the environment. As such, under the provisions of Government Code Section 15262 “Feasibility and Planning Studies” a Study Session is statutorily exempt from further environmental review. Any future Code Amendment would receive necessary environmental review at that time.

Approval Process

If the Study Session progresses to a Code Amendment to address Solar Farms/Fields with different standards, the Commission, under the provision of Development Code Section 19.22.040 “Approval Authority and Notification”, is the Review Authority with the City Council being the Approval Authority. If a Code Amendment is initiated, any recommendation would be forwarded to the Council for final action.