



# LAND USE SERVICES DEPARTMENT PLANNING COMMISSION STAFF REPORT

**HEARING DATE:** May 24, 2018

**AGENDA ITEM #2**

**Project Description:** Amendment to the General Plan Renewable Energy and Conservation Element – primarily affecting Policy 4.10

<b>Applicant:</b>	Land Use Services Department
<b>Community:</b>	Countywide
<b>Staff:</b>	Linda Mawby, Senior Planner Terri Rahhal, Planning Director
<b>Proposal:</b>	General Plan Amendment to modify the Renewable Energy and Conservation Element relative to siting of utility-oriented renewable energy generation projects and potential impacts on communities.

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Newspaper Publication Date: May 14, 2018

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## INTRODUCTION AND OVERVIEW

The Renewable Energy and Conservation Element (RECE) of the County General Plan was adopted by the Board of Supervisors (Board) on August 8, 2017 (Agenda Item 51). The RECE was adopted with two exceptions: (1) Policy 4.10, a policy proposed to limit potential impacts of utility-oriented renewable energy (RE) project development on unincorporated communities was omitted, and (2) it was noted that any references to 10 megawatts (MW) as a threshold capacity of utility-oriented RE projects should be deleted. Staff was directed to make the editorial correction (which has been completed) and to present Policy 4.10 to the Planning Commission for review and a recommendation.

This report presents four policy items for the Planning Commission to consider for potential recommendation to the Board as an amendment to the RECE:

- Exhibit A:** The original version of RECE Policy 4.10 recommended to the Board on August 8, 2017.
- Exhibit B:** Proposed addition to Policy 5.2, which identifies site types potentially suitable for utility-oriented RE generation (adding existing energy generation sites).
- Exhibit C:** A modified version of RECE Policy 4.10 now recommended by staff, with a related revision to Policy 4.3.2.

**Exhibit D:** A new draft policy intended to emphasize and implement the previously stated priority of the Board for utility-oriented RE generation to be developed as much as possible on public lands away from unincorporated communities.

## **BACKGROUND INFORMATION**

The RECE was presented to the Planning Commission on November 3, 2016. The staff report for that Planning Commission hearing contains a detailed report of the planning process and public outreach conducted with grant funds from the California Energy Commission to prepare the RECE, as well as a detailed outline of the RECE contents. This previous report to the Planning Commission is available on the County web site at: <http://www.sbcounty.gov/uploads/lus/pc/RECELEMENTSTAFFREPORT1.pdf> The RECE adopted by the Board on August 8, 2017 is also posted at: <http://www.sbcounty.gov/uploads/LUS/Renewable/RECElementFINALADOPTEDVersion8817WEB.pdf>

### **REC Element Summary:**

The RECE is comprised of six chapters containing goals and policies on the chapter topic:

- Chapter 1. **Energy Conservation and Efficiency**
- Chapter 2. **Renewable Energy Systems**
- Chapter 3. **Community-Oriented Renewable Energy (CORE)**
- Chapter 4. **Environmental Compatibility**
- Chapter 5. **Siting**
- Chapter 6. **County Government Systems**

There are two key terms to understand about energy generation policies in the RECE:

***Community-Oriented Renewable Energy (CORE)*** is energy generated for consumption by local end-users. This includes roof-top or on-site, or even shared energy generation that is mainly used locally. If more than 50% of output is sold into the energy grid, it is not CORE.

***Utility-Oriented Renewable Energy*** is defined as energy generated primarily (more than 50% of output) for use outside the local area, by connection to the energy grid.

### **Issues of Concern and Controversy:**

The RECE encourages energy conservation and technology innovation and the use of CORE. All of these topics and the related RECE policies have been well-received by the public. The issues of controversy about renewable energy in San Bernardino County are centered on the impacts and conflicts that arise from development of large utility-oriented solar energy projects near communities in the desert. These include environmental impacts and land use compatibility conflicts related to site selection and project design. These issues

of concern and controversy are addressed in Chapters 4 and 5 of the RECE, especially in the policies presented in this staff report.

## **ANALYSIS**

### **Original Approach to Policy 4.10:**

The Draft RECE presented to the Planning Commission in 2016 did not contain Policy 4.10. Much of the public testimony at the 2016 hearing stressed a clear preference for roof-top and parking lot applications for solar energy, and also stated public concerns about environmental impacts and land use conflicts related to utility-oriented RE projects near desert communities. The Planning Commission encouraged staff to add clarifying language to address public concerns discussed in the hearing. In an effort to minimize impacts on communities, staff recommended Policy 4.10 (Exhibit A) to prohibit utility-oriented RE projects in community plan areas and in the Rural Living (RL) land use district.

### **Reasons for Re-Evaluating Policy 4.10:**

At the Board hearing on August 8, 2017, the RE industry came out in opposition to Policy 4.10 because it was too restrictive, while comments from the public were intensely opposed to utility-oriented RE development projects. The public comments focused on Policy 5.2 being too permissive. Many stated that utility-oriented RE should be permitted only in the five Development Focus Areas (DFAs) supported by the Board in its Resolution No. 2016-20. After the public hearing, the Board adopted the RECE, omitting Policy 4.10 because it had not been reviewed by the Planning Commission. The Board gave direction to staff to present Policy 4.10 to the Planning Commission. After considering the public testimony from both sides, staff began to re-evaluate Policy 4.10 for the following reasons:

- Many existing RE generation sites would become non-conforming uses under Policy 4.10, which would limit the potential for substantial improvements, technology upgrades or expansion. This is contrary to the principles of the RECE which encourage technological advances and utilization of disturbed and developed sites for energy generation.
- Introduction of prohibition/exclusion areas would conflict with the standards-based approach to the other goals and policies of the RECE.
- RE generation is treated as an interim land use. Power purchase agreements have specified terms, and County use permits for RE facilities require decommissioning plans and securities to guarantee decommissioning and restoration of the site to a condition suitable for the end use indicated by the County land use designation; including Rural Living.
- Prohibitions related to specified zones and planning areas are based on mapping, rather than being related to site characteristics or site-specific circumstances. There will always be opportunities to propose zoning changes or modification of planning area boundaries, using site-specific information.

Going back to the premise of Policy 4.10 being about protecting the quality of life in existing communities, staff reached out to RE developers to bring community concerns to their attention and to discuss ways to reduce land use compatibility conflicts.

### **New Siting Recommendations:**

As a partial solution to the non-conforming use issue that could arise for existing RE generation facilities, staff is recommending an amendment to Policy 5.2 to make it clear that an existing energy generation facility is an appropriate site for new RE development or upgrades. (Exhibit B).

### **New Recommendations for Policy 4.3.2 and 4.10:**

The proposed revision to Policy 4.10 (Exhibit C) creates a framework for site-specific analysis of potential impacts and potential benefits of utility-oriented RE generation development on local residents. Compliance with the policy will require due diligence in site selection and project design. The proposed policy will go beyond standard development application requirements and environmental regulations. It will require interaction with local residents, especially neighboring property owners, in order to prepare an analysis and report of project-related benefits to the community and steps taken to enhance compatibility of the project with adjacent properties and the surrounding community. This report will, by necessity, be augmented as site design and environmental analyses proceed. The intent is to ensure that the relationship of the project to the community will be a significant consideration at every stage of project planning, beginning with application submittal.

### **Other Requirements on Utility-Oriented RE:**

The RECE is a General Plan element that provides policy direction regarding renewable energy use and development and energy conservation. The RECE is not the only source of requirements to be considered in the development of RE generation facilities.

- **Code Compliance:** The County Development Code, Chapter 84.29 *Renewable Energy Generation Facilities*, contains development standards and application procedures for RE generation project development. Upon final action by the Board concerning the policies discussed in this report, the Development Code will be updated as necessary to implement RECE policies. One of the existing requirements for RE projects is that in addition to the approval of the permits for project development, a Special Use Permit is required to fund and schedule code compliance reviews.
- **Project Review Procedures:** Land Use Services reviews and places requirements on utility-oriented RE projects following the model of our procedures for approval of mining and land reclamation. There are many parallels, since both land uses (mining and RE generation) are long-term, but have defined end-dates and reclamation or decommissioning requirements. In both instances, financial assurances are required to guarantee completion of the plan to restore the site to

a stable condition suitable for another approved use. Both uses often require disturbance of desert soils, requiring significant efforts to control dust and to stabilize the soil upon removal of the interim use. The project review team involved in mining and reclamation also reviews RE project dust management plans and decommissioning plans.

- **Environmental Analysis:** Every development project is subject to environmental review requirements of the California Environmental Quality Act (CEQA). These requirements are in state law, and do not have to be duplicated in County policies of the RECE.

### **Other Work in Progress:**

Staff is working on improvements to public information access relative to RE project proposals. Land Use Services maintains a list of RE projects, including statistics about each project's location, technology and site acreage on the County web site at: <http://cms.sbcounty.gov/Portals/5/Planning/Renewable%20Energy/SolarProjectList.pdf> . Staff is now adding links to vicinity maps to clarify the location and scale of each project site. There is a subscription option to receive e-mail notification of updates as well. Staff will continue to enhance this listing and facilitate links to other project information, such as notices and environmental documents.

State and federal agencies conduct parallel RE planning on public lands, through the Desert Renewable Energy and Conservation Plan (DRECP). The Board has weighed in on the DRECP on multiple occasions, including submittal of Board Resolution No. 2016-20, to encourage RE development and habitat mitigation on public lands. Moving utility-oriented RE projects to public lands would take development pressure off private lands in and near communities. Recent discussions with the California Energy Commission have highlighted the need to coordinate RE generation planning with the energy transmission planning of the electric utilities. To that end, staff recommends an additional RECE Policy 5.9 (Exhibit D) to make this coordination a priority by policy.

### **California Environmental Quality Act Compliance for RECE:**

The RECE was adopted concurrent with an Addendum to the Program Environmental Impact Report for the San Bernardino County General Plan Update (2007), including the Supplemental Environmental Impact Report for the Greenhouse Gas Reduction Plan (2011). The Addendum (Exhibit E) documents compliance with CEQA with evidence supporting the conclusion that no additional environmental analysis was required to adopt the RECE as a new element of the County General Plan, because none of the conditions specified in Section 15162 of the State CEQA Guidelines applied to adoption of the REC Element. The same conclusion applies for the current proposal to amend the REC Element. Therefore, staff recommends reliance on the previously adopted Addendum to comply with CEQA, as noted in the recommended Findings (Exhibit F).

## **PUBLIC COMMENTS**

Written public comments received on the subject of the RECE subsequent to the 2017 adoption of the RECE have been compiled in Exhibit G.

## **RECOMMENDATION**

Staff recommends that the Planning Commission make the following recommendation to the Board of Supervisors:

- (1) **Adopt** the Addendum to the Program Environmental Impact Report for the San Bernardino County General Plan Update (2007), including the Supplemental Environmental Impact Report for the Greenhouse Gas Reduction Plan (2011).
- (2) **ADOPT** the recommended amendments to the General Plan Renewable Energy and Conservation Element, including Exhibit B (addition to Policy 5.2), Exhibit C (revised Policy 4.10) and Exhibit D (new Policy 5.9) based on the recommended findings in Exhibit F.

## **ALTERNATIVE RECOMMENDATION**

As an alternative, the Planning Commission may substitute Exhibit A (the original version of Policy 4.10) for Exhibit C, and recommend adoption of Exhibits A, B and D.

## **ATTACHMENTS:**

- Exhibit A:** Original version of RECE Policy 4.10 recommended on August 8, 2017. (Please see separate link)
- Exhibit B:** Proposed addition to RECE Policy 5.2, specifying existing energy generation sites as suitable for utility-oriented RE project development. (Please see separate link)
- Exhibit C:** Proposed revised version of RECE Policy 4.10 with a related revision to RECE Policy 4.3.2. (Please see separate link)
- Exhibit D:** Proposed new RECE Policy 5.9, emphasizing Board priority for utility-oriented RE to be located on public lands away from unincorporated communities. (Please see separate link)
- Exhibit E:** Addendum to the Program EIR for the County General Plan Update (2007) and Supplemental EIR for the Greenhouse Gas Reduction Plan (2011). (Please see separate link)
- Exhibit F:** Recommended Findings (Please see separate link)
- Exhibit G:** Written Public Comments (Please see separate link)

## **EXHIBIT A – Original proposal for Policy 4.10**

### **RE Policy 4.10: Prohibit utility-oriented RE project development on sites that would create adverse impacts on the quality of life or economic development opportunities in existing unincorporated communities.**

- RE 4.10.1: Prohibit development of utility-oriented RE projects in the Rural Living land use districts throughout the County.
- RE 4.10.2: Prohibit development of utility-oriented RE projects within the boundaries of existing community plans, which at the time of adoption of this Element are the Bloomington, Muscoy, Bear Valley, Crest Forest, Hilltop, Lake Arrowhead, Lytle Creek, Oak Glen, Homestead Valley, Joshua Tree, Lucerne Valley, Morongo Valley, Oak Hills and Phelan/Pinon Hills Community Plans.
- RE 4.10.3: Establish exclusion areas in the Development Code regulations for renewable energy development, beginning with the prohibitions in Policies 4.10.1 and 4.10.2 and provide for additional exclusion areas, such as new community plan areas, to be designated by amendment to the Development Code.

## EXHIBIT B – Proposed Addition to Policy 5.2

**RE Policy 5.2: Utility-oriented RE generation projects on private land in the unincorporated County will be limited to the site-types below, in addition to meeting criteria established herein and in the Development Code:**

- i. Private lands adjacent to the federal Development Focus Areas supported by the Board of Supervisors that meet siting criteria and development standards
- ii. Waste Disposal Sites
- iii. Mining Sites (operating and reclaimed)
- iv. Fallow, degraded and unviable agricultural lands
- v. Airports (existing and abandoned or adaptively re-used)
- vi. Brownfields
- vii. California Department of Toxic Substance Control Cleanup Program Sites
- viii. Resource Conservation and Recovery Act Sites
- ix. Sites within or adjacent to electric transmission and utility distribution corridors
- ~~ix.~~ x. Existing energy generation sites
- ~~x.~~ xi. Industrial zones proven to not conflict with economic development needs
- ~~xi.~~ xii. Other sites proven by a detailed suitability analysis to reflect the significantly disturbed nature or conditions of those listed above

**RE Goal 4: The County will establish a new era of sustainable energy production and consumption in the context of sound resource conservation and renewable energy development practices that reduce greenhouse gases and dependency on fossil fuels.**

**RE Objective 4.1:** The County will continue its efforts to meet or exceed State Greenhouse Gas reduction goals, by encouraging renewable energy development that will be compatible with the natural environment and the integrity of unincorporated communities.

**RE Policy 4.1: Apply standards to the design, siting, and operation of all renewable energy facilities that protect the environment, including sensitive biological resources, air quality, water supply and quality, cultural, archaeological, paleontological and scenic resources.**

- RE 4.1.1: Consult with Native American tribes in the identification, evaluation, and treatment of cultural resources and in the preparation and implementation of measures required to identify, evaluate, protect, and manage cultural resources.
- RE 4.1.2: RE development applications shall be subject to thorough environmental review, including consideration of water consumption, before being permitted.

**RE Policy 4.2: Ensure that renewable energy facilities do not disrupt, degrade, or alter the local hydrology and hydrogeology.**

- RE 4.2.1: Require a groundwater impact assessment that evaluates the short and long-term impacts to groundwater usage.

**RE Policy 4.3: Require construction and operation of all renewable energy facilities to minimize negative effects and optimize benefits to unincorporated communities.**

- RE 4.3.1: Define measures required to minimize ground disturbance, soil erosion, flooding, and blowing of sand and dust, with appropriate enforcement mechanisms in the Development Code.
- RE 4.3.2: Require ~~operators to track and report energy production and other benefits cited in a~~ developers to submit a report detailing community benefits of each project proposal, in addition to tracking efforts to avoid and minimize negative impacts.
- RE 4.3.3: Give preference to the utilization of existing infrastructure to minimize the need for additional transmission development.
- RE 4.3.4: Establish inspection protocols and programs to ensure that RE facilities are constructed, operated, and eventually decommissioned consistent with the requirements of the San Bernardino County Code, and in a manner that will not be detrimental to the public health, safety, or welfare.

## EXHIBIT C – PROPOSED REVISIONS TO POLICY 4.3.2 AND 4.10

**RE Policy 4.4: Encourage siting, construction and screening of RE generation facilities to avoid, minimize or mitigate significant changes to the visual environment including minimizing light and glare.**

- RE 4.4.1: Reduce visual impacts through a combination of minimized reflective surfaces, context-sensitive color treatments, nature-oriented geometry, minimized vegetation clearing under and around arrays, conservation of pre-existing native plants, replanting of native plants as appropriate, maintenance of natural landscapes around the edges of facility complexes, and lighting design to minimize night-sky impacts, including attraction of and impact to nocturnal migratory birds.

**RE Policy 4.5: Require RE generation facility developers to provide and implement a decommissioning plan that provides for reclamation of the site to a condition at least as good as that which existed before the lands were disturbed or another appropriate end use that is stable (i.e. with interim vegetative cover), prevents nuisance, and is readily adaptable for alternative land uses. Decommissioning plans shall:**

- RE 4.5.1: Include a cost estimate of the decommissioning and site restoration work for the purpose of providing a bond to guarantee completion of decommissioning.
- RE 4.5.2: Provide for an inspection after all decommissioning and site restoration work to ensure that the work has been completed to the standards required by the County, prior to release of the decommissioning bond.
- RE 4.5.3: Require any structures created during construction to be decommissioned and all material recycled to the greatest extent possible.
- RE 4.5.4: Require all material recovered during decommissioning and site restoration work of a renewable energy facility, including the renewable energy technology itself, to be reused or recycled to the greatest extent possible.

**RE Policy 4.6: Require all recyclable electronic and/or toxic materials to be recycled in accordance with the requirements of the Basel Convention or comparable standard.**

**RE Policy 4.7: RE project site selection and site design shall be guided by the following priorities relative to habitat conservation and mitigation:**

- Avoid sensitive habitat, including wildlife corridors, during site selection and project design.
- Where necessary and feasible, conduct mitigation on-site.
- When on-site habitat mitigation is not possible or adequate, establish mitigation off-site in an area designated for habitat conservation.

## EXHIBIT C – PROPOSED REVISIONS TO POLICY 4.3.2 AND 4.10

**RE Policy 4.8: Encourage mitigation for RE generation facility projects to locate habitat conservation offsets on public lands where suitable habitat is available.**

- RE 4.8.1: Collaborate with appropriate state and federal agencies to facilitate mitigation/habitat conservation activities on public lands.

**RE Policy 4.9: Encourage RE facility developers to design projects in ways that provide sanctuary (i.e., a safe place to nest, breed and/or feed) for native bees, butterflies and birds where feasible and appropriate, according to expert recommendations.**

**RE Policy 4.10: ~~Prohibit~~ Require utility-oriented RE project ~~development on sites that would create adverse impacts on~~ applications to include a report of project benefits to the quality of life or economic development opportunities in existing unincorporated communities.**

- RE 4.10.1: The community benefit report shall identify elements of the project site design that have been incorporated to enhance compatibility with surrounding properties and existing communities, including Native American Tribes. The report shall also:
  - If the project site is located within the boundaries of an adopted community plan, include an analysis of consistency with community values and aspirations outlined in the community plan.
  - Explain how natural features of the site, such as elevation, topography or vegetation, combined with project design, will minimize potential visual impacts of the project.
  - Explain how planned improvements to the project site will minimize impacts or benefit other properties. This may include avoidance of natural drainage courses, making improvements that will reduce drainage impacts on downstream properties, allowing for wildlife movement through or around the site, or minimizing and managing impacts of blowing sand.
  - Identify any benefits to public utilities or public services that may result from construction of the project. This may include energy transmission or distribution system improvements that would enhance energy reliability, water system improvements that would reduce service costs for local consumers, or land use conversion that would decrease demand for public services.
  - Detail anticipated on-site or off-site project improvements that will benefit the community at large or other properties, such as road and drainage improvements.
  - Identify any commitment to employ the local labor force or cooperate with local job training or apprenticeship programs.

**EXHIBIT C – PROPOSED REVISIONS TO POLICY 4.3.2 AND 4.10**

- Identify any planned efforts to engage County residents and visitors through marketing or public education that will enhance interest in renewable energy and appreciation of the project.
- ~~RE 4.10.1: Prohibit development of utility-oriented RE projects in the Rural Living land use districts throughout the County.~~
- ~~RE 4.10.2: Prohibit development of utility-oriented RE projects within the boundaries of existing community plans, which at the time of adoption of this Element are the Bloomington, Museoy, Bear Valley, Crest Forest, Hilltop, Lake Arrowhead, Lytle Creek, Oak Glen, Homestead Valley, Joshua Tree, Lucerne Valley, Morongo Valley, Oak Hills and Phelan/Pinon Hills Community Plans.~~
- ~~RE 4.10.3: Establish exclusion areas in the Development Code regulations for renewable energy development, beginning with the prohibitions in Policies 4.10.1 and 4.10.2 and provide for additional exclusion areas, such as new community plan areas, to be designated by amendment to the Development Code.~~

## **EXHIBIT D – Proposed new RECE Policy 5.9**

**RE Policy 5.9: Collaborate with utilities, the California Energy Commission (CEC) and the Bureau of Land Management (BLM) to plan for RE generation facilities to be located on public lands, apart from existing unincorporated communities.**