

DOCKETED

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Docket Number: 22-OIR-01*

**Comments of Contra Costa County on Emergency Rulemaking for
AB 205, Opt-In Provisions**

Additional submitted attachment is included below.

The Board of Supervisors

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Martinez, California 94553

John Gioia, 1st District
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Contra Costa County



Monica Nino
Clerk of the Board
and
County Administrator
(925) 655-2075

September 30, 2022

California Energy Commission
715 P Street
Sacramento, California 95814

RE: Docket 22-OIR-01, Emergency Rulemaking for AB 205, Opt-In Provisions

Dear California Energy Commission:

The County of Contra Costa (Contra Costa) appreciates the urgency of accelerating California's progress in meeting the state's clean energy goals. As the California Energy Commission (CEC) develops regulations to implement AB 205, Contra Costa requests that the CEC consider in its deliberations local policies and zoning ordinances that are intended to facilitate the development of renewable energy.

Contra Costa in 2018, developed a *Renewable Resource Potential Study* through a Sustainable Communities Planning Grant from the State¹. The Study evaluated renewable energy potential in all the land use types in the county from sources including solar, wind, biomass, and biogas. The study found that rooftop and ground-mounted solar provided the great potential to generate electricity within the County, with rooftop solar being most appropriate within the County's voter-approved urban limit line, and ground-mounted solar being more appropriate in less developed areas.

In 2020, Contra Costa updated its solar policies. This included zoning text amendments to facilitate the expansion of solar energy generation in the County, particularly for projects involving negligible or no land use tradeoffs such as commercial/industrial rooftops, on existing parking lots, and urban land unlikely to be developed, for which all zoning barriers to solar deployment were removed. The potential development of "greenfield" commercial solar projects within the agricultural region in the eastern part of our county represents a relatively small but significant portion of the solar generation potential from all sources. As such, the Solar Energy Generation Combining District (-SG) was adopted in agricultural areas in East County, identifying such lands and excluding areas of high conservation and agricultural value in order to realize the generation potential on greenfield sites in areas where it does not conflict with other policy goals. (*See attached*)

¹ The study can be found at <https://www.contracosta.ca.gov/6997/Renewable-Resource-Potential-Study>.

The resulting -SG combining district consists of approximately 7,800 acres of agricultural zoned farmland of marginal value (i.e., non-prime soil, no significant hillsides or natural land cover, low special status plant/animal species habitat value) located in the Byron, Bethel Island, and Jersey Island areas of unincorporated County. By identifying agricultural parcels with the necessary attributes to accommodate commercial solar development and excluding those parcels containing major agricultural resources and sensitive habitat, the approved -SG combining district balances the County's interest in encouraging local renewable energy production with other important policy goals. The -SG district includes multiple screening criteria, including topography, natural land cover type, and parks/ conservation lands.

The 2020 update to our solar policies included new policies to govern commercial solar facilities (*attached*). These include requirements regarding setbacks, illumination, avoiding sensitive habitat, and site restoration. It is very important to Contra Costa that applicants anticipate and plan for site restoration before a land use permit is issued. We encourage the CEC to include a similar requirement in its new regulations.

Contra Costa recommends the following additions to Article 4.1

- § 1877. Contents of Opt-in Application.
In section (a), the opt-in application should include detailed information about local government zoning and land use policies in effect as of June 30, 2022, when AB 205 was signed into law, and that would be applicable if the local government retained permitting authority.

In section (e), the opt-in application should identify the land use designation of the proposed project location, and describe whether the project is on a site that the local jurisdiction has designated as protected.

This section should include an additional section that requires the opt-in application to provide a site restoration plan for the project that does the following:

- (1) Identify the specific properties to which the plan applies.
- (2) Indicate that all commercial solar energy facilities, buildings, structures, and foundation will be removed to three feet below finished grade.
- (3) Detail all regrading and revegetation necessary to return the subject property to the condition existing before the commercial solar energy facility was established or expanded. The plan must accurately show all topography, vegetation, drainage, and unique environmental features of the site.
- (4) Provide an estimate of total restoration costs, including materials and labor.
- (5) Include a statement that the operator, applicant, and permittee guarantee and accept responsibility for all restoration work for a period of two years after completion of restoration.

- § 1878.5. Tribal Consultation. This section should be renamed "Tribal and Local Jurisdiction Consultation" and should include a requirement that the commission consult with the jurisdiction that would have permitting authority, absent AB 205.

- § 1879. Environmental Document and Executive Director’s Recommendation. This section should include a requirement that the environmental document identify whether the site is in conflict with local government land use policies and ordinances that were in effect prior to June 30, 2021.
- § 1880. Public Outreach. This section should include a requirement that the local jurisdiction in which the proposed project would be located be invited to any meetings, informational workshops, or scoping workshops.

Contra Costa appreciates the opportunity to provide comments on these draft regulations. Should you have any questions or comments, please contact John Kopchik, Director, Department of Conservation and Development, John.Kopchik@dcd.cccounty.us, 925-655-2780.

Respectfully,

A handwritten signature in cursive script that reads "Karen Mitchoff".

KAREN MITCHOFF

Chair, Board of Supervisors

cc: Honorable Members, Contra Costa County Board of Supervisors
Monica Nino, County Administrator
John Kopchik, DCD Director
James Gross, Michelle Rubalcava & Rachael Blucher, Nielsen Merksamer

ORDINANCE NO. 2020-07

SOLAR ENERGY FACILITIES

The Contra Costa County Board of Supervisors ordains as follows (omitting the parenthetical footnotes from the official text of the enacted or amended provisions of the County Ordinance Code):

SECTION I. SUMMARY. This ordinance adds Chapter 88-30 to the County Ordinance Code to allow the establishment of commercial solar energy facilities in the general commercial (C), light industrial (L-I), heavy industrial (H-I), and planned unit (P-1) districts, and in the solar energy generation (-SG) combining district.

SECTION II. Chapter 88-30 is added to the County Ordinance Code, to read:

Chapter 88-30
SOLAR ENERGY FACILITIES

Article 88-30.2
General

88-30.202 Title. This chapter is known as the Solar Energy Facilities Ordinance of Contra Costa County. (Ord. 2020-07 § 2.)

88-30.204 Purpose. The purpose of this chapter is to regulate the establishment of commercial solar energy facilities in the unincorporated area of Contra Costa County. (Ord. 2020-07 § 2.)

88-30.206 Definitions. For purposes of this chapter, the following words and phrases have the following meanings:

- (a) “Accessory solar energy facility,” also referred to as a “solar energy system,” means a solar energy facility that is designed to collect, store, and distribute no more solar energy than what is necessary to meet on-site energy demand.
- (b) “Commercial solar energy facility” means a solar energy facility that is designed to collect, store, and distribute solar energy that will be used to meet off-site energy demand.
- (c) “Solar energy facility” means any solar collector or other solar energy device that collects, stores, and distributes solar energy for space heating, space cooling, electric generation, or water heating. “Solar energy facility” includes a photovoltaic system consisting of one or more solar panels, a solar thermal system that converts solar energy to electricity by heating a working fluid to power a generator, and a solar hot water system designed to heat water for either domestic or commercial uses. (Ord. 2020-07 § 2.)

Article 88-30.4 Permits

88-30.402 Land use permit required. No person may establish or expand a commercial solar energy facility in the unincorporated area of the County without first obtaining a land use permit, except as otherwise provided in this chapter. (Ord. 2020-07 § 2.)

88-30.404 Permit–exception. A commercial solar energy facility may be established or expanded without a land use permit if the facility meets all of the following criteria.

- (a) The facility is installed on the roof of an existing building or on a parking canopy at an existing parking lot. For purposes of this section, “existing parking lot” means an area designated and used for parking of vehicles as of the time the commercial solar energy facility is established and for at least the previous two years.
- (b) The facility is located in a general commercial (C), light industrial (L-I), or heavy industrial (H-I) district, or in a planned unit (P-1) district with an underlying general plan land use designation of commercial or industrial.
- (c) The facility complies with the standards set forth in sections 88-30.604 through 88-30.614. (Ord. 2020-07 § 2.)

88-30.406 Application and fee. An application for a land use permit for a commercial solar energy facility must be made in writing on a form approved by the director and must be accompanied by the required fee, in an amount established by the board of supervisors in the department’s fee schedule. (Ord. 2020-07 § 2.)

88-30.408 Compliance review. The department may perform a compliance review at any time to determine whether a permittee is complying with the permit's terms and conditions, the requirements of this chapter, and all applicable laws and regulations. A permittee shall cooperate with the department to complete the compliance review and must pay all applicable compliance review fees. (Ord. 2020-07 § 2.)

88-30.410 Building permits. Nothing in this chapter, and no permit or permission granted under this chapter, waives any requirement of Title 7, including the requirement to obtain all applicable building permits for construction of a commercial solar energy facility. (Ord. 2020-07 § 2.)

Article 88-30.6 Standards

88-30.602 Location requirement. A commercial solar energy facility may be established on any lot in a general commercial (C), light industrial (L-I), or heavy industrial (H-I) district, or in a

planned unit (P-1) district with an underlying general plan land use designation of commercial or industrial, or in a solar energy generation (-SG) combining district. (Ord. 2020-07 § 2.)

88-30.604 Setbacks. The front yard, side yard, and rear yard setback requirements for a commercial solar energy facility are those applicable in the underlying zoning district. (Ord. 2020-07 § 2.)

88-30.606 Height.

- (a) A ground-mounted commercial solar energy facility may not exceed 25 feet in height. For a ground-mounted facility, height is measured as the vertical distance from the natural or finished grade, whichever is lower, to the top of the structure.
- (b) A roof-mounted commercial solar energy facility may not exceed four feet above the roof surface. (Ord. 2020-07 § 2.)

88-30.608 Visibility. A commercial solar energy facility that is visible from any public right-of-way or other public space must be designed and installed to minimize visual and aesthetic impacts to the greatest extent feasible. (Ord. 2020-07 § 2.)

88-30.610 Illumination. A commercial solar energy facility may not include any type of lighted signal, lights, or other illumination, except as necessary for the operation of the facility. (Ord. 2020-07 § 2.)

88-30.612 Septic system avoidance. A commercial solar energy facility may not be located above a septic system or leach field unless approved by the Environmental Health Division of the County Department of Health Services. (Ord. 2020-07 § 2.)

88-30.614 Habitat avoidance. A commercial solar energy facility may not be located within 75 feet of any creek or within 50 feet of any other aquatic habitat unless a land use permit is issued and the zoning administrator determines: that there will be no impact to the aquatic habitat; or that mitigation measures are available to minimize or offset any impacts to the aquatic habitat and the zoning administrator requires the mitigation measures as a condition of permit approval. (Ord. 2020-07 § 2.)

88-30.616 Site restoration. If a commercial solar energy facility is located in an -SG combining district, the following site restoration requirements apply.

- (a) A site restoration plan must be approved by the zoning administrator before a land use permit is issued. The restoration plan must do all of the following:
 - (1) Identify the specific properties to which the plan applies.

- (2) Indicate that all commercial solar energy facilities, buildings, structures, and foundation will be removed to three feet below finished grade.
 - (3) Detail all regrading and revegetation necessary to return the subject property to the condition existing before the commercial solar energy facility was established or expanded. The plan must accurately show all topography, vegetation, drainage, and unique environmental features of the site.
 - (4) Provide an estimate of total restoration costs, including materials and labor.
 - (5) Include a statement that the operator, applicant, and permittee guarantee and accept responsibility for all restoration work for a period of two years after completion of restoration.
- (b) A cash deposit or surety bond must be deposited with the department to ensure the completion of the restoration work described in an approved plan. The zoning administrator will determine the amount of security before a land use permit is issued. The amount of security will include all material and labor costs, adjusted for inflation to reflect anticipated total costs at the time of restoration. (Ord. 2020-07 § 2.)

Article 88-30.8
Accessory Solar Energy Facilities

88-30.802 Approved use. An accessory solar energy facility may be established in any zoning district in accordance with Chapter 718-12. The permitting and standards provisions of this chapter do not apply to accessory solar energy facilities. (Ord. 2020-07 § 2.)

SECTION III. Section 718-12.002 of the County Ordinance Code is amended to read:

718-12.002 Building permit required.

- (a) A building permit is required to install a solar energy system. "Solar energy system," also referred to as an "accessory solar energy facility," has the meaning set forth in Section 88-30.206.
- (b) An application for a building permit to install a solar energy system will be processed in accordance with Government Code section 65850.5. (Ords. 2020-07 § 3, 2015-13, § 2.)

SECTION IV. Ordinance No. 2017-17 is repealed in its entirety.

SECTION V. EFFECTIVE DATE. This ordinance becomes effective 30 days after passage, and within 15 days after passage shall be published once with the names of supervisors voting for or against it in the East Bay Times, a newspaper published in this County.

PASSED on _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: DAVID J. TWA,
 Clerk of the Board of Supervisors
 and County Administrator

Board Chair

By:

Deputy

[SEAL]

KCK:

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ORDINANCE NO. 2020-08

SOLAR ENERGY GENERATION COMBINING DISTRICT

The Contra Costa County Board of Supervisors ordains as follows (omitting the parenthetical footnotes from the official text of the enacted or amended provisions of the County Ordinance Code):

SECTION I. SUMMARY. This ordinance adds Chapter 84-88 to the County Ordinance Code to establish the Solar Energy Generation (-SG) Combining District. The ordinance authorizes the establishment of commercial solar energy facilities on land within an agricultural district that is combined with a solar energy generation combining district, after the issuance of a land use permit.

SECTION II. Chapter 84-88 is added to the County Ordinance Code, to read:

Chapter 84-88
SOLAR ENERGY GENERATION (-SG) COMBINING DISTRICT

Article 84-88.2
General

84-88.202 Solar energy generation (-SG) combining district. All land within an agricultural (A-2, A-3, A-20, A-40, or A-80) district combined with a solar energy generation (-SG) combining district is subject to the additional regulations set forth in this chapter. (Ord. 2020-08 § 2.)

84-88.204 Priority. If there is any conflict between the regulations of this chapter and those of the underlying zoning district, the requirements of this chapter govern. (Ord. 2020-08 § 2.)

84-88.206 Definitions. For the purposes of this chapter, the following words and phrases have the following meanings:

- (a) “Commercial solar energy facility” has the meaning set forth in Section 88-30.206.
- (b) “Solar energy facility” has the meaning set forth in Section 88-30.206. (Ord. 2020-08 § 2.)

Article 84-88.4
Uses

84-88.402 Permitted uses. All uses allowed in the underlying zoning district are permitted in an

-SG district. (Ord. 2020-08 § 2.)

84-88.404 Commercial solar energy facilities. A commercial solar energy facility that meets the requirements of Chapter 88-30 may be established in an -SG district after issuance of a land use permit. (Ord. 2020-08 § 2.)

SECTION III. EFFECTIVE DATE. This ordinance becomes effective 30 days after passage, and within 15 days after passage shall be published once with the names of supervisors voting for or against it in the Contra Costa Times, a newspaper published in this County.

PASSED on _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST: DAVID J. TWA,
Clerk of the Board of Supervisors
and County Administrator

Board Chair

By: _____
Deputy

[SEAL]

KCK:

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