

**COUNTY OF SAN LUIS OBISPO BOARD OF SUPERVISORS
AGENDA ITEM TRANSMITTAL**

(1) DEPARTMENT Planning and Building	(2) MEETING DATE 3/10/2015	(3) CONTACT/PHONE Nick Forester, Planner III/(805)781-1163 James Caruso, Senior Planner/(805)781-5702	
(4) SUBJECT Hearing to consider a request by the County of San Luis Obispo to 1) amend sections of Titles 21, 22 and 23 to comply with federal law requirements of the Federal Emergency Management Agency (FEMA); and 2) to amend portions of the Framework for Planning (Inland), Part I of the Land Use and Circulation Elements (LUCE), the Carrizo, North County, San Luis Obispo, and South County Area Plans, Part II of the LUCE, the Official Maps, Part IV of the LUCE, the Conservation and Open Space Element, Title 22 (the Land Use Ordinance), and the Rules of Procedure to Implement the California Land Conservation Act of 1965 in order to encourage the development of certain renewable energy projects through a Renewable Energy Streamlining Program (RESP). All Districts.			
(5) RECOMMENDED ACTION It is recommended that the Board: 1. Hold the public hearings on the amendments recommended for approval by the Planning Commission as set forth in the attached Exhibits and staff reports. 2. Take tentative action on the flood hazard amendments heard today with final action occurring on March 24, 2015. 3. Continue RESP amendment hearing to March 24, 2015 in order to take final action on that date.			
(6) FUNDING SOURCE(S) Current Budget and Grant Funds	(7) CURRENT YEAR FINANCIAL IMPACT \$0.00	(8) ANNUAL FINANCIAL IMPACT \$0.00	(9) BUDGETED? Yes
(10) AGENDA PLACEMENT <input type="checkbox"/> Consent <input type="checkbox"/> Presentation <input checked="" type="checkbox"/> Hearing (Time Est. <u>180 minutes</u>) <input type="checkbox"/> Board Business (Time Est. <u> </u>)			
(11) EXECUTED DOCUMENTS <input type="checkbox"/> Resolutions <input type="checkbox"/> Contracts <input checked="" type="checkbox"/> Ordinances <input type="checkbox"/> N/A			
(12) OUTLINE AGREEMENT REQUISITION NUMBER (OAR) N/A		(13) BUDGET ADJUSTMENT REQUIRED? BAR ID Number: <input type="checkbox"/> 4/5 Vote Required <input checked="" type="checkbox"/> N/A	
(14) LOCATION MAP N/A	(15) BUSINESS IMPACT STATEMENT? No	(16) AGENDA ITEM HISTORY <input type="checkbox"/> N/A Date: <u>FH 10/16/12, 2/24/15;</u> <u>RESP 07/09/13</u>	
(17) ADMINISTRATIVE OFFICE REVIEW			
(18) SUPERVISOR DISTRICT(S) All Districts			

County of San Luis Obispo



TO: Board of Supervisors

FROM: Planning and Building / Nick Forester, Planner III
James Caruso, Senior Planner

VIA: Trevor Keith, Policies and Programs Division

DATE: 3/10/2015

SUBJECT: Hearing to consider a request by the County of San Luis Obispo to 1) amend sections of Titles 21, 22 and 23 to comply with federal law requirements of the Federal Emergency Management Agency (FEMA); and 2) to amend portions of the Framework for Planning (Inland), Part I of the Land Use and Circulation Elements (LUCE), the Carrizo, North County, San Luis Obispo, and South County Area Plans, Part II of the LUCE, the Official Maps, Part IV of the LUCE, the Conservation and Open Space Element, Title 22 (the Land Use Ordinance), and the Rules of Procedure to Implement the California Land Conservation Act of 1965 in order to encourage the development of certain renewable energy projects through a Renewable Energy Streamlining Program (RESP). All Districts.

RECOMMENDATION

It is recommended that the Board:

1. Hold the public hearings on the amendments recommended for approval by the Planning Commission as set forth in the attached Exhibits and staff reports.
2. Take tentative action on the flood hazard amendments heard today with final action occurring on March 24, 2015.
3. Continue RESP amendment hearing to March 24, 2015 in order to take final action on that date.

DISCUSSION

At today's meeting, your Board will hold public hearings on the following amendments recommended for approval by the Planning Commission and take tentative action on Item 1 and continue the public hearing on Item 2.

Item 1

The Planning Commission is transmitting the record of its meetings of February 27, 2014 and March 27, 2014 to your Board for the attached proposed amendments to Titles 21, 22, and 23 of the County Code as follows:

A request by the **COUNTY OF SAN LUIS OBISPO** to amend Sections 22.14.060 (Flood Hazard Area) and 22.80.030 (Definitions) of the Land Use Ordinance (Title 22 of County Code), Sections 23.07.060 (Flood Hazard Area), 23.07.062 (Applicability of Flood Hazard Standards), 23.07.064 (Flood Hazard Area Permit Processing Requirements), 23.07.065 (General Hazard Avoidance), 23.07.066 (Construction Standards), 23.11.030 (Definitions) of the Coastal Zone Land Use Ordinance (Title 23 of County Code) and Section 21.03.010(e) of the Real Property Division Ordinance (Title 21 of County Code), to comply with the federal law requirements of the Federal Emergency Management Agency (FEMA).

County File No: **LRP2012-00002**
Supervisory District: All Districts

Assessor Parcel Number: Countywide
Date Authorized For Processing: 10/16/12

The Planning Commission considered the above amendment and took the following action to recommend approval of the proposed amendment:

On the motion of Commissioner Ken Topping, seconded by Commissioner Irving and carried (4-0), with Commissioner Campbell absent, recommending to the Board of Supervisors approval of the amendment as shown in Exhibits LRP2012-00002:B, LRP2012-00002:C, and LRP2012-00002:D based on Findings in Exhibit LRP2012-00002:A.

Background/Discussion

Federal law requires communities participating in the National Flood Insurance Program (NFIP) to have adequate permitting and other administrative procedures in place to ensure that local ordinances are in compliance with federal law. A local program deficiency is a defect in a community's flood plain management regulations or administrative procedures that impairs effective implementation of FEMA flood plain management regulations. FEMA has identified several deficiencies in county code. Federal law requires correction of any program deficiencies that are identified.

If the County fails to correct the identified deficiencies, the FEMA Regional Director may place the county on probation. Probation has no effect on the continued availability of flood insurance; however, an additional charge of \$50.00 will be added to the premium of each flood insurance policy.

If a community on probationary status fails to take appropriate remedial measures and adopt compliant flood plain management measures during the probationary period, the FEMA Regional Director may suspend a community from the National Flood Insurance Program. If a community is suspended, new flood insurance cannot be purchased and existing policies cannot be renewed. In addition, existing three year policies become void at the end of the current policy year.

The proposed revisions, if adopted will bring local ordinances into compliance with FEMA requirements and will prevent the imposition of additional flood insurance fees and/or cancellation of existing flood insurance policies.

The following is a summary discussion of the proposed amendments:

The project proposes the following revisions to Section 22.14.060 (Flood Hazard Area) of Title 22 and sections 23.07.060 (Flood Hazard Area), 23.07.062 (Applicability of Flood Hazard Standards), 23.07.064 (Flood Hazard Area Permit Processing Requirements), 23.07.065 (General Hazard Avoidance), 23.07.066 (Construction Standards) of Title 23 of county code:

- Adds Language regarding Statutory Authority
- Requires that temporary uses be removable in times of flooding in order to be exempt from the Flood Hazard Combining Designation
- Adds new language regarding definition of "substantial damage"
- Establishes new requirements for projects that alter a watercourse
- Establishes new requirements and findings for variances
- Adds new language regarding disclaimer of liability
- Establishes new requirements for land divisions in flood hazard areas
- Adds new language regarding abrogation and greater restrictions

The project also proposes revisions to section 22.80 (Definitions) of Title 22 and section 23.11(Definitions) of Title 23 of county code to add definitions of the following language:

- Highest Adjacent Grade
- Area of Special Flood Hazard
- Start of Construction

The project also proposes revisions to section 21.03.010 (Flood hazard and drainage) of title 21 (Real Property Division Ordinance) of county code as follows:

- For new land divisions, public utilities and facilities such as sewer, gas, electrical and water systems are required to be located and constructed to minimize flood damage.
- Requires that all new subdivisions greater than 50 lots or 5 acres shall identify the Special Flood Hazard Areas and the Base Flood Elevation.

Item 2

The Planning Commission is transmitting the record of its meetings of January 22, February 5 and February 26 to your Board for the attached proposed amendments to the General Plan, Title 22 of the County Code and Rules of Procedure to Implement the California Land Conservation Act of 1965 as follows:

A request by the **COUNTY OF SAN LUIS OBISPO** to amend portions of the following documents in order to encourage the development of certain renewable energy projects in the most suitable locations in unincorporated inland areas of the county through a Renewable Energy Streamlining Program (RESP): 1) Framework for Planning (Inland), Part I of the Land Use and Circulation Elements (LUCE) of the County General Plan; 2) the Carrizo, North County, San Luis Obispo, and South County Area Plans, Part II of the LUCE; 3) the Official Maps, Part IV of the LUCE; 4) the Conservation and Open Space Element of the County General Plan; 5) the Land Use Ordinance, Title 22 of the County Code; and 6) the Rules of Procedure to Implement the California Land Conservation Act of 1965. The proposed amendments would: 1) establish a Renewable Energy combining designation where the land use permitting of certain renewable energy projects is streamlined, for example, through the use of Site Plan Review instead of Minor Use Permits; 2) establish new performance standards that renewable energy projects must meet; and 3) revise the Rules of Procedure to Implement the Land Conservation Act of 1965 to allow certain renewable energy projects on contracted land. The Environmental Coordinator found that there is evidence that the project may have a significant effect on the environment, and therefore a Final Environmental Impact Report (FEIR) was prepared (pursuant to Public Resources Code Section 21000 et seq., and CA Code of Regulations Section 15000 et seq.) for this project. The FEIR addresses potential impacts on: Aesthetics, Agricultural Resources, Air Quality, Biological Resources, Cultural Resources, Geology and Soils, Greenhouse Gases and Climate Change, Hazards and Hazardous Materials, Land Use and Planning, Noise and Water Resources. Overriding considerations were determined necessary based on significant and unavoidable impacts associated with Aesthetics, Agricultural Resources and Land Use and Planning.

County File Number: LRP2014-00015
 Assessor Parcel Numbers: Countywide

Supervisory Districts: All
 Date Authorized for Processing: July 9, 2013

Planning Commission Review and Recommended Revisions

The Planning Commission considered the above amendment at its January 22, February 5 and February 26, 2015 meetings and took the following action to recommend approval of the proposed amendments:

On the motion of Commissioner Eric Meyer, seconded by Commissioner Topping and carried unanimously, recommending to the Board of Supervisors approval of the amendments as shown in Exhibits LRP2015-00015:C, LRP2015-00015:D and LRP2015-00015:E based on Findings in Exhibit LRP2015-00015:A (CEQA Findings) and LRP2015-00015:B (Planning Commission Findings).

Background/Discussion

San Luis Obispo County has developed a Renewable Energy Streamlining Program (RESP) that will streamline permitting of renewable energy projects, primarily solar and wind energy projects, in the most suitable locations. The RESP gives special attention to streamlining the permitting of accessory renewable energy facilities for on-site use such as rooftop and ground-mounted facilities, as well as small wind generators. The RESP applies in the inland area of the county only; it does not apply in the Coastal Zone.

The objectives of the RESP are accomplished through a variety of ordinance and General Plan revisions. One of the key features of the RESP is a new Renewable Energy (RE) Combining Designation to identify the most suitable areas for renewable energy development. The RESP also includes revisions to the Rules of Procedure to Implement the California Land Conservation Act of 1965. The primary streamlining vehicle is the use of Site Plan review as the streamlined permit process. Site Plan review is a ministerial permit, while the Minor Use Permit process is discretionary. The streamlined ministerial permit can be issued in considerable less time than a discretionary permit and offers certainty in the result as a project must meet published detailed standards in order to be streamlined.

Environmental Review

A programmatic Environmental Impact Report (EIR) has been prepared to support streamlining of eligible on-site renewable energy projects as well as larger renewable energy projects. The EIR and streamlining program were developed together so that impacts identified in the EIR are addressed with “performance standards” for renewable energy projects in the RESP where applicable.

Policy Basis for the RESP

The RESP implements policies and programs in the Conservation and Open Space Element (COSE) of the County General Plan to designate and protect areas that contain renewable energy resources and to streamline planning and development rules, codes, and processing to encourage renewable energy development.

The RESP also implements the County’s Comprehensive County Energy Strategy, which included the following strategy:

“Examples of regulatory relief could come in the form of a programmatic approach that simplifies the discretionary permit process, including allowing specific renewable projects to occur with a ministerial review. Additionally, the County sponsored legislation in the form of AB 2161 (Achadjian) that would allow the County to compete for a funding as a “qualified county” to further streamline the process for solar energy facility projects. If appropriated, there may be up to \$7,000,000 of funding available for “qualified counties” to apply for statewide. It appears that there is likely to be outside funding available to finance a County led initiative in order for the Board to direct staff to prioritize removal of regulatory barriers to incentivize development and deployment of future SEFs or renewable energy.”

Strategy 1 of California’s Renewable Action Plan in the 2012 Integrated Energy Policy Report Update states the basis for the State’s support of local government permit streamlining:

Identify and prioritize geographic areas in the state for both renewable utility-scale and distributed generation development. Priority areas should have high levels of renewable resources, be located where development will have the least environmental impact, and be close to planned, existing, or approved transmission or distribution infrastructure. Prioritization should also include increasing efforts between state and local agencies to coordinate local land-use planning and zoning decisions that ease the siting and permitting of renewable energy-related infrastructure

The proposed program is supported by state and local policy documents including the County General Plan and state renewable Energy Plan.

Description of the RESP

The Public Review Draft RESP defined renewable energy projects in four “tiers” ranging from Tier 1, smaller projects less than 20 acres in size, all the way up to Tier 4, which could cover over 160 acres. Also included are renewable energy projects that are accessory to uses on the site such as the solar facilities found at some wineries. These smaller facilities that supply electric power for on-site use would continue to be permitted with Zoning Clearance and building permits.

The Planning Commission considered the RESP over three separate days and 14 hearing hours. The major Commission revision to the RESP reduced the 4 tiers down to 3 with only Tiers 1 and 2 eligible for streamlining. Table 1 below shows the basic streamlining requirements and performance standards for Tiers 1 and 2 (20 acres and less and 20 acres to 40 acres):

**Table 1
Permitting Requirements**

	Site Plan Review	Minor Use Permit
Tier 1 Up to 20 acres	<ol style="list-style-type: none"> 1. Not on Prime Farmland 2. Not in OS or REC 3. Not in Airport Review 4. On disturbed site 5. CS/IND disturbed sites 	Tier 1 not meeting these standards processed as a MUP unless it meets Tier 2
Tier 2 Up to 40 acres	<ol style="list-style-type: none"> 1. Must be in RE designation 2. No new offsite transmission 3. Not located in an SRA 4. Must meet 1-3 above 5. Not in RS, RSF or RMF 6. Not located on Important Ag Soils 7. Complies with Section F performance standards <ol style="list-style-type: none"> a. Comply w/ other permits b. Meet bio standards c. Fencing d. Setbacks from resources e. Meets archaeological standards f. Meets reveg standards g. Meet ag standard h. Meets screening requirements 	Tier 2 not meeting standards or not in RE designation
Tier 3 Over 40 acres	All Tier 3 projects require a Minor Use Permit	

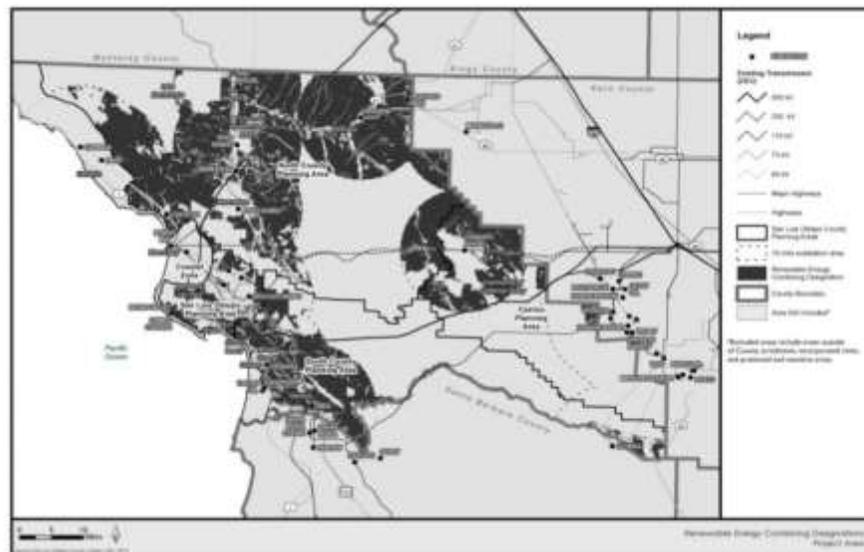
Presently, all renewable energy projects (with the exception of accessory solar) require a Minor Use Permit. If the RESP was to be adopted, it would provide a streamlined permit process for qualifying projects.

Renewable Energy Combining Designation

Areas included in the RE Combining Designation are those that are most conducive to streamlining permits for Solar Electric Facilities (SEFs). They are shown in Figure 1. The RE Combining Designation includes inland, unincorporated county areas under the County's jurisdiction that are not located in the following sensitive areas with special resources or characteristics:

- Sensitive Resource Areas (SRAs) for visual resources
- Certain Highway Corridor Design Standard areas
- Areas covered by conservation easements
- Areas that have been or are intended for preservation for unique biological values
- Recreation (REC) and Open Space (OS) land use categories
- Any areas beyond a 10-mile distance from an existing electrical substation
- Prime Farmland
- Federal and state-designated and managed public lands, such as state parks, national forests, and national monuments.

Figure 1
RE Combining Designation



Commission Issues Discussion

Notice

Site Plan review is a ministerial action that does not include a public hearing as there is no discretion in its issuance. The Commission was concerned with the lack of any public notice of impending streamlined solar development and discussed the issue at length. The Commission agreed to require a streamlined solar application to include a certified letter to neighboring property owners informing them of the impending application. The letter would include the project description, a contact name and phone number. This is a process similar to that in use for certain winery developments and would afford neighbors an early opportunity to address concerns directly to the project applicant.

Tier Definitions

The Commission was concerned with streamlining the larger tier of projects (Tier 3 up to 160 acres). The Commission considered changes to the tier definitions to substantially lower the project acreage that could be subject to streamlining. The specific Commission decision led to a reduction in streamlining

potential to Tiers 1 and 2. Tier 3 (up to 160 acres) was dropped from streamlining potential. Any project over 40 acres would require a MUP with no streamlined permit process offered.

Performance Standards and Self Mitigation

The County employed an iterative approach to development of the RESP that was informed by the EIR analyses. As each section of the RESP was completed, environmental analysis was conducted and then changes were made to the code or performance standards were added to reduce or eliminate impacts that were identified. In essence, this project analysis and feedback loop constituted a comprehensive alternatives analysis where a version of the RESP was analyzed and then revised to avoid environmental impacts.

The performance standards contained in the RESP are intended to result in “self-mitigation” for most projects. Projects that cannot demonstrate avoidance of environmental impacts (i.e., do not meet the standards) are required to complete a discretionary review process. This self-mitigating aspect is why there are no mitigation measures in the EIR. Any action that would be considered a mitigation measure for the RESP is included as a performance standard.

Minor Use Permits v. Site Plan Review

The Commission discussed the process differences between a MUP and Site Plan Review. Public testimony was concerned with the difference in transparency between a MUP and a Site Plan process. It was perceived that a MUP offered the public access to the permit process in a way that a Site Plan did not. A Site Plan is not subject to a public hearing (it is a ministerial permit) and no notices are sent to property owners.

A Site Plan is used as the streamlined permit process because it is ministerial. A well developed, rigorous set of performance standards must be met in order for a streamlined project to be approved. The RESP proposes just such rigorous performance standards (see table 1 above). The following are examples of standards that must be met in order for a solar project to be streamlined through use of a Site Plan instead of a discretionary MUP:

1. The project must be sited on a previously disturbed site.¹
2. The project cannot include expanded off site transmission or distribution lines.
3. The project cannot be located in a sensitive resource area.
4. There cannot be the potential for sensitive species on site.

The RESP is structured so that smaller Tier 1 projects (i.e. 20 acres and smaller) have fewer standards to meet. Tier 2 (40 acres) has a more strict standard to meet in order to be streamlined. Tier 3 (over 40 acres) must go through a discretionary permit process (see Table 1).

OTHER AGENCY INVOLVEMENT/IMPACT

These amendments were referred to all applicable responsible agencies and community advisory groups and was reviewed and recommended for approval by the Planning Commission.

In addition, County Counsel reviewed the ordinances as to form and content.

FINANCIAL CONSIDERATIONS

The Flood Hazard amendments are being processed using funds within the Planning and Building

¹ **Site Disturbance.** Any activity that involves clearing, grubbing, grading, or disturbances to the ground such as stockpiling or excavation.

Department budget. The RESP amendments are being processed through a grant from the California Energy Commission.

RESULTS

Final approval of the request will allow the amendments affecting inland portions of the County to become effective 30 days after the date of final action, which is set for March 24, 2015 making the effective date April 24, 2015.

Final approval of the Flood Hazard amendments affecting coastal portions of the County will allow these amendments to be transmitted to the Coastal Commission for review and approval. The effective date of these amendments will be 30 days from the date of Coastal Commission approval.

ATTACHMENTS

Attachment 1A - LRP2012-00002:A Planning Commission Memo with Findings
Attachment 1B: LRP2012-0002:B - Ordinance Amending Title 21 of the County Code (clean)
Attachment 1C: LRP2012-0002:B - Ordinance Amending Title 21 of the County Code (showing changes)
Attachment 1D: LRP2012-0002:C - Ordinance Amending Title 22 of the County Code (clean)
Attachment 1E: LRP2012-0002:C - Ordinance Amending Title 22 of the County Code (shows changes)
Attachment 1F: LRP2012-0002:D - Ordinance Amending Title 23 of the County Code (clean)
Attachment 1G: LRP2012-00002:D - Ordinance Amending Title 23 of the County Code (shows changes)
Attachment 1H: Minutes from the March 27, 2014 Planning Commission Meeting
Attachment 1I: Staff Report from the March 27, 2014 Planning Commission Meeting
Attachment 1J: Minutes from the February 27, 2014 Planning Commission Meeting
Attachment 1K: Staff Report from the February 27, 2014 Planning Commission Meeting

Attachment 2A: Planning Commission Resolution
LRP2012-00015:A CEQA Findings
LRP2012-00015:B Planning Commission Findings

Attachment 2B: LRP2012-00015:C Amendments to the Land Use and Conservation Element and the Conservation and Open Space Element of the County General Plan (clean)
Attachment 2C: LRP2012-00015:C Amendments to the Land Use and Conservation Element and the Conservation and Open Space Element of the County General Plan (shows changes)
Attachment 2D: LRP2012-00015:D Ordinance Amending the Land Use Ordinance, Title 22 of the County Code (clean)
Attachment 2E: LRP2012-00015:D Ordinance Amending the Land Use Ordinance, Title 22 of the County Code (shows changes)
Attachment 2F: LRP2012-00015:E Amendments to the Rules of Procedure to Implement the Land Conservation Act of 1965 (clean)
Attachment 2G: LRP2012-00015:E Amendments to the Rules of Procedure to Implement the Land Conservation Act of 1965
Attachment 2H: Draft Minutes from the February 26, 2015 Planning Commission Meeting
Attachment 2I - Supplemental Staff Report from the February 26, 2015 Planning Commission Meeting
Attachment 2J - Staff Report from the February 26, 2015 Planning Commission Meeting
Attachment 2K - Minutes from the February 5, 2015 Planning Commission Meeting
Attachment 2L - Staff Report from the February 5, 2015 Planning Commission Meeting
Attachment 2M - Minutes from the January 22, 2015 Planning Commission Meeting
Attachment 2N - Staff Report from the January 22, 2015 Planning Commission Meeting
Attachment 2O - Minutes from the January 8, 2015 Planning Commission Meeting
Attachment 2P - Staff Report from the January 8, 2015 Planning Commission Meeting
Attachment 2Q - APRC Recommendation
Attachment 2R - Clerk file page for the Environmental Impact Report