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Date: September 26, 2023

To: Board of County Commissioners

Via: Gregory S. Shaffer, County Manager

From: Hank Hughes, Santa Fe County Commissioner, District 5
Anna Hamilton, Santa Fe County Commissioner, District 4

Subject: A Resolution Directing Staff to Engage With Expert Consultants Regarding Commercial Renewable Energy Projects in Santa Fe County and Post Information Concerning Conditional Use Permit Applications for Such Projects on the County's Website.

Issue:

Via a September 15, 2023, press release, Santa Fe County (County) solicited comments on the subject resolution, which was introduced for discussion at the September 12, 2023, Board of County Commissioners (BCC) meeting. This memo explains changes between the original draft of the resolution and the revised draft proposed for adoption. It also explains why the resolution sponsors do not recommend that other public comments be incorporated into the subject resolution.

Background:

The most likely renewable energy projects are solar, wind, and geothermal.

- With regard to Commercial Solar Energy Production Facilities and Geothermal Production Facilities, in those zoning districts where they are potentially allowed, they are, with limited exceptions, a conditional use.¹
- Large Scale Wind Facilities have specific regulations. [SLDC, Section 10.16.] In addition, where potentially allowed, Large Scale Wind Facilities must receive a conditional use permit.

¹ The only zoning districts where Commercial Solar Energy Production Facilities and Geothermal Production Facilities are a "permitted use" are Industrial General and Industrial Light (and, potentially, Planned Development Districts). Such uses are prohibited in many zoning districts. And conditional uses in the remaining zoning districts where potentially allowed.

[SLDC, Section 10.16.5.1.1 (“[a] large wind energy facility shall obtain a conditional use permit”).

Changes Between September 12 Draft and Current Draft:

- Definition of Commercial Renewal Energy Projects – (3rd Whereas Clause): This was in partial response to a commentator who suggested that production capacity (for example, 5MW or above) be used to identify the types of projects to which the resolution applies.

The Sustainable Land Development Code (SLDC), however, does not use size. Rather, as it relates to solar and wind energy production facilities, the distinguishing characteristic for determining whether the use is permitted, prohibited, or a conditional use is whether the energy is produced for sale or profit. *E.g.*, SLDC, Section 10.16.5 (a “large wind energy facility is any wind-based electric generating facility that generates power for sale or profit” and meets size criterion) and Appendix A, Part 2, Definitions (defining commercial solar energy production facility as “a renewable energy production facility that uses sunlight to generate, and may store, energy for sale or profit”). Therefore, with respect to commercial solar energy production facility projects, both small-scale and large-scale projects for profit must meet the SLDC criteria.

- Underscore Independence of Retained Experts. Paragraph 1 of the revised resolution was revised to highlight that experts should be “appropriate, necessary, independent, and qualified”. This change was made in highlight that experts retained by the County would be independent of the applicant and other parties.
- Notice of Webpage and Commercial Renewable Energy Production Facility Applications. Paragraph 3 of the resolution was revised to require County staff to notify all Community Organizations and Registered Organizations registered pursuant or recognized under the SLDC of such webpage and of any commercial renewable energy project application, as well as provide public outreach and education concerning such webpage. This change was made in response to comments asking for broad notification of commercial renewable energy production facility applications.

Explanation of Comments that Were Not Included in Revised Resolution:

- Adopt So-Called “Smart from the Start” Zoning. While the concept of “Smart from the Start Zoning” may differ from organization-to-organization, as we understand it, the idea behind the concept is to identify and prioritize lower-impact areas where renewable energy generation, storage, and transmission can be deployed with as little impact to natural lands, cultural resources, recreation and other land uses. Commonly identified areas are brownfields, closed landfills, Superfund sites, Resource Recovery and Conservation Act (RCRA) and closed mine lands. The revised resolution does not incorporate this suggestion because:
 - It is unclear whether there exist enough such preferred locations to meet the County’s and State’s renewable energy production goals.
 - Where potentially allowed, commercial solar energy production facilities are generally conditional uses. This allows for site specific analysis of the produced facility, as judged against the robust conditional use approval criteria.
- Impose a Moratorium on Commercial Solar Energy Production Facilities. This suggestion was not adopted in the proposed resolution because the conditional use approval criteria – especially

when supported by independent experts – ensures that all relevant factors are considered on a site-specific basis. In addition, if the conditional use is approved, the SLDC authorizes appropriate standards, conditions, or mitigation requirements to be imposed in response to site-specific analysis and conditions.

As reflected in the resolution, conditional use permits “may only be approved if it is determined that the use for which the permit is requested will not:

1. be detrimental to the health, safety and general welfare of the area;
2. tend to create congestion in roads;
3. create a potential hazard for fire, panic, or other danger;
4. tend to overcrowd land and cause undue concentration of population;
5. interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
6. interfere with adequate light and air; and
7. be inconsistent with the purposes of the property's zoning classification or in any other way inconsistent with the spirit and intent of the [SLDC] or [Sustainable Growth Management Plan]” [SLDC, Section 4.9.6.5].

In addition, the SLDC empowers the Planning Commission (and BCC on appeal) to “[i]mpose such reasonable standards, conditions, or mitigation requirements, in addition to any general standard specified in the SLDC or the SGMP, as the Planning Commission may deem necessary” [SLDC, Section 4.9.6.6]

- Designate Commercial Solar Energy Production Facilities as Developments of Countywide Impact (DCI). Due to the robust nature of the conditional use permit approval criteria and ability to impose site specific standards, conditions, or mitigation requirements as stated above, the sponsors do not believe at this time that DCI designation and regulation is necessary to protect the health, safety and general welfare of the community or ensure widespread public participation in the process.
Our opinion on this recommendation is also guided by the Sustainable Growth Management Plan’s commitment to renewable energy and energy efficiency, as well as the reality that the impacts of the status quo dependency on fossil fuels are Countywide and worldwide. Creating additional hurdles to the necessary transition to renewable energy would be inconsistent with that commitment and reality.
- Creating a Buffer Zone Between Commercial Solar Energy Production Facilities and Surrounding Properties. The conditional use permit approval criteria and ability to impose site specific standards, conditions, or mitigation requirements allow buffer zones to be considered and imposed (as appropriate based upon site-specific conditions and analysis).
- Treat Any Battery Energy Storage System (BESS) Separately from the Energy Production Components of the Project. The conditional use permit approval process allows all components of the proposed project to be evaluated separately. Among other things, this means that, if supported by substantial evidence, a Commercial Solar Energy Production Facility proposing to use BESS could be approved on the condition that BESS not be included or be included only if specific standards, conditions, and mitigation requirements are met.

Attachments:

- Resolution as Introduced at September 12, 2023, Meeting
- Press Release Published September 15, 2023
- Revised Resolution
- Public Comments