



Legislation Text

File #: 22-926, **Version:** 1

TO: Napa County Planning Commission
FROM: David Morrison, Director of Planning, Building and Environmental Services
REPORT BY: Dana Morrison, Planner III
SUBJECT: Horwitz and LeClair - Solar Array Use Permit Exception to the Conservation Regulations

RECOMMENDATION

HORWITZ & LECLAIR - SOLAR ARRAY USE PERMIT EXCEPTION TO THE CONSERVATION REGULATIONS - #P21-00247-UP

CEQA Status: Consideration and possible adoption of Categorical Exemption Class 3. It has been determined that this type of project does not have a significant effect on the environment and is exempt from the California Environmental Quality Act. See Section 15303 [Class 3 New Construction or Conversion of Small Structures] which may be found in the guidelines for the implementation of the California Environmental Quality Act at 14 CCR §15303. The project site is not on any lists of hazardous waste sites enumerated under Government Code Section 65962.5.

Request: Approval of a request for an exception to the Napa County Conservation Regulations (County Code Chapter 18.108.060), in the form of a Use Permit in order to allow the development of a solar array and associated equipment (trench and bunker) on land with slopes over 30%. The proposed solar array would provide energy to the existing single-family residence and accessory structure. The project is located on an approximately 21-acre parcel within the Agricultural Watershed (AW) zoning district and accessed via a private driveway located off of Silverado Trail, just south of its intersection with Skellenger Lane at 7870 Silverado Trail, Napa, CA; APN 030-210-010.

Staff Recommendation: Adopt the Categorical Exemption and approve the Use Permit Exception to the Conservation Regulations as conditioned.

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Owner/Applicant: Shawn Horwitz and Allison LeClair; phone (818) 522-9172;
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Applicant Representative: Brian Peterson, Bright Power Inc., PO Box 10637, Napa CA 94581; (707) 252-9990;
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EXECUTIVE SUMMARY

Proposed Actions:

That the Planning Commission:

1. Adopt the Categorical Exemption based on Findings 1-3 of Attachment A; and
2. Approve an Exception to the Conservation Regulations in the form of a Use Permit (#P21-00247-UP), based on Findings 4-15 of Attachment A, and subject to the Conditions of Approval listed in Attachment B.

Discussion:

The Applicant has requested an exception to the Napa County Conservation Regulations (County Code Chapter 18.108), in the form of a Use Permit, in order to allow the development of portions of a new solar array on land with slopes over 30%. The proposed solar array and associated equipment would provide energy for the existing single-family residence and accessory structures located on the subject parcel (APN 030-210-010). Staff has reviewed the proposal and found it to be consistent with the Zoning Ordinance and applicable General Plan policies. Based upon the evidence submitted, Staff believes that the necessary findings can be made to approve the requested exception to the Conservation Regulations. The proposed project as designed would minimize adverse impacts on the site, and therefore supports approval of the exception to the Conservation Regulations as conditioned.

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: Article 19 of the State Guidelines for Implementation of the

California Environmental Quality Act (CEQA Guidelines) establishes a list of classes of projects that are categorically exempt from the provisions of CEQA. This project qualifies as an exempt activity under CCR §15303 (Class 3, New Construction or Conversion of Small Structures) which, exempts a project that consists of construction of limited numbers of new, small facilities or structures and installation of small new equipment and facilities in small structure such as a solar array and associated equipment. As the Project qualifies for the identified exemption, is consistent with the General Plan, and does not have any special circumstances which would result in significant impacts to the environment, no further environmental review is required. This project is not on any lists of hazardous waste sites enumerated under Government Code Section 65962.5.

BACKGROUND AND DISCUSSION

Owner: Shawn Horwitz and Allison LeClair, 21600 Oxnard St, Suite 1200, Woodland Hills, CA 91367; (818) 522-9172; shawn.horwitz@alliantcapital.com

Applicant/Representative: Brian Peterson, Bright Power Inc., PO Box 10637, Napa CA 94581; (707) 252-9990; brian@bpi-power.com

Zoning: Agricultural Watershed (AW) District

General Plan Designation: Agricultural, Watershed and Open Space (AWOS)

Parcel Size: 21-acres

Application Filed: September 17, 2021; Resubmittals: January 27, 2022; February 2, 2022 Application Complete: February 2, 2022

Adjacent General Plan Designations, Zoning Districts and Land Uses: Surrounding properties within Napa County to north, east and south are all within the Agriculture Watershed Open Space General Plan land use designation and the Agricultural Watershed zoning designation. The lots immediately adjacent to the property in Napa County are approximately 22, 23, 40 and 140 acres each, developed with wineries, single family residences and some vineyards; parcels have similar vegetation as compared to the subject parcel with the vegetation dominated by oak trees and scrub vegetation along with grassland.

Property History:

The project area is located at the eastern edge of the Napa Valley floor where the foothills of the Vacaville Range begin. While the valley floor has been in agricultural use dating from at least the 19th century until the early 2000s, the subject parcel has remained vacant until construction of a new single family residence was approved in 2014.

Development on the parcel has been occurring since 2014 (including approved permits underway) which specifically include the following:

- an approximately 5000 sf single family residence with a 575 sf garage (#P14-00219 [administrative viewshed application], approved in October 2015 and Building Permit #BR14-00993),
- an approximately 997 sf guest cottage, 438 sf carport, 289 sf recreation shed (#P20-00215 [administrative viewshed application]; Building Permit #BR20-02019);
- an approximately 282 sf greenhouse (Building Permit #BR20-00517);
- trellises, outdoor kitchen, terrace, retaining wall (#B2R1-02555, #BR21-02554 and #BR21-02179)
- a pool and spa (#BR17-00367 and #BR22-00188); and,
- associated utility and road infrastructure, and landscaping.

On August 15, 2015, the Zoning Administrator approved an exception to the Road and Street Standards (RSS) to allow a residential drive shoulder width of four (4)-feet, to preserve existing steep slopes and heritage trees. The RSS exception allowed the existing driveway to be reconstructed to provide widening to the maximum extent possible to preserve the existing natural features (minimum of 10-foot travel lane with varying shoulder width). Requiring two new standard turnouts (20-foot roadway width) and utilizing three (3) existing non-standard turnouts. Setbacks in the AW zoning district are 20 feet for the side, rear and front yard; however, accessory structures are permitted to be within five (5)' of the side and rear property line per NCC 18.104.140.

Compliance History:

There was a Code Compliance issue identified on this property regarding short-term rental of the residence; this is not associated with the proposed solar array and according to County records the issue was resolved in September 2019.

Discussion Points:

Project Description - The project involves the installation of solar array which will have an approximately 3000 sf footprint, as well associated equipment such as a trench for conduit lines and a bunker to house inverters and switchgear. According to the applicant, the location of the array has been selected as there are no other suitable locations on the property that have slope less than 30%; roof mounted was not desired by the property owner. The array will be constructed from materials brought to the existing private road, which will act as the staging area and will then be transported by hand to the array location; other than when a skid steer will be used to install ground screws. The skid steer will be driven off the private road to the array location and used to install ground screws which will anchor the array. No road to the location of the array, temporary or permanent, is proposed as part of this project. The array assembly (apart from the ground screws) will be assembled by hand, utilizing hand tools or handheld power tools. A mini excavator will be used to dig the new bunker that will house the solar inverters and switch gear; this will be located near an existing bunker which houses the main disconnect service for the existing residence. The bunker will be 20 feet long by 10 feet wide and seven feet tall (approximately 1400 cubic feet in size). The bunker will be located adjacent to the existing paved driveway. The bunker's location is more than 65 feet from the identified ephemeral drainage. As noted by the Engineering department the amount of soil needed to be removed for the project is minimal. According to the applicant, the soil resulting from the excavation of the bunker will be reused as backfill material for other work being done at the site. Additionally, the project will require the laying of a trench for the placement of electrical wiring and conduit lines which will run from the array to said bunker.

Project Access - Access to the property exists from Silverado Trail, and no additional road is proposed to access the solar array construction site. The proposed plans have been reviewed for fire safety and to ensure that the project would not result in a net increase in soil loss or runoff, and were approved by the Napa County Fire and Engineering Division, subject to their Conditions of Approval (Attachment A). The Categorical Exemption found that implementation of the proposed project would not result in significant adverse impacts, due in large part to the project's proposed use as a solar array, which is a green energy source. Furthermore, the proposed project will not require the construction of additional roads, removal of trees and is not located within or near a stream or identified sensitive habitat. It is worth consideration that approval of the proposed Use Permit would allow the development of a green energy source, thereby reducing potential negative impacts to the environment through a more eco-friendly means of producing energy for the existing residence and accessory structures currently under construction.

Conservation Regulations Compliance - An Exception to the Conservation Regulations - County Code Section 18.108.040 allows landowners or leaseholders to request exceptions to the requirements of the County's Conservation Regulations. Such requests are made in the form of a use permit application, which is subject to decision by the Planning Commission. Pursuant to County Code Sections 18.124.070, the Commission's decision to grant or deny a use permit must be based on findings that the granting of the use permit would not adversely affect public health, safety, or welfare of the county, and that the request is consistent with the policies and standards of the County's General Plan. Among the purposes of the Conservation Regulations

(County Code Section 18.108.010) are intentions for the County to: 1) minimize the effects of cut, fill, earthmoving, grading operations and similar activities on the natural terrain; 2) minimize soil erosion caused by human modifications to the natural terrain; 3) maintain and improve water quality by regulating stormwater quality and quantity; 4) preserve riparian areas and other natural habitat near streams; and 5) encourage development that minimizes impacts to existing land forms, avoids steep slopes and preserves existing vegetation and unique geologic features.

The project would utilize the existing driveway to access the site and then carry materials from the road to the solar array construction site. The final grading plans will be reviewed and approved by the Engineering Division, which imposes construction and post-construction pollution prevention requirements to ensure that no there is no potential for significant on- or off-site erosion, impact to siltation, or flooding. Soil erosion potential from a project of this small scale is negligible.

The proposed project does not propose to remove any trees, consistent with Napa County Code 18.108.020(C). An equipment bunker, located adjacent to the existing private driveway and an existing utilities bunker is proposed as part of the project. This bunker is located near two existing trees (one 18 inch White Oak tree and one two trunked Live Oak, with 10" and 6" trunks) Conditions of Approval have been included requiring protections of said trees, in addition to monitoring and replacement (2:1 ratio), if for some unforeseen reason the trees are lost during the construction process or during the monitoring period to follow.

A site visit and analysis of the County GIS layers was conducted by County Staff. Due to the nature of the development, a solar array and associated equipment, there is little to no potential impact to special-status species as no trees will be removed, and only a limited amount of ground work will be required to install the solar array footings, trench and the bunker. The proposed solar development is occurring well outside of the identified ephemeral drainages noted in the County GIS layers. Furthermore, there are no wetlands or sensitive or critical habitat identified on the project site and there are no unique geologic features within or near the project site, nor are there any streams or riparian areas within 100 feet of the project area that would be at risk of impact, should the project be approved.

Public Comments - No public comments regarding this project have been received at the time of finalizing this staff report (April 27, 2022).

Decision-Making Options:

As noted in the Executive Summary Section above, staff is recommending approval of the Use Permit with conditions of approval as described in Option 1 below. Decision making options identified below include a no

project alternative and a continuance option. An option to modify the project is not being offered with this report since a reduction to the number of the solar panels would not meet the energy needs of the property.

Option 1 - Approve Applicant's Proposal (Staff Recommendation)

Disposition - This option would allow the development of a solar array and associated equipment to provide energy for the existing single-family residence on the parcel. Staff supports this option because it meets the findings and is defensible as a Categorical Exemption under CEQA Guidelines CCR §15303 (Class 3, New Construction or Conversion of Small Structures) and under the CCR §15301 (Common Sense Exemption).

Action Required - Follow the proposed action listed in the Executive Summary. If conditions of approval are to be amended, specify conditions to be amended at time motion is made. This option was analyzed for its environmental impacts and were found to be less than significant.

Option 2 - Deny the Requested Use Permit

Disposition - Denial of the requested use permit would deny the property owner the ability to provide a green energy alternative for supplying their home with energy. According to the applicant, locating the solar array on the roof of the existing single-family residence was not feasible. This option would result in the Owner continuing to use less green energy to supply their house which is not environmentally superior to the proposed project. For these reasons, Staff does not recommend this option. In the event the Commission determines that the project with conditions does not or cannot meet the required findings for granting of the use permit exception, the Commissioners should articulate what aspect or aspects of the project are in conflict with the required findings. State law requires the Commission to adopt findings, based on the General Plan and County Code, setting forth why the proposed use permit exception is not being approved.

Action Required - Commission would adopt a tentative motion to deny the project and remand the matter to staff for preparation of required findings to return to the Commission at a future hearing date.

Option 3: Continuance Option

The Commission may continue the item to a future hearing date, at its discretion.

Supporting Documents

- A. Recommended Findings
- B. Recommended Conditions
- C. CEQA Determination
- D. Application Submittal Documents
- E. Plans
- F. Graphics