



# County of Yolo

## Office of the County Counsel

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**TO:** Chair Mary Kimball and Members, Yolo County Planning Commission

**FROM:** Robyn Truitt Drivon, County Counsel  
Philip J. Pogledich, Senior Deputy County Counsel

**DATE:** July 9, 2009

**SUBJECT:** A draft ordinance regulating major providing for County regulation of the location and construction of transmission towers and other facilities for the transmission or distribution of electrical energy

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### **RECOMMENDED ACTIONS**

- 1. RECEIVE** a staff presentation regarding the draft ordinance (**Attachment A**) regarding major electrical transmission and distribution projects;
- 2. HOLD** a public hearing to receive comments from the public regarding the draft ordinance and any related issues; and
- 3. RECOMMEND** that the Board of Supervisors (a) adopt the ordinance with any changes recommended by the Planning Commission, and (b) find that adoption of the ordinance is exempt from the California Environmental Quality Act pursuant to CEQA Guidelines §§ 15307 (actions by regulatory agencies for protection of natural resources), 15308 (actions by regulatory agencies for protection of the environment), and Public Resources Code § 15061(b)(3) (the “common sense” exemption).

### **REASONS FOR RECOMMENDED ACTIONS**

The Board of Supervisors asked this office to draft an ordinance regulating major electrical transmission and distribution projects. Generally, such projects entail the use of structures such as those shown in **Attachment B**, which are designed for long-distance transmission of energy. Local ordinances regulating such projects are authorized by California law, as discussed below. Among other things, the attached draft ordinance responds to the Board’s request by requiring a use permit for such projects and establishing criteria to govern the issuance (or denial) of subsequent applications. The Board of Supervisors expects to consider a draft ordinance at its August 4, 2009 meeting.

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## **BACKGROUND**

In connection with a project proposed by the Transmission Agency of Northern California (“TANC”), the Board of Supervisors asked this office on April 21, 2009 to determine generally whether the County could adopt an ordinance regulating the location of transmission towers and related facilities. As we advised the Board of Supervisors at that meeting, our initial research indicated that the County could adopt such an ordinance. Further research confirmed that initial conclusion.

Two provisions of California law bear directly on this issue. First, Government Code § 53091(e) states that “[z]oning ordinances of a county or city shall apply to the location or construction of facilities for the storage or transmission of electrical energy by a local agency, if the zoning ordinances make provision for such facilities.” Second, Public Utilities Code § 12808.5 says that a municipal utility district cannot “locate or construct any lines for the transmission or distribution of electrical energy, including poles and other accessory structures, unless such facilities are approved . . .” by the district and by the governing body of any city or county in which the facilities are to be located. However, the local approval requirement of Section 12808.5(c) does not apply unless a city or county has “adopted an ordinance setting forth criteria to govern its decision pursuant to subdivision (c) of this section.”

In plain English, this means that the County can exercise some control over the location and construction of transmission towers and related facilities. To do so, however, the County must first adopt an ordinance stating the criteria that will apply to such projects. Any such ordinance must be in place prior to approval of a specific project by a municipal utility district.

The only significant project at the present time is the TANC project (mentioned above); it is in a rather preliminary planning and environmental review stage, and is not scheduled to be considered for approval until late-2011. [The TANC project may not proceed, particularly now that SMUD (as of July 1) has pulled out.] With regard to that project, the County thus has ample time to adopt a local ordinance pursuant to Government Code § 53091(e) and Public Utilities Code § 12808.5 and ensure local review pursuant to those provisions. Early adoption of an ordinance will put TANC and proponents of other similar projects on notice of the County’s regulatory requirements, and may help encourage early consultation between project proponents and County officials and staff.

The Planning Commission should be aware of some additional limits on local authority under those statutory provisions. For example, the County must review and act within 60 days on each project later referred to it pursuant to its ordinance. And much more importantly, any County decision to deny a project or approve it in an alternative location can be nullified by a public utility district by a four-fifths vote of its governing board. The County could challenge such a vote in court; to prevail, the County would have to show that there are “feasible” alternatives to the district’s proposed project. Altogether, any action by the County to deny a project thus would not necessarily be the final word.

Further, some major projects will be subject to the authority of the California Public Utilities Commission (“PUC”) or the California Energy Commission (“CEC”). The PUC and the CEC operate under statutory authority enacted by the Legislature. These agencies have promulgated regulations to carry out their statutory duties. The PUC regulates all public utilities, including transmission lines of 200 kV or greater, while the CEC regulates the siting of various energy generating sources and some transmission line projects. But a municipal

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utility district like SMUD—and a JPA like TANC, which derives its authority from SMUD—is outside the regulatory purview of both PUC and the CEC. The County thus has clear authority over municipal utility district projects, but its zoning ordinances could be preempted if projects by other entities, such as PG&E, fall within the purview of the PUC or CEC.

**OTHER AGENCY INVOLVEMENT**

Staff has coordinated this item with the Planning and Public Works Department.

**DRAFT**

**ORDINANCE NO. \_\_ - \_\_**

**An Ordinance Regulating Major Electrical Transmission and Distribution Projects**

The Yolo County Board of Supervisors hereby ordains as follows:

1. Findings and Authority.

Electrical energy demands in California are met by a variety of providers, including agencies of the State and Federal government, municipal utility districts, and public utilities. These providers generate energy at sources located both inside and outside of California and transport electricity to customers via a utility grid that crisscrosses California and other nearby states. Due to population growth and related energy demand increases, energy providers are expected to expand or develop new electrical energy generating capacity and improve or build new facilities to move this electricity to their customers.

The County is in the path of numerous transmission lines which have been built to supply local consumers and to meet energy demands which exist elsewhere in California. Recently however, the County learned of a proposal to build a new major electrical transmission and distribution project—the TANC Transmission Project (“TTP”), proposed by the Transmission Agency of Northern California—within the County in the near future. It is reasonable to assume that other projects of a similar nature are likely to be proposed within the County in the years to come.

Careful planning and clear public policy direction are necessary to ensure that such projects do not cause significant adverse impacts within the County. Many areas of concern are identified in the County’s prior comment letters on the TTP and in related staff reports and Board letters. These areas of concern include adverse effects on agriculture and biological resources, conflicts with existing land uses and developed areas, and a decline in rural character, quality of life, and scenery of the County. Accordingly, among other things, this Ordinance establishes specific permitting requirements to minimize the potential adverse social, economic, and environmental effects of such projects within the County.

The County’s authority to adopt this Ordinance is set forth in Public Utilities Code Section 12808.5 and Government Code Section 53091. Those provisions of law authorize the County to exercise limited authority over major electrical transmission and distribution projects proposed by municipal utility districts and certain other agencies. This Ordinance is adopted pursuant to those authorities for the purposes set forth above.

2. Definition of “Major Electrical Transmission and Distribution Project”. The following shall be added as Yolo County Code Section 8-2.270.2:

**Sec. 8-2.270.2 Major Electrical Transmission and Distribution Project**

“Major electrical transmission and distribution project” shall mean a project that includes a network of transmission lines and related towers and similar facilities with a capacity to convey 200 kilovolts (kV) or greater. It shall also include any project that proposes the designation of a transmission corridor zone to accommodate such facilities.

3. Major Use Permit Required. A major use permit, as that term is defined in Yolo County Code Section 8-2.270.3, shall be required for any major electrical transmission and distribution project. Accordingly, the following sections of the Yolo County Code shall be amended to include this requirement by adding an appropriately-lettered subsection followed by the words “Major electrical transmission and distribution projects”:

- Section 8-2.404.5 (Agricultural Preserve)
- Section 8-2.504.5 (Agricultural Exclusive)
- Section 8-2.604.5 (Agricultural General)

In addition, the following sections shall be added to the Yolo County Code, shall be entitled “Major Use Permit,” and shall identify “Major electrical transmission and distribution projects” as a major conditional use in subsection (a) thereof.

- Section 8-2.614.5 (Agricultural Industry)
- Section 8-2.1404.5 (General Commercial)
- Section 8-2.1504.5 (Highway Service Commercial)
- Section 8-2.1604.5 (Limited Industrial)
- Section 8-2.1704.5 (Light Industrial)
- Section 8-2.1804.5 (Heavy Industrial)
- Section 8-2.1914.5 (Public Open Space)
- Section 8-2.1922.5 (Open Space)

4. Revision of Yolo County Code Section 8-2.2405. Section 2-2.2405 of the Yolo County Code shall be revised to read as follows (changes indicated in underline [new text] or strikethrough [deleted text] fonts):

**Sec. 8-2.2405 Public Utility Lines and Structures**

- (a) Lines. With the exception of lines associated with major electrical transmission and distribution projects, local public utility communication and gas and electrical power distribution and transmission lines, both overhead and underground, shall be permitted in all zones without the necessity of first obtaining a use permit or site plan approval. The routes of all proposed utility transmission lines, except communication lines for local service purposes, shall be submitted to the

Commission for recommendation prior to the acquisition of rights-of-way therefore.

- (b) *Structures.* Communication equipment buildings and electric power distribution substations shall be permitted in all zones, subject to first obtaining a use permit, unless otherwise provided for in this chapter. As a condition of the issuance of such permit, the Commission may require screening, landscaping, and/or architectural conformity to the neighborhood. Other structures associated with major electrical transmission and distribution projects, such as poles and towers, shall be subject to subsection (c), below.
- (c) *Major Electrical Transmission and Distribution Projects.* A use permit requirement applies to all major electrical transmission and distribution projects. Such projects are not allowed in any zone where they are not identified as a conditional use. Sections 8-2.2405.1 through 8-2.2405.7 of this chapter govern those projects, and set forth various standards and requirements for applications, permit review, and related matters. In some cases, state and federal laws may regulate certain types or characteristics of these projects. This section shall be construed to provide the County with the maximum control consistent with such other laws.

5. Addition of Yolo County Code Sections 8-2.2405.1 through 8-2.2405.6. The following sections shall be added to the Yolo County Code:

**Sec. 8-2.2405.1 Major Electrical Transmission and Distribution Project Applications.**

At a minimum, each application for a conditional use permit for a major electrical transmission and distribution project shall include the following:

- (a) A completed application form and filing fee.
- (b) A description of a reasonable range of alternatives to the proposed project, including alternatives that use or expand existing rights-of-way.
- (c) All application materials (maps, site plans, etc.) necessary to illustrate the proposed location of the proposed facilities and all alternative locations, together with all other materials required for a conditional use permit application (see Yolo County Code Section \_\_-\_\_.\_\_), as described on application forms provided by the Planning Division.
- (d) A photo simulation of the proposed project and each alternative from at least six locations along its route in the County. Each location shall include simulated views of project facilities from four directions (north, south, east, and west).

- (e) A narrative explanation of the route of the proposed project and each alternative, together with a discussion of any alternative locations and project alternatives considered by the applicant but not formally included for County consideration.
- (f) For the proposed project and each alternative, all of the following:
  - i. Estimated cost, including construction, land acquisition, and other development costs;
  - ii. A description of the type of vegetation and soils that would be removed or impacted by construction;
  - iii. A map showing the number, types, uses, and distances of buildings, public and private airports, dedicated open space, and parklands located within a 1,000 foot distance of project infrastructure;
  - iv. An analysis of the audible noise and lighting impacts of the proposal, together with any other studies reasonably necessary for the County to perform its duties as a lead or responsible agency in connection with the environmental review of the project; and
  - v. An analysis of the potential adverse human health effects of the project on those present in residential areas, schools, licensed day-care facilities, playgrounds, and other developed areas in reasonably proximity to the project. The analysis shall use the best available scientific information at the time it is conducted.

**Sec. 8-2.2405.2            *Coordination and Documentation***

Within 30 days of filing an application for a major use permit in connection with a major electrical transmission and distribution project, the applicant shall provide the County with copies of all applications for state, federal, and other permits and licenses in connection with the proposed project. Promptly following the issuance of any state or federal permits or licenses, biological opinions, records of decision, memoranda of understanding, exemptions, variances, or similar authorizations or approvals related to the proposed project, the applicant shall provide copies of those documents to the County.

**Sec. 8-2.2405.3            *Public Outreach***

For all major electrical transmission and distribution projects that traverse a significant portion of the County, and whose impacts are not likely to be isolated to a small geographic area, the Director may require the applicant to present the application to interested members of the public at one or more public meetings to be arranged by the applicant. Such meetings shall be in addition to any hearings on the permit application held by the Planning Commission or the Board of Supervisors, and in addition to any

meetings of local general plan advisory committees to which the application is referred. The Director and the applicant shall, if requested by the Director, develop a mutually acceptable public outreach program that includes such meeting(s) and any similar public outreach efforts to be undertaken by the applicant.

**Sec. 8-2.2405.4 Deciding Authority**

The Deciding Authority for a major electrical transmission and distribution project application shall be the Board of Supervisors. The Planning Commission shall review the project application and any other relevant documents, hold at least one noticed public hearing, and make a recommendation to the Board of Supervisors thereon. Upon receiving this recommendation, the Board of Supervisors shall consider the application at a noticed public hearing, taking into account the criteria set forth in Section 8-2.2405.5 of the Yolo County Code.

**Sec. 8-2.2405.5 Review Criteria**

The purpose of this Section is to establish use permit criteria for major electrical power distribution and transmission projects in the unincorporated area of the County, and shall apply to all such projects that require a use permit. A use permit for such projects may only be approved if all of the following findings are made based on substantial evidence in the record:

- (a) The proposed project is consistent with any applicable policies in the General Plan and any applicable specific plan(s), as well as the Yolo Natural Heritage Program (HCP/NCCP) upon its adoption;
- (b) There is a demonstrated need for the proposed project;
- (c) To the greatest feasible (as that term is defined in Public Utilities Code § 12808.5) extent, the project utilizes existing infrastructure and rights-of-way or, alternatively, expands existing rights-of-way, in that order of preference;
- (d) There are no feasible alternatives that are superior to the proposed project, taking into consideration and balancing the considerations set forth in this Section;
- (e) The proposed project would not have adverse human health effects, particularly with respect to individuals present in residential areas, schools, licensed day-care facilities, playgrounds, and other developed areas in reasonable proximity to the project;
- (f) To the greatest feasible extent, the proposed project does not have a significant adverse effect on the environment, agriculture, existing land uses and activities, areas with significant scenic qualities, or other relevant considerations of public health, safety, or welfare;



- (g) To the greatest feasible extent, the proposed project avoids lands preserved by the County for public park purposes;
- (h) To the greatest feasible extent, the proposed project avoids lands preserved by a conservation easement or similar deed restriction for agricultural, habitat, or other purposes. The Board of Supervisors may waive this requirement if the applicant provides documentation that the project does not conflict with the conservation easement or deed restriction, or that the conservation easement or deed restriction will be amended or extinguished prior to implementation of the project. If the conservation easement or deed restriction was provided as mitigation for the impacts of a prior development project, however, it shall only be amended or extinguished if adequate substitute mitigation is provided by the applicant;
- (i) The proposed project complies with all laws, regulations, and rules regarding airport safety conditions and similar matters, and would not require a significant change in the operations of a public or private airport in the County, create an undue hazard for aircraft, or substantially hinder aerial spraying operations;
- (j) To the greatest feasible extent, operation of the proposed project would not create conditions that unduly reduce or interfere with public or private television, radio, telemetry, or other electromagnetic communications signals; and
- (k) The applicant has agreed to conduct all roadwork and other site development work in compliance with all laws, regulations, and rules relating to dust control, air quality, erosion, and sediment control, as well as any permits issued pursuant thereto.

**Sec. 8-2.2405.6          Scope**

The requirements of sections 8-2.2405.1 through 8-2.2405.5, above, shall apply to all major electrical power transmission and distribution projects that have not received all required federal, state, and local agency approvals prior to the effective date of this ordinance.

**Sec. 8-2.2405.7          Costs**

The project applicant shall reimburse all County costs associated with reviewing an application for a major electrical power transmission and distribution project. In addition, if the County is required to review a proposed transmission corridor zone pursuant to California Government Code Section 25334 or other provisions of law, such costs shall also be reimbursed by the project applicant.

6.     Severability.

If any section, subsection, sentence, clause or phrase of this Ordinance is held by court of competent jurisdiction to be invalid, such decision shall not affect the remaining portions of this

ordinance. The Board of Supervisors hereby declares that it would have adopted this Ordinance and each section, sentence, clause or phrase thereof irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases be declared invalid.

7. Effective Date

This Ordinance shall take effect and be in force thirty (30) days following its adoption and, prior to the expiration of fifteen (15) days after its adoption, it shall be published once in the Davis Enterprise, a newspaper of general circulation, printed and published in the County of Yolo, with the names of the Board members voting for and against the Ordinance.

**PASSED AND ADOPTED** by the Board of Supervisors of the County of Yolo, State of California, this \_\_ day of \_\_\_\_\_, 2009, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

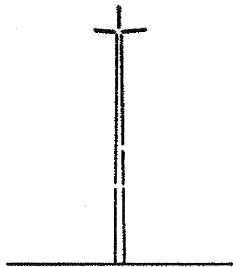
By \_\_\_\_\_  
Mike McGowan, Chair  
Yolo County Board of Supervisors

Attest:  
Ana Morales, Clerk  
Board of Supervisors

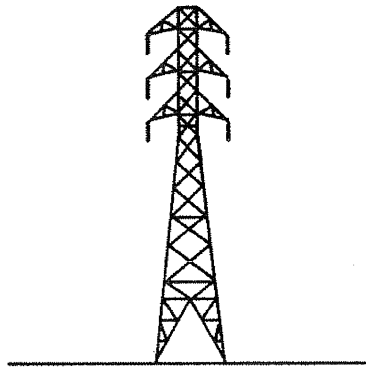
Approved as to Form:  
Robyn Truitt Drivon, County Counsel

By: \_\_\_\_\_  
Deputy (Seal)

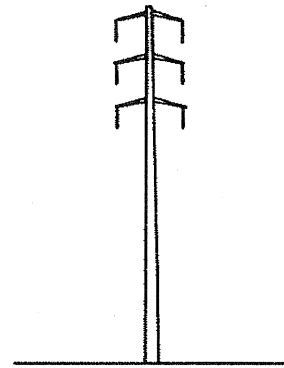
By: \_\_\_\_\_  
Philip J. Pogledich, Senior Deputy



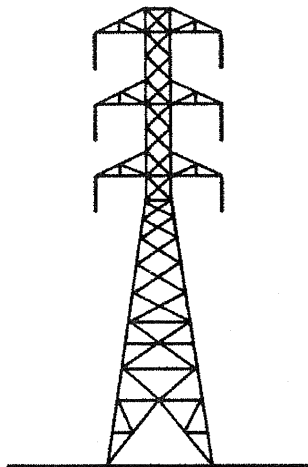
60 kV and 115 kV  
Single Circuit  
(Wood)



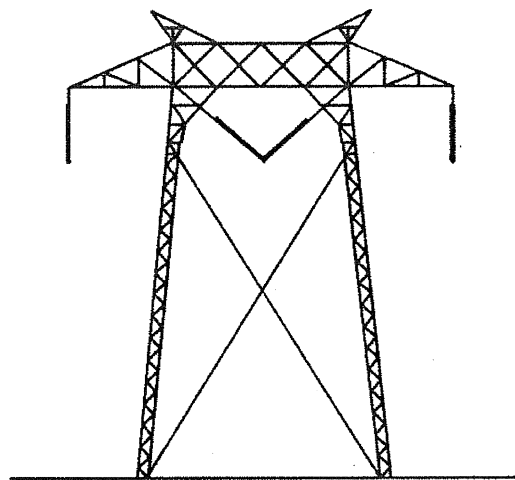
115 kV  
Double Circuit



115 kV  
Double Circuit  
(Steel)



230 kV  
Double Circuit



500 kV  
Single Circuit

Exhibit 2. Typical Transmission Structures