

REPORT TO THE SHASTA COUNTY PLANNING COMMISSION

<u>PROJECT IDENTIFICATION:</u> <u>REGULAR AGENDA</u>	MEETING DATE	AGENDA ITEM #
POTENTIAL ZONING AND GENERAL PLAN CHANGES AND MORATORIUM CONCERNING LARGE WIND ENERGY SYSTEMS	12/9/21	R2

RECOMMENDATION: That the Planning Commission:

1. Receive a presentation from staff; and
2. Consider taking one of the following actions:
 - (a) Adopt a resolution, as initially proposed by Commissioner Kerns or with revisions, recommending that the Board of Supervisors adopt a moratorium on wind turbine developments and take other actions with respect to large wind turbine developments; or
 - (b) Adopt an alternative resolution, as also proposed by Commissioner Kerns or with revisions, recommending that the Board of Supervisors take specific actions with respect to wind turbine developments, including initiating the process to amend the County Zoning Plan and General Plan; or
 - (c) Direct staff to prepare a different resolution of intention to initiate an amendment to the County Zoning Plan to either establish specific regulations for large wind energy systems or to prohibit large wind energy systems for consideration by the Commission at a future meeting; or
 - (d) Direct staff to prepare a different resolution recommending that the Board adopt a resolution of intention to initiate an amendment to the County Zoning Plan to either establish specific regulations for large wind energy systems or to prohibit large wind energy systems for consideration by the Commission at a future meeting; and/or
3. Consider providing additional direction to staff.

BACKGROUND AND DISCUSSION:

During the Planning Director’s Report to the Commission on November 10th, Commissioner Kerns distributed copies of a proposed resolution recommending that the Board of Supervisors (Board) adopt a moratorium on wind turbine developments pending further study and potential changes to the County’s zoning ordinance and general plan. Commissioner Kerns made a motion to place the presentation of a report regarding options for regulating wind turbine developments and consideration of the proposed resolution on the December 9th Planning Commission agenda, which was carried by a 4-0 vote.

On November 22nd, the attached memorandum from County Counsel Rubin E. Cruse, Jr. dated November 19, 2021, regarding whether the County may legally impose a moratorium on the development of large wind energy systems was provided to the commissioners via e-mail. County Counsel states that it is his understanding that the proposed moratorium is not designed to apply to “small wind energy systems,” which are used primarily to reduce on-site consumption of utility power and require the approval of an administrative permit, but rather to apply to large wind energy systems, similar to the Fountain Wind Project, which are classified as “public utilities” pursuant to section 17.02.430 of the County Zoning Plan and require the approval of a use permit by the Planning Commission or the Board in the event of an appeal of the Commission’s decision.

County Counsel’s conclusion is that the County would not be able to lawfully impose a moratorium on the development of large wind energy systems because the facts do not establish the existence of a “current and immediate threat to the public health, safety, or welfare.” County Counsel also states that the County does have the ability to consider amendments to the County Zoning Plan concerning the proposed development of large wind energy systems without adopting a moratorium and that either the Commission or the Board may initiate an amendment to the County Zoning Plan by adopting a resolution of intention to make such amendments.

County Counsel states that Government Code section 65858 authorizes the Board to adopt an urgency measure prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the County is considering or studying or intends to study within a reasonable time provided the Board finds that there is a “current and immediate threat to the public health, safety, or welfare.” County Counsel further states that the California Court of Appeal has held that, to satisfy this statutory requirement, there must be evidence that actual approval of a permit is imminent. County Counsel opines that the approval of a use permit for a large wind energy system is not imminent since there are no current applications pending, the County has discretion to deny use permits, there is no right to construct a large wind energy system unless a use permit is issued, the mere processing of a use permit does not pose a current and immediate threat to the public health, safety, or welfare because no rights will vest imminently, and no rights vest until a permit is granted and the applicant has thereafter acted upon the approval.

In light of this legal opinion from County Counsel, Commissioner Kerns has submitted an alternative resolution for the Commission’s consideration. The alternative resolution makes the following recommendations to the Shasta County Board of Supervisors:

1. That the Board of Supervisors direct the Planning Commission and staff to study the following on a county wide basis: (A) the potential impacts of wind turbine developments, particularly those that might be proposed to be located in areas of the County that are in or near communities, in or near woodland or forested areas, or in or near high fire danger zones, including whether such projects should not be allowed in such areas due to potential increased fire danger and impediments to firefighting efforts; (B) the potential impacts of wind turbine developments on aesthetics in Shasta County and the issue of visual blight, and addressing the protection of the rural nature and scenic beauty of Shasta County, and its mountain tops and ridge lines; (C) the potential impacts of wind turbine developments on woodland or forest resources, wildlife and other biological or natural resources; and (D) the potential impacts of wind turbine developments on historical, cultural, and tribal resources considered to be spiritually and culturally important to local tribes; and
2. That the Board of Supervisors direct the Planning Commission to initiate the appropriate process pursuant to Shasta County Code Section 17.92.080(B) and any other applicable provisions of the County Code, to study the issues outlined above, and review and consider any additional input from interested groups, experts, and the public that the Planning Commission may receive, and after completing the appropriate planning process, recommend appropriate changes to Shasta County’s Zoning Ordinances and General Plan, including consideration and adoption of an Open Space Plan or equivalent as part of the General Plan, to specifically address wind turbine developments, the potential impacts of such developments, and whether any such projects should be allowed in the County, and if so, where and under what conditions and restrictions; and
3. In the event that one or more use permit application(s) for future wind turbine developments are made before such changes to Shasta County’s Zoning Ordinances and General Plan are adopted, that the Board of Supervisors consider adoption of a temporary Moratorium on such developments in accordance with Government Code Section 65858, at the appropriate time and when applicable legal standards are met, to ensure that any such developments will be subject to any new Zoning Ordinances or General Plan provisions that may result from the planning process outlined above.

County Counsel is of the opinion that the foregoing recommendations are lawful.

As outlined below, alternatives to the adoption of the initial resolution or the alternative resolution proposed by Commissioner Kerns include the adoption of a different resolution of intention to initiate an amendment to the County Zoning Plan to either establish specific regulations for large wind energy systems or to prohibit large wind energy systems or the adoption of a resolution recommending that the Board adopt a resolution of intention for either purpose. If the Commission elects to initiate an amendment to the Zoning Plan or to recommend that the Board do so, the Commission would need to provide general direction to staff with respect to the nature of the amendments to the County Zoning Plan they would like staff to prepare for future consideration by the Commission and the Board.

ALTERNATIVES:

The following alternatives to the adoption of the initial resolution or alternative resolution proposed by Commissioner Kerns are available:

1. Direct staff to prepare a different resolution of intention to initiate an amendment to the County Zoning Plan to either establish specific regulations for large wind energy systems or to prohibit large wind energy systems for consideration by the Commission at a future meeting.
2. Direct staff to prepare a different resolution recommending that the Board adopt a resolution of intention to initiate an amendment to the County Zoning Plan to either establish specific regulations for large wind energy systems or to prohibit large wind energy systems for consideration by the Commission at a future meeting.
3. Continue the item to request additional information.

CONCLUSION:

The initial resolution proposed by Commissioner Kerns would recommend that the Board of Supervisors adopt a moratorium on wind turbine developments. As outlined in the attached memorandum, County Counsel's opinion is that the County would not be able to justify a moratorium on large wind energy systems as posing a current and immediate threat to the public health, safety, or welfare. Therefore, staff recommends that the Commission not adopt the initial resolution proposed by Commissioner Kerns.

If the Commission feels that the County Zoning Plan and General Plan should be amended to either establish specific regulations for large wind energy systems or to prohibit large wind energy systems, then the Commission may adopt the alternative resolution proposed by Commissioner Kerns, or direct staff to prepare a different resolution of intention to initiate an amendment to the Zoning Plan for either purpose or direct staff to prepare a different resolution recommending that the Board adopt a resolution of intention for either purpose. In addition to, or in lieu of, directing staff to prepare a resolution for consideration by the Commission at a future meeting, the Commission may provide additional direction to staff with respect to the regulation of large wind energy systems by the County of Shasta.



PAUL A. HELLMAN

Director of Resource Management

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Attachments: Initial Draft Resolution

Alternative Draft Resolution

Memorandum from Rubin E. Cruse, Jr., County Counsel, regarding "Moratorium on Large Wind Energy Systems," November 19, 2021