REPORT TO THE SHASTA COUNTY PLANNING COMMISSION

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<th>PROJECT IDENTIFICATION:</th>
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<td>POTENTIAL ZONING AND GENERAL PLAN CHANGES AND MORATORIUM CONCERNING LARGE WIND ENERGY SYSTEMS</td>
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**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.

[Signature]

PAUL A. HELLMAN
Director of Resource Management

PAH/trh/All Districts
RESOLUTION NO. 2021-___

A RESOLUTION OF THE SHASTA COUNTY PLANNING COMMISSION RECOMMENDING TO THE BOARD OF SUPERVISORS THE ADOPTION OF A MORATORIUM ON WIND TURBINE DEVELOPMENTS IN SHASTA COUNTY PENDING FURTHER STUDY AND POTENTIAL CHANGES TO THE COUNTY’S ZONING ORDINANCES AND GENERAL PLAN TO BETTER GUIDE FUTURE DEVELOPERS AND THE PUBLIC

WHEREAS, on June 22, 2021, the Shasta County Planning Commission conducted a public hearing where it considered Fountain Wind LLC’s application for approval of a use permit for the Fountain Wind Project, a wind energy generation development, Use Permit 16-007; and

WHEREAS, after receiving presentations from staff, the applicant, various groups, and receiving public comment, the Planning Commission unanimously denied the application of Use Permit 16-007 by a vote of 5 to 0; and

WHEREAS, the Commission denied Use Permit 16-007 due to several significant and unavoidable issues both in the Final Environmental Impact Report (FEIR) and in public testimony during the special meeting, as well as comprehensive reviews of the Draft EIR along with public testimony, both written and oral, received over the last 2.5 years. The FEIR stated that the proposed project was for the construction of up to 72 wind turbines and associated infrastructure with the actual number and location to be determined at a future date (FEIR pp. 1-3). The FEIR noted significant and unavoidable issues concerning the impacts of the project on the aesthetics of the area, impacts to selected wildlife species, impacts to forest resources, and impacts to Native American culture. The Commission found that the FEIR erred in not addressing the significant impact of the removal of aerial firefighting capability due to the location and height of the proposed structures, thus putting the communities of Round Mountain, Montgomery Creek, Moose Camp, Big Bend, and Burney into a significantly dangerous position. The Commission acknowledged that there would be a significant revenue increase to Shasta County during the buildout phase of the project. However, looking at the long term, the financial return would be minimal and, therefore, did not constitute an overriding circumstance. The Commission noted that those who spoke in favor of the project were from out of the project area, while all of those within the project area were against the project. With these considerations, the Commission found that the establishment, operation, and maintenance of the subject use, under the circumstances of the particular case will be detrimental to the health, safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood or will be detrimental or injurious to property or improvements in the neighborhood or to the general welfare of the County (Shasta County Code subsection 17.92.020.F); and

WHEREAS, on June 25, 2001, the Applicant for the Fountain Wind project timely appealed the determination of the Planning Commission; and
WHEREAS, on October 26, 2021, the Board of Supervisors of the County of Shasta considered the appeal by Fountain Wind, LLC of the Shasta County Planning Commission’s denial of Use Permit 16-007 for the Project, a renewable wind energy generation development consisting of the construction, operation, maintenance, and ultimately the decommissioning of up to 72 wind turbines and associated transformers together with the associated infrastructure and ancillary facilities in unincorporated Shasta County on approximately 4,464 acres of a 29,500-acre leasehold comprised of 76 Shasta County Assessor’s parcels operated as managed forest timberlands located approximately one mile west of the existing Hatchet Ridge Wind Project, 6 miles west of Burney, CA and 35 miles northeast of Redding, CA, in accordance with Section 17.92.020 of the Shasta County Ordinance Code, Title 17, Zoning; and

WHEREAS, the Applicant proposed modifications to the Project; and

WHEREAS, the Board of Supervisors received and reviewed the proposed Project, including the modifications to the Project proposed by the Applicant following the filing of its appeal, along with all draft, final, and supporting documents of the environmental impact report (EIR) prepared in compliance with the California Environmental Quality Act (CEQA), staff reports, correspondence to the County concerning the application, in addition to a report from the Director of Resource Management; and

WHEREAS, a duly noticed public hearing on the Final EIR and the Project was conducted by the Board of Supervisors on October 26, 2021, at which time all interested persons were given an opportunity to comment which were considered in accordance with the modified procedures for the conduct of the Board of Supervisors resulting from the current COVID-19 pandemic and in compliance with orders and recommendations of federal, state, and local authorities, and those comments were considered by the Board of Supervisors; and

WHEREAS, the Board of Supervisors received testimony regarding the following detrimental impacts of the proposed project: impacts to aesthetics; potential increased fire danger; impediments to firefighting efforts; damage to wildlife; damage to natural resources; and damage to cultural of tribal resources; and

WHEREAS, after independent consideration and determinations of the Board of Supervisors following its de novo review of the application, the CEQA determination, and the issues on appeal, the Board of Supervisors of the County of Shasta made the following use permit finding: The establishment, operation, and maintenance of the subject use, under the circumstances of the particular case, will be detrimental to the health safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood or will be detrimental or injurious to property or improvements in the neighborhood or to the general welfare of the County. Testimony was received regarding potential increased fire danger and impaired emergency evacuation and/or hindrance of firefighting efforts. Testimony was received from residents in the area regarding the impaired aesthetics of the region caused by visual blight. Testimony was received by residents and tribal members regarding encroachment on and impact to historical, cultural, and tribal resources considered to be spiritually and culturally important to local tribes. Testimony was also received that the detriment to the health, safety, peace, morals,
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Page 3

comfort, and general welfare of persons residing or working in the area of the project and the County, in general, outweighed the proposed benefits to the County. In addition to the testimony received, documents were presented to the Board and made a part of the record that supported the testimony received and the findings made herein; and

WHEREAS, the Board of Supervisors affirmed the decision of the Planning Commission’s denial of Use Permit 16-007 and denied Use Permit 16-007 as originally proposed and as modified by the Applicant, by a vote of 4-1; and

WHEREAS, following the denial of Use Permit 16-007 by the Planning Commission, the appeal, and the final denial of Use Permit 16-007 by the Board of Supervisors, the Planning Commission met on December 9, 2021; and

WHEREAS, at the meeting of the Planning Commission on December 9, 2021, the Planning Commission discussed the issue of a potential moratorium (the “Moratorium”) on future wind turbine developments pending further study of the issues raised by the Planning Commissioners and the Board of Supervisors in denying the permit for the Fountain Wind project, and pending potential changes to the County Zoning Ordinances and General Plan, and otherwise, to provide future developers additional guidance in advance concerning such projects that might be proposed in the future, as well as to further protect the public from the types of potential negative impacts that led to the denial of the use permit for the Fountain Wind project; and

WHEREAS, following discussion and public comments on the proposed Moratorium, and due consideration by Shasta County Planning Commission.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the County of Shasta recommends to the Shasta County Board of Supervisors:

1. That a Moratorium on future wind turbine developments in Shasta County be adopted until such time as the County considers the following on a county wide basis: (A) studies of 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 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) studies of 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) studies concerning the potential impacts of wind turbine developments on forest resources, wildlife and other biological or natural resources; and (D) studies concerning 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. Following completion of the further studies outlined above, and after receiving any additional input from interested groups, experts, and the public that the Planning
Commission and/or Board of Supervisors may receive, and after undertaking the appropriate processes, (A) the Board of Supervisors determines whether any future wind turbine developments will be allowed in Shasta County, given the rural nature of the county, high fire danger in the County, and the potential impacts posed by such projects; and (B) makes and adopts 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 industrial wind turbine developments, the potential impacts of such developments, and whether any such projects will be allowed in the County in the future, and if so, in what area or areas of the County, and under what conditions and restrictions.

DULY PASSED AND ADOPTED this 9th day of December 2021, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:
RECUSE:

PATRICK WALLNER, Chair
Planning Commission
County of Shasta, State of California

ATTEST:

PAUL A. HELLMAN, Secretary
Planning Commission
County of Shasta, State of California
RESOLUTION NO. 2021-__

A RESOLUTION OF THE SHASTA COUNTY PLANNING COMMISSION
RECOMMENDING TO THE BOARD OF SUPERVISORS THAT FURTHER STUDY
OF WIND TURBINE DEVELOPMENTS IN SHASTA COUNTY BE UNDERTAKEN
AND TO INITIATE THE PROCESS FOR POTENTIAL CHANGES TO THE
COUNTY’S ZONING ORDINANCES AND GENERAL PLAN TO BETTER GUIDE
FUTURE DEVELOPERS AND THE PUBLIC

WHEREAS, on June 22, 2021, the Shasta County Planning Commission conducted a
public hearing where it considered Fountain Wind LLC’s application for approval of a use
permit for the Fountain Wind Project, a wind energy generation development, Use Permit 16-
007; and

WHEREAS, after receiving presentations from staff, the applicant, various groups, and
receiving public comment, the Planning Commission unanimously denied the application of Use
Permit 16-007 by a vote of 5 to 0; and

WHEREAS, the Commission denied Use Permit 16-007 due to several significant and
unavoidable issues both in the Final Environmental Impact Report (FEIR) and in public
testimony during the special meeting, as well as comprehensive reviews of the Draft EIR along
with public testimony, both written and oral, received over the last 2.5 years. The FEIR stated
that the proposed project was for the construction of up to 72 wind turbines and associated
infrastructure with the actual number and location to be determined at a future date (FEIR pp. 1-
3). The FEIR noted significant and unavoidable issues concerning the impacts of the project on
the aesthetics of the area, impacts to selected wildlife species, impacts to forest resources, and
impacts to Native American culture. The Commission found that the FEIR erred in not
addressing the significant impact of the removal of aerial firefighting capability due to the
location and height of the proposed structures, thus putting the communities of Round Mountain,
Montgomery Creek, Moose Camp, Big Bend, and Burney into a significantly dangerous position.
The Commission acknowledged that there would be a significant revenue increase to Shasta
County during the buildout phase of the project. However, looking at the long term, the financial
return would be minimal and, therefore, did not constitute an overriding circumstance. The
Commission noted that those who spoke in favor of the project were from out of the project area,
while all of those within the project area were against the project. With these considerations, the
Commission found that the establishment, operation, and maintenance of the subject use, under
the circumstances of the particular case will be detrimental to the health, safety, peace, morals,
comfort, and general welfare of persons residing or working in the neighborhood or will be
detrimental or injurious to property or improvements in the neighborhood or to the general
welfare of the County (Shasta County Code subsection 17.92.020.F); and

WHEREAS, on June 25, 2001, the Applicant for the Fountain Wind project timely
appealed the determination of the Planning Commission; and
WHEREAS, on October 26, 2021, the Board of Supervisors of the County of Shasta considered the appeal by Fountain Wind, LLC of the Shasta County Planning Commission’s denial of Use Permit 16-007 for the Project, a renewable wind energy generation development consisting of the construction, operation, maintenance, and ultimately the decommissioning of up to 72 wind turbines and associated transformers together with the associated infrastructure and ancillary facilities in unincorporated Shasta County on approximately 4,464 acres of a 29,500-acre leasehold comprised of 76 Shasta County Assessor’s parcels operated as managed forest timberlands located approximately one mile west of the existing Hatchet Ridge Wind Project, 6 miles west of Burney, CA and 35 miles northeast of Redding, CA, in accordance with Section 17.92.020 of the Shasta County Ordinance Code, Title 17, Zoning; and

WHEREAS, the Applicant proposed modifications to the Project; and

WHEREAS, the Board of Supervisors received and reviewed the proposed Project, including the modifications to the Project proposed by the Applicant following the filing of its appeal, along with all draft, final, and supporting documents of the environmental impact report (EIR) prepared in compliance with the California Environmental Quality Act (CEQA), staff reports, correspondence to the County concerning the application, in addition to a report from the Director of Resource Management; and

WHEREAS, a duly noticed public hearing on the Final EIR and the Project was conducted by the Board of Supervisors on October 26, 2021, at which time all interested persons were given an opportunity to comment which were considered in accordance with the modified procedures for the conduct of the Board of Supervisors resulting from the current COVID-19 pandemic and in compliance with orders and recommendations of federal, state, and local authorities, and those comments were considered by the Board of Supervisors; and

WHEREAS, the Board of Supervisors received testimony regarding the following detrimental impacts of the proposed project: impacts to aesthetics; potential increased fire danger; impediments to firefighting efforts; damage to wildlife; damage to natural resources; and damage to cultural of tribal resources; and

WHEREAS, after independent consideration and determinations of the Board of Supervisors following its de novo review of the application, the CEQA determination, and the issues on appeal, the Board of Supervisors of the County of Shasta made the following use permit finding: The establishment, operation, and maintenance of the subject use, under the circumstances of the particular case, will be detrimental to the health safety, peace, morals, comfort, and general welfare of persons residing or working in the neighborhood or will be detrimental or injurious to property or improvements in the neighborhood or to the general welfare of the County. Testimony was received regarding potential increased fire danger and impaired emergency evacuation and/or hindrance of firefighting efforts. Testimony was received from residents in the area regarding the impaired aesthetics of the region caused by visual blight. Testimony was received by residents and tribal members regarding encroachment on and impact to historical, cultural, and tribal resources considered to be spiritually and culturally important to local tribes. Testimony was also received that the detriment to the health, safety, peace, morals,
comfort, and general welfare of persons residing or working in the area of the project and the County, in general, outweighed the proposed benefits to the County. In addition to the testimony received, documents were presented to the Board and made a part of the record that supported the testimony received and the findings made herein; and

WHEREAS, the Board of Supervisors affirmed the decision of the Planning Commission’s denial of Use Permit 16-007 and denied Use Permit 16-007 as originally proposed and as modified by the Applicant, by a vote of 4-1; and

WHEREAS, following the denial of Use Permit 16-007 by the Planning Commission, the appeal, and the final denial of Use Permit 16-007 by the Board of Supervisors, the Planning Commission met on December 9, 2021; and

WHEREAS, at the meeting of the Planning Commission on December 9, 2021, the Planning Commission discussed the need for further study of the issues raised by the FEIR, and by the Planning Commissioners and the Board of Supervisors in denying Use Permit 16-007, but on a county wide basis, and the need for changes to the County Zoning Ordinances and General Plan, and otherwise, to provide future wind turbine developers additional guidance in advance concerning such projects, as well as to protect the public from impacts similar to those that led to the denial of Use Permit 16-007; and

WHEREAS, the Planning Commission further discussed that pending the adoption of changes to the County’s Zoning Ordinances and General Plan to address the issues posed by potential future wind turbine development(s) in Shasta County, it may be appropriate if and when applicable legal standards are met, to issue a moratorium (the “Moratorium”) on future wind turbine development(s), in accordance with Government Code Section 65858, pending completion of the planning process to ensure that any such development(s) will be subject to any changes to the Zoning Ordinances and General Plan that may be adopted to address such issues concerning future wind turbine development(s) in Shasta County; and

WHEREAS, following discussion and public comments on the need for further study, potential changes to the County’s Zoning Ordinances and General Plan, and the proposed Moratorium, and due consideration by the Shasta County Planning Commission;

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the County of Shasta recommends 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.
DULY PASSED AND ADOPTED this 9th day of December 2021, by the Shasta County Planning Commission by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RECUSE:

______________________________
PATRICK WALLNER, Chair
Planning Commission
County of Shasta, State of California

ATTEST:

_____________________________
PAUL A. HELLMAN, Secretary
Planning Commission
County of Shasta, State of California
MEMORANDUM
Office of the County Counsel
Rubin E. Cruse, Jr., County Counsel

TO: Members of the Shasta County Planning Commission
Matthew P. Pontes, County Executive Officer
Paul Hellman, Director of Resource Management

FROM: Rubin E. Cruse, Jr., County Counsel

DATE: November 19, 2021

RE: Moratorium on Large Wind Energy Systems

On November 10, 2021, the Shasta County Planning Commission directed staff to place on the December 9, 2021 Shasta County Planning Commission agenda a proposed resolution concerning a moratorium on large wind energy systems in Shasta County.

If adopted by the Planning Commission, the proposed resolution, among other things, recommends to the Shasta County Board of Supervisors that a moratorium on large wind energy systems in Shasta County be adopted until such time as the County studies and considers the potential impacts of such wind turbine developments on a county wide basis.

Based on the language in the proposed resolution, it is my understanding that the recommended moratorium is for large wind energy systems, similar to the proposed Fountain Wind Project, that was recently denied by the Planning Commission and the Board of Supervisors. I understand that the recommended moratorium is not designed to apply to “small wind energy systems,” which may be authorized under Shasta County Code § 17.88.030 upon the issuance of an administrative permit.¹

The following memorandum addresses the question of whether the County of Shasta may legally impose a moratorium on the development of large wind energy systems.

The conclusions can be summarized as follows:

1. Based on an evaluation of the current circumstances, 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.”

¹ A “small wind energy system” means a wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics . . . and which will be used primarily to reduce on-site consumption of utility power. Shasta County Code § 17.88.035(A).
2. The County has the ability to consider amendments to the County Zoning Plan concerning the proposed development of large wind energy systems without adopting a moratorium. The Board of Supervisors or the Planning Commission may initiate an amendment to the County Zoning Plan by adopting a resolution of intention to make such amendments. Shasta County Code § 17.92.080(B).

3. Should any such amendments to the County Zoning Plan be adopted before action is taken to approve a future application for a large wind energy system, the application would then be subject to any such amendments to the County Zoning Plan. Government Code § 65858 authorizes the Board of Supervisors 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. However, the Board of Supervisors shall not adopt such an urgency measure unless the urgency measure contains findings that there is a “current and immediate threat to the public health, safety, or welfare.”

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. *California Charter Schools Assn v. City of Huntington Park*, 35 Cal. App. 5th 362 (2019).

In that case, the City of Huntington Park attempted to impose a moratorium on the establishment of new charter schools within its borders. The Huntington Park Municipal Code required charter schools to obtain conditional use permits, which could be either approved or disapproved at the discretion of the City.

The Court of Appeal struck down the City’s moratorium as being unlawful because there was no evidence that actual approval of a use permit for a new charter school was imminent. No applications had been submitted. There had only been some inquiries and requests for meetings. The Court of Appeal stated “mere inquiries, requests, and meetings, do not constitute a current and immediate threat” within the meaning of Government Code § 65858.

The following facts indicate that actual approval of a use permit for a large wind energy system is not “imminent” as defined by case law.

1. Under the Shasta County Code, a public utility, such as a large wind energy system, is allowed in all zoning districts with the approval of a use permit. Shasta County Code § 17.88.100(B). The Shasta County Code also provides that wind energy systems that are not considered “small wind energy systems” may be permitted with an approved use permit. Shasta County Code § 17.88.035. The Director of Resource Management has informed me that there are no current applications pending for a use permit for a large wind energy system in Shasta County.

2. Use permits are discretionary actions, subject to approval by the Planning Commission and subject to appeal to the Board of Supervisors. Unless a use permit is issued, there is no right to construct such a project in any zone. *California Charter Schools Assn. v. City of Huntington Park*, 35 Cal. App. 5th 362 (2019).
3. With a use permit, the County has discretion to deny or impose conditions on the use permit. No rights vest until a permit is granted and the applicant has thereafter acted upon the approval to his or her detriment. *California Charter Schools Assn. v. City of Huntington Park*, 35 Cal. App. 5th 362 (2019).

4. The mere processing of a development application, such as a use permit, does not pose a current and immediate threat to the public health, safety or welfare because no rights will vest imminently. *Id.* at 371; *Building Industry Legal Defense Foundation v. Superior Court*, 72 Cal. App. 4th 1410 (1999).

Based on the foregoing legal authorities, 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. Under the current Shasta County Code, no person is able to construct a large wind energy system until after a use permit is approved and the County has discretion to deny the permit.

The County has the ability to consider amendments to the County Zoning Plan concerning the proposed development of large wind energy systems without adopting a moratorium. The Board of Supervisors or the Planning Commission may initiate an amendment to the County Zoning Plan by adopting a resolution of intention to make such amendments. Shasta County Code § 17.92.080(B).

Should any such amendments to the County Zoning Plan be adopted before action is taken to approve a future application for a large wind energy system, the application would then be subject to any such amendments to the County Zoning Plan. The applicant who wishes to develop undeveloped land has no vested right in the existing zoning. *Gilliland v. County of Los Angeles*, 126 Cal. App. 3d 610 (1981).

REC:lk