

R4 Receive an update regarding the Fountain Wind Project and consider providing direction to staff to allocate funds towards community education. (Sponsored by Supervisor Jones).

STAFF REPORT

BOARD MEETING DATE:	October 3, 2023
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CATEGORY: Board Matters 4

SUBJECT: Receive an update regarding the Fountain Wind Project and consider providing direction to staff to allocate funds towards community education (Sponsored by Supervisor Jones).

DEPARTMENT: Clerk of the Board

SUPERVISORIAL DISTRICT #: District 3

DEPARTMENT CONTACT: Stewart Buettell, Deputy County Executive Officer (530) 225-5550

STAFF REPORT APPROVED BY: David J. Rickert, County Executive Officer

Vote Required? Simple Majority Vote	General Fund Impact? Future General Fund Impact
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RECOMMENDATION

Receive an update regarding the Fountain Wind Project and consider providing direction to staff to allocate funds towards community education. (Sponsored by Supervisor Jones).

DISCUSSION

The Fountain Wind Project (Project) is a wind energy generation facility proposed by Fountain Wind, LLC., on approximately 4,500 acres of private, leased land in the unincorporated area of Shasta County.

On June 22, 2021, the Shasta County Planning Commission (PC) unanimously denied the application for the conditional use permit necessary to build the Project, citing testimony received regarding impacts to the local communities and private landowners, potential for increased fire danger, impediments to firefighting efforts, damage to wildlife, and damage to both cultural and tribal resources. In addition, the County further found that these impacts would be detrimental and injurious to the general welfare of people in the County and to County property.

The decision by the PC was appealed by Fountain Wind, LLC., to the Shasta County Board of Supervisors. Fountain Wind, LLC., including a modification and shrank the scope of the project from 72 turbines, to 48. On October 26, 2021 (pursuant to Shasta County Code section 17.92.030), that the Shasta County Board of Supervisors voted to uphold the Planning Commission’s decision and deny the permit.

Between January 3 and January 11, 2023, Fountain Wind, LLC., re-filed the Project for approval with the California Energy Commission (CEC) under Assembly Bill (AB) 205. AB 205 was signed into law on June 30, 2022, giving the CEC extended siting authority over certain renewable energy facilities, including any “solar photovoltaic or terrestrial wind electrical generating power plant with a generating capacity of 50 megawatts or more and any facilities appurtenant thereto.”

On March 14, 2023, and effective April 13, 2023, the Board of Supervisors adopted Shasta County Ordinance No. SCC 2023-01, which amends Shasta County Code Section 17.88.335, “Large wind energy systems,” in its entirety to further clarify, define, and prohibit large wind energy systems “in all zone districts of the unincorporated area of the County of Shasta and no permit or approval of any type shall be issued therefor.”

The Project is currently under review by the CEC, as part of the “opt-in” certification allowable pursuant to AB 205.

ALTERNATIVES

The Board could defer discussion of this item to a future date or provide alternate direction to staff.

OTHER AGENCY INVOLVEMENT

The County Administrative Office has reviewed this report.

FISCAL IMPACT

There is no General Fund impact associated with discussing this item. Depending on how the Board directs staff, there may be additional General Fund impact from subsequent, associated activities.

ATTACHMENTS:

1: Ordinance No. SCC 2023-01

ORDINANCE NO. SCC 2023-01

**AN ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SHASTA
AMENDING SECTION 17.88.335, LARGE WIND ENERGY SYSTEMS,
OF THE SHASTA COUNTY CODE
IN LIGHT OF ASSEMBLY BILL 205**

The Board of Supervisors of the County of Shasta ordains as follows:

SECTION I.

Section 17.88.335, "Large wind energy systems," of the Shasta County Code is amended in its entirety as follows:

17.88.335 Large wind energy systems.

A. Legislative Findings.

The Board of Supervisors finds as follows:

1. California Government Code section 65850 authorizes the County of Shasta to adopt ordinances that regulate the use of buildings, structures, and land and the intensity of land uses.
2. Pursuant to Article XI, Section 7, of the California Constitution, the County of Shasta may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and general welfare of its citizens.
3. The adverse impacts of large wind energy systems, particularly with respect to wildfire, aerial firefighting, aesthetics, biological resources, and historical, cultural, and tribal resources, are of significant concern to many residents of Shasta County as evidenced by the numerous public comments received between 2019 and 2021 regarding the proposed Fountain Wind Project.
4. The vast majority of the unincorporated area of Shasta County is designated as being in the High and Very High Fire Hazard Severity Zones as recommended by the California Department of Forestry and Fire Protection. Large wind energy systems are incompatible in the High and Very High Fire Hazard Severity Zones.
5. In light of the foregoing concerns, the construction or operation of large wind energy systems will not have an overall net positive economic benefit to the County of Shasta. The foregoing concerns outweigh any potential economic benefits to the County that may be available from such large wind energy systems.

6. Regulations are needed to protect the public health, safety, and welfare of residents from the adverse impacts of large wind energy systems.
7. The Board of Supervisors enacts this section to prohibit large wind energy systems in furtherance of the public necessity, health, safety, convenience, and general welfare.

B. Definitions.

The following definition governs this section:

“Large wind energy system” means a wind energy conversion system that is not defined as a small wind energy system pursuant to subsection 17.88.035.A. of this chapter.

C. Prohibition.

Large wind energy systems are prohibited in all zone districts of the unincorporated area of the County of Shasta and no permit or approval of any type shall be issued therefor.

D. Applications for Large Wind Energy Systems Filed with the California Energy Commission.

1. In connection with applications for large wind energy systems submitted to the California Energy Commission for review and approval, pursuant to Chapter 6.2 of Division 15 of the Public Resources Code (Government Code sections 25545 *et seq*), the County of Shasta makes the following findings:
 - a. As recognized by relevant legal authorities, the California Energy Commission is to give great weight to the comments, opinions, ordinances, and standards of local governments. The concerns of counties and cities are not to be ignored or to be given secondary consideration. As representatives of the people who live in the immediate area of large wind energy systems, county and city government officers are to be listened to and respected.
 - b. In accordance with Public Resources Code sections 25525 and 25545.8, the California Energy Commission may not certify a facility contained in the application when it finds, pursuant to subdivision (d) of Public Resources Code Section 25523, that the facility does not conform with any applicable state, local, or regional standards, ordinances, or laws, unless the commission determines that the facility is required for public convenience and necessity and that there are not more prudent and feasible means of achieving public convenience and necessity. In making the determination, the commission shall consider the entire record of the proceeding, including, but not limited to, the impacts of the facility on the environment, consumer benefits, and electric system reliability. The commission may not make a finding in conflict with applicable federal law or

regulation. The basis for these findings shall be reduced to writing and submitted as part of the record pursuant to Public Resources Section 25523.

- c. The foregoing statutes reflect a legislative policy that local ordinances, laws and standards are to be given such weight as to prevent or substantially influence the construction of a proposed facility not in compliance therewith if there exists a more prudent and feasible means of achieving the public convenience and necessity than constructing the facility as proposed or on the site proposed.
 - d. Pursuant to Shasta County Code section 17.88.335(C), large wind energy systems are prohibited in all zone districts of the unincorporated area of the County of Shasta and no permit or approval of any type shall be issued therefor. There are more prudent and feasible means of achieving any possible public convenience and necessity than constructing large wind energy systems in the unincorporated area of the County of Shasta.
 - e. Pursuant to section 25545.9 of the Public Resources Code, the California Energy Commission shall not certify a site and related facility unless the commission finds that the construction or operation of the facility will have an overall net positive economic benefit to the County of Shasta. Pursuant to the findings in Shasta County Code section 17.88.335(A), large wind energy systems will not have an overall net positive economic benefit to the County of Shasta.
 - f. Pursuant to section 25545.10 of the Public Resources Code, the California Energy Commission shall not certify a site and related facility unless the commission finds that the applicant has entered into one or more legally binding and enforceable agreements with, or that benefit, a coalition of one or more community-based organizations, including local governmental entities. No County officer, agency, or department is authorized to agree to any such community benefit agreement for large wind energy systems without the prior approval of the Board of Supervisors.
2. For each application for a large wind energy system within the unincorporated area of Shasta County filed with the California Energy Commission for review and approval, pursuant to Chapter 6.2 of Division 15 of the Public Resources Code (Government Code sections 25545 *et seq*), the Director of Resource Management shall perform the following duties:
- a. In consultation with all applicable Shasta County departments, Native American tribal governments, agencies, organizations, and groups, evaluate the economic impacts of the proposal and prepare and present a comment letter regarding the economic impacts of the proposal to the Board of Supervisors for their consideration.

- b. When directed by the Board of Supervisors, submit a comment letter regarding the economic impacts of the proposal to the California Energy Commission and on such other impacts as may be directed by the Board of Supervisors.
- c. In his/her capacity as the Shasta County Environmental Review Officer, review all environmental documents prepared for the proposal by the California Energy Commission in accordance with the California Environmental Quality Act and submit written comments to the commission when warranted and appropriate.
- d. In accordance with Public Resources Code section 25519, the Director of Resource Management shall review the application and submit comments on, among other things, the design of the facility, architectural and aesthetic features of the facility, access to highways, landscaping and grading, public use of lands in the area of the facility, and other appropriate aspects of the design, construction, or operation of the proposed site and related facility. The Director of Resource Management shall also provide the California Energy Commission copies of all relevant laws, ordinances, and regulations promulgated or administered by the County of Shasta.
- e. The Director of Resource Management shall also review the application and provide comments for conformance with the requirements of Public Resources Code section 25527 and whether the proposed site will impact any of the following areas:
 - i. State, regional, county and city parks; wilderness, scenic or natural reserves; areas for wildlife protection, recreation, historic preservation; or natural preservation areas located in the County of Shasta.
 - ii. Estuaries in an essentially natural and undeveloped state located within the County of Shasta.

Pursuant to Public Resources Code section 25527, in considering applications for certification, the California Energy Commission shall give the greatest consideration to the need for protecting areas of critical environmental concern, including, but not limited to, unique and irreplaceable scientific, scenic, and educational wildlife habitats; unique historical, archaeological, and cultural sites; lands of hazardous concern; and areas under consideration by the state or the United States for wilderness, or wildlife and game reserves.

- f. In accordance with Public Resources Code section 25538, the Director of Resource Management shall request a fee from the California Energy Commission to reimburse the County of Shasta for the actual and added costs of the review by the County of Shasta and such other fees as may authorized under that statute and other applicable laws.

SECTION II.

The County finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines section 15060(c)(2) since it can be seen with certainty that this ordinance will not result in a direct or reasonably foreseeable indirect physical change in the environment.

SECTION III.

If any section, subsection, sentence, clause, phrase, or provision of this ordinance or its application to any person or circumstance is held invalid for any reason, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause, phrase, or provision thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or provisions be declared unconstitutional or invalid.

SECTION IV.

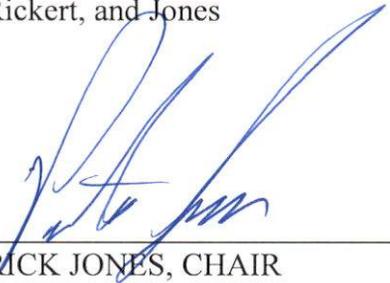
All former ordinances and resolutions, or parts thereof, conflicting or inconsistent with the provisions of this ordinance are hereby superseded by this ordinance. The adoption of this ordinance shall not in any manner affect any action or prosecution for violation of ordinances, which violations were committed prior to the effective date hereof, be construed as a waiver of any license, fee, or penalty required by or resulting from any such ordinance, or affect the validity of any bond (or cash deposit in lieu thereof) required to be posted, filed, or deposited pursuant to such ordinance.

SECTION V.

This ordinance shall take effect and be in full force and effect 30 days after its passage. The Clerk shall cause this ordinance to be published as required by law.

DULY PASSED AND ADOPTED this 14th day of March, 2023, by the Board of Supervisors of the County of Shasta, by the following vote:

AYES: Supervisors Kelstrom, Crye, Garman, Rickert, and Jones
NOES: None
ABSENT: None
ABSTAIN: None
RECUSE: None



PATRICK JONES, CHAIR
Board of Supervisors
County of Shasta
State of California

ATTEST:

MARY WILLIAMS
Acting Clerk of the Board of Supervisors

By:  _____
Deputy