

## ATTACHMENT A: EXECUTIVE SUMMARY AND DISCUSSION

The California State legislature enacted Assembly Bill 1207 in 2001 as a measure to reduce California's dependence on electricity supplied by utilities by encouraging the development of small, private wind energy systems (SWES). AB 1207 added Government Code Section 65892.13 that allows the development of SWES on property located outside of urbanized areas (as defined by the United States Department of Commerce, Bureau of the Census) provided the system primarily serves the property it is located on. Section 65892.13 also allows local jurisdictions to adopt a permit process to regulate the installation of SWES provided the regulations comply with the restrictions of the section regarding notice, tower height, setbacks, noise level, turbine approval, tower drawings, and engineering analysis or line drawings. The local permit process may include development standards that address potential visual and aesthetic impacts. However, if the local jurisdiction fails to adopt such a permit process by July 1, 2002, then the jurisdiction must permit SWES as a matter of right subject to only the development standards contained in Section 65892.13 until such time as a local ordinance is adopted. Government Code Section 65892.13 becomes inoperative on July 1, 2005 and is repealed on January 1, 2006 unless extended by statute.

The Planning Commission considered these amendments at their hearing of May 1, 2002 and recommended that your Board adopt the amendments as presented by staff with the following changes.

**A. Revise the definition of Small Wind Energy System to be more consistent with the Government Code:**

Small Wind Energy Systems: A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, ~~that~~ which has a rated capacity that does not exceed the allowable rated capacity under the Emerging Renewables Fund of the Renewables Investment Plan administered by the California Energy Commission, and ~~that~~ which will be used primarily to reduce onsite consumption of utility power.

This revision recommended by the Planning Commission applies to all three ordinances (Article II - Sec. 35-149.2; Article III - Sec. 35-301.2; Article IV - Sec. 35-474D.2).

The Planning and Development Department supports this revision.

**B. Increase the minimum lot size necessary to construct a SWES from 5 acres to 40 acres:**

1. A system shall be located on a lot a minimum of ~~5~~ 40 acres in size.

This revision recommended by the Planning Commission applies to all three ordinances (Article II - Sec. 35-149.5; Article III - Sec. 35-301.5; Article IV - Sec. 35-474D.5).

Government Code Section 65892.13 (d)(1) provides that a local jurisdiction may regulate the height of towers associated with SWES provided that it is no more restrictive than the following:

Tower heights of not more than 65 feet shall be allowed on parcels between one and five acres and tower heights of not more than 80 feet shall be allowed on parcels of five acres or more, provided that the application includes evidence that the proposed height does not exceed the height recommended by the manufacturer or distributor of the system {Sec. 65892.13 (d)(1)(B)}.

Staff of Planning and Development and the Office of the County Counsel interpreted this section as requiring that any locally adopted ordinance provide for the development of SWES on lots as small as one acre, and advised the Planning Commission that their recommended revision was inconsistent with State law. However, the Planning Commission interpreted this section as to only apply to restricting the limitations on tower height and not minimum parcel size, and so adopted the recommended language shown above. County Counsel is researching this issue, and will report their findings to your Board at the hearing on May 21<sup>st</sup>. The attached ordinances reflect the language as recommended by the Planning Commission, however, revised ordinances will be available at the hearing should your Board decide to adopt different language.

**C. In Article II (Sec. 35-149.5), revise the height restrictions on towers appurtenant to SWES within the Coastal Zone to limit the height to 50 feet:**

3. ~~Tower heights may be allowed as follows, Towers appurtenant to small wind energy systems are limited to 50 feet in height pursuant to Sec. 35-127.1 (General Regulations - Height). The tower height may be increased to a maximum of 80 feet provided a variance to the height limit of Sec. 35-127.1 is approved.:~~
  - ~~a. 65 feet or less on parcels between one and five acres.~~
  - ~~b. 80 feet or less on parcels of five or more acres.~~

**In Article III (Sec. 35-301.5) and Article IV (Sec. 35-474D.5), revise the height restrictions on towers appurtenant to SWES outside the Coastal Zone to limit the height to 80 feet:**

3. ~~Towers heights may be allowed as follows:~~
  - ~~a. 65 feet or less on parcels between one and five acres.~~
  - ~~b. 80 feet or less on parcels of five or more acres.~~

Towers appurtenant to small wind energy systems are limited to a height of 80 feet. Such towers are not subject to Sec. 35-276. (General Regulations - Height).

The proposed language of Article II is more restrictive than that of Articles III and IV in that the tower height is limited to 50 feet in the Coastal Zone versus 80 feet outside the Coastal Zone. The basis for this is that Government Code Section 65892.13(d)(3)(A)

provides that a SWES shall not be allowed where otherwise prohibited by a local coastal program and any implementing regulations adopted pursuant to the California Coastal Act. Therefore, the height of a SWES located within the Coastal Zone could be limited to 50 feet since the existing height restrictions of the General Regulations section of Article II limit such structures to a height of 50 feet.

Planning and Development support for these revisions depends on whether the Planning Commission's recommendation to increase the minimum parcel size (discussed under paragraph B, above) is allowed by state law. If the County is able to restrict SWES to lots 40 acres or more in size, then these revisions can stand. However, if it is determined that the County, as part of a locally adopted ordinance, must allow for SWES on lots as small as one acre, then these sections should be revised to reflect State law, as follows.

**Article II (Sec. 35-149.5):**

3. ~~Tower heights may be allowed as follows,~~ Towers appurtenant to small wind energy systems are limited to 50 feet in height pursuant to Sec. 35-127.1 (General Regulations - Height). The tower height may be increased to the height limits listed below provided a variance to the height limit of Sec. 35-127.1 is approved:
  - a. 65 feet or less on parcels between one and five acres.
  - b. 80 feet or less on parcels of five or more acres.

**Article III (Sec. 35-301.5) and Article IV (Sec. 35-474D.5):**

3. ~~Towers heights~~ appurtenant to small wind energy systems may be allowed as follows; such towers are not subject to Sec. 35-276 (General Regulations - Height):
  - a. 65 feet or less on parcels between one and five acres.
  - b. 80 feet or less on parcels of five or more acres.

The reference to the ability to increase the height beyond 50 feet in the language for Article II is included only for clarity and is not required by the Government Code section.

**D. Revise the development standard relating to the minimization of adverse visual impacts for clarity:**

8. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas (e.g., public parks, roads, trails) to the greatest extent feasible. A small wind energy system:

- a. Shall not project above the top of ~~visually prominent~~ ridgelines.
- b. If visible from public viewing areas, shall use natural landforms and existing vegetation for screening ~~from view from public viewing areas~~.
- c. Shall not ~~significantly impair~~ cause a significant adverse visual impact to a scenic vista from a County or State designated scenic corridor.
- d. Shall be screened to the maximum extent feasible by natural vegetation or other means to minimize potentially significant adverse visual impacts on neighboring residential areas.

This revision recommended by the Planning Commission applies to all three ordinances (Article II - Sec. 35-149.5; Article III - Sec. 35-301.5; Article IV - Sec. 35-474D.5).

Planning and Development supports this revision.

**E. Revise the language regarding noticing requirements for clarity:**

In addition to the requirements of Sec. 35-488 (Noticing), if deemed necessary by Planning and Development due to circumstances specific to the proposed installation (~~e.g., system would be significantly visible from public viewing areas, standard notice requirement would not provide notice to nearby residential areas that might be adversely impacted by the system~~), notice shall also be provided by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within Santa Barbara County. Examples of such circumstances include, but are not limited to, when the system would be significantly visible from public viewing areas, or where the standard notice requirement would not provide notice to nearby residential areas that might be adversely impacted by the system.

This revision recommended by the Planning Commission applies to all three ordinances (Article II - Sec. 35-149.6; Article III - Sec. 35-301.6; Article IV - Sec. 35-474D.6).

Planning and Development supports this revision.

**F. Delete the revisions in their entirety to the existing language of Article III, Sec. 35-300, regarding Wind Energy Conversion Systems (WECS) due to a lack of information concerning wind strength and direction patterns throughout the County and the possibility that the proposed revisions to the development standards could impede the development of appropriately sited commercial wind energy conversion systems.**

Articles II and IV currently do not address WECS such that the proposed amendments to those Articles only add new ordinance sections addressing SWES. However, Article III currently allows for similar WECS under Sec. 35-300. Unlike SWES, these systems are limited to 50 feet in height, do not have a minimum lot size, and are not restricted to property located outside of urbanized areas. WECS are also not limited to one system per

lot. The draft amendment presented to the Planning Commission proposed to amend the existing regulations regarding WECS in the following manner:

1. The existing regulations allow for a single WECS on residentially zoned property pursuant to a Major CUP. The proposed amendment **deleted** this provision so that a property owner desiring to utilize a wind turbine to create electricity on his property would have to apply instead for SWES.

Planning and Development recommends that your Board retain this revision, otherwise the situation would exist where a person could apply for a 50 foot tall tower on any size lot located in any residential zone throughout the County, but to go any higher would require a 40 acre minimum lot area restricted to non-urbanized areas (under the Commission recommended language). Also, the existing language may give false expectations to people that they can erect such a system on a fairly small lot when in fact it is highly doubtful that the necessary findings of compatibility can be made.

2. The existing regulations allow for a single WECS within commercial, industrial, mixed use, recreation and public utility zone districts subject to only a land use permit. The proposed regulations **delete** this provision, and require that such systems be processed as a SWES with a Minor CUP.

Planning and Development recommends that your Board retain this revision, otherwise, similar to the reasoning in the previous paragraph, the situation would exist where a person could apply for a 50 foot tall tower on any size lot located in the named zone districts throughout the County, but to go any higher would require a 40 acre minimum lot area restricted to non-urbanized areas. Also, the existing language provides that such a system could be permitted pursuant to only a ministerial permit that provides a very limited opportunity to review the potential for any visual or noise impacts.

3. The existing regulations allow for WECS (with multiple turbines) on property zoned agriculture and resource management pursuant to a land use permit with certain limitations (limited power output per turbine and per parcel, turbine spacing). The proposed regulations **retain** this provision as it relates to systems located in agricultural zones, but require that systems located in resource management zones are subject to the minor conditional use permit process.

Planning and Development recommends that your Board retain this revision. The Resource Management zone district is utilized to ensure the protection of lands that are unsuited for intensive development and are characterized by having steep topography and areas of outstanding resource values. As discussed in the above paragraph, allowing such systems through the land use permit provides a very limited opportunity to review the potential for impacts (e.g., aesthetic, geologic, biological, noise).

4. The proposed regulations would also update the existing development standards for WECS, as well as add new ones, to be more consistent with the required development standards for SWES.

Planning and Development recommends that your Board retains this revision but also revise Development Standard 11 as follows:

11. The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas (e.g., public parks, roads, trails). To the greatest extent feasible, a small wind energy system:
  - a. Shall not project above the top of ~~visually prominent~~ ridgelines.
  - b. If visible from public viewing areas, shall use natural landforms and existing vegetation for screening ~~from view from public viewing areas~~.
  - c. Shall not ~~significantly impair~~ cause a significant adverse visual impact to a scenic vista from a County or State designated scenic corridor.
  - d. Shall be screened to the maximum extent feasible by natural vegetation or other means to minimize potentially significant adverse visual impacts on neighboring residential areas.

This change allows increased flexibility in the siting of a system if for technical considerations (e.g., height and location required to intercept the wind) a proposed system could not strictly comply with all parts of the standard. This addresses the Planning Commission's concern that the proposed revisions to the development standards could impede the development of appropriately sited commercial wind energy conversion systems. If located in the rural area, a system would still have to be determined to be subordinate in appearance to the natural landforms of the surrounding area in order to be permitted.

**SANTA BARBARA COUNTY PLANNING COMMISSION**  
**Staff Report for Small Wind Energy Systems**  
**Ordinance Text Amendments**

**Hearing Date: May 1, 2002**

**Staff Report Date: April 24, 2002**

**Case Nos.: 02ORD-00000-00001, -00002 & -00003**

**Environmental Document: CEQA Guidelines Section 15308**

**Supervisory District: All**

**Staff: Noel Langle**

**Phone #: 568-2073**

## **1.0 REQUEST**

Hearing on the request of Planning and Development that the Planning Commission recommend to the Board of Supervisors that they adopt amendments to the text of the Santa Barbara County Zoning Ordinances (Articles II, III and IV) to implement new regulations allowing for the installation of small wind energy systems in the unincorporated portions of the County outside of urbanized areas. The amendment to Article III, 02ORD-00000-00002, would also revise the existing permitting process regarding wind energy conversion systems.

02ORD-00000-00001 proposes to amend Division 7, General Regulations, of Article II of Chapter 35 of the Santa Barbara County Code (Coastal Zone) to add a new Section 35-149 titled Small Wind Energy Systems (see Exhibit 1 of Attachment C).

02ORD-00000-00002 proposes to amend Division 8, Energy Facilities, of Article III of Chapter 35 of the Santa Barbara County Code (Inland unincorporated areas, excluding Montecito) to amend existing Section 35-300 titled Wind Energy Systems and add a new Section 35-302 titled Small Wind Energy Systems (see Attachment D).

02ORD-00000-00003 proposes to amend Division 7, General Regulations, of Article IV of Chapter 35 of the Santa Barbara County Code (Inland unincorporated areas of Montecito) to add a new Section 35-474D titled Small Wind Energy Systems.

## **2.0 RECOMMENDATION AND PROCEDURES:**

Follow the procedures outlined below and recommend that the Board of Supervisors approve Case Nos. 02ORD-00000-00001, 02ORD-00000-00002 and 02ORD-00000-00003, as shown in Exhibit 1 of Attachment C, Attachment D and Attachment E, respectively, based upon the ability to make appropriate findings.

Your Commission's motion should include the following:

- Recommend that the Board of Supervisors find that these amendments are categorically exempt from the California Environmental Quality Act pursuant to Section 15308 of the Guidelines for Implementation of CEQA (Attachment A).
- Adopt the findings for approval of the proposed amendments (Attachment B).

- Adopt a resolution recommending that the Board of Supervisors adopt 02ORD-00000-00001, amendments to Article II (Attachment C).
- Recommend that the Board of Supervisors adopt 02ORD-00000-00002 and 02ORD-00000-00003, amendments to Article III (Attachment D) and Article IV (Attachment E).

Please refer the matter to staff if your Commission takes other than the recommended action for appropriate findings.

### **3.0 JURISDICTION**

This project is being considered by the Planning Commission based upon Section 65855 of the Government Code and the County's zoning ordinance process requirements for zoning ordinance text amendments. The Government Code and the County's zoning ordinances require that the Planning Commission review and consider proposed ordinance amendments and render its decision in the form of a written recommendation to the Board of Supervisors.

### **4.0 ISSUE SUMMARY**

The California State legislature enacted Assembly Bill 1207 in 2001 as a measure to reduce California's dependence on electricity supplied by utilities by encouraging the development of small, private wind energy systems. AB 1207 amended the Government Code to add Section 65892.13 (see Attachment F) that allows for the development of systems that primarily serve the property where they are located, provided the lot is at least one acre in size and located outside of urbanized areas. Urbanized areas are as defined by the United States Department of Commerce, Bureau of the Census. This section also includes other restrictions on where such systems may be located.

Section 65892.13 provides that local jurisdictions may adopt a permit process allowing the installation of small wind energy systems (SWES), and that the process may include the requirement for a conditional use permit. If a local jurisdiction does adopt a process, then any development standards regarding notice, tower height, setbacks, noise level, turbine approval, tower drawings, engineering analysis, or line drawings may not be more restrictive than the development standards contained Section 65892.13.

However, if the local jurisdiction fails to adopt such a permit process by July 1, 2002, then the jurisdiction must permit SWES as a matter of right subject to only the development standards contained in Section 65892.13 until such time as a local ordinance is adopted. This section of the Government Code becomes inoperative on July 1, 2005, and is repealed on January 1, 2006, unless extended by statute.

### **5.0 PROJECT INFORMATION**



## 5.1 Small Wind Energy Systems (SWES)

The attached amendments are proposed in order to implement a permit process to allow for the development of SWES on lots a minimum of one acre in size located outside of urbanized areas, provided the system primarily serves the property that it is located on.

Consistent with the limitations established by Government Code Section 65892.13, the amendments include definitions, permitted areas, processing requirements, development standards, notice and application requirements. The amendments also include a sunset clause whereby the new section of the ordinance will become inoperative as of January 1, 2005, and be repealed as of January 1, 2006, unless Section 65892.13 is extended by the State prior to January 1, 2006.

### Definitions

The amendments include definitions of onsite, primarily, small wind energy systems, tower, tower height, urbanized area, and wind energy system height. The definitions of small wind energy system, tower height, urbanized area are as provided in Government Code Section 65892.13.

**Onsite:** The premises upon which the small wind energy system and its associated structure(s) are located and the location upon which the generated electrical power is primarily used.

**Primarily:** Greater than 50 percent.

**Small Wind Energy Systems:** A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, that has a rated capacity that does not exceed the allowable rated capacity under the Emerging Renewables Fund of the Renewables Investment Plan administered by the California Energy Commission and that will be used primarily to reduce onsite consumption of utility power.

**Tower:** The support structure, including guyed, monopole and lattice types, upon which a wind turbine or other mechanical device is mounted as part of a small wind energy system.

**Tower Height:** The height above grade of the upper-most fixed portion of the tower excluding the length of any vertical axial-rotating turbine blades.

**Urbanized Area:** As defined in paragraph (2) of subdivision (b) of Section 21080.7 of the Public Resources Code.

**Wind Energy System Height:** The height above grade of the fixed portion of the tower including the vertical length of any extensions such as the rotor blade.

### Permitted Areas

In addition to the requirement in Section 65892.13 that a SWES be located on a lot having a minimum area of one acre located outside of urbanized areas, this Section also provides that a SWES not be allowed where otherwise prohibited by any of the following:

1. A local coastal program and any implementing regulations adopted pursuant to the California Coastal Act, Division 20 (commencing with Section 30000) of the Public Resources Code.
2. The California Coastal Commission, pursuant to the California Coastal Act, Division 20 (commencing with Section 30000) of the Public Resources Code.
3. A comprehensive land use plan and any implementing regulations adopted by an airport land use commission pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Division 9 of Part 1 of the Public Utilities Code.
4. The Alquist-Priolo Earthquake Fault Zoning Act, Chapter 7.5 (commencing with Section 2621) of Division 2 of the Public Resources Code.
5. A local agency to protect the scenic appearance of the scenic highway corridor designated pursuant to Article 2.5 (commencing with Section 260) of Chapter 2 of Division 1 of the Streets and Highways Code.
6. The terms of a conservation easement entered into pursuant to Chapter 4 (commencing with Section 815) of Division 2 of Part 2 of the Civil Code.
7. The terms of an open-space easement entered into pursuant to the Open-space Easement Act of 1974, Chapter 6.6 (commencing with Section 51070) of Division 1 of Title 5 of the Government Code.
8. The terms of an agricultural conservation easement entered into pursuant to the California Farmland Conservancy Program Act, Division 10.2 (commencing with Section 10200) of the Public Resources Code.
9. The terms of a contract entered into pursuant to the Williamson Act, Chapter 7 (commencing with Section 51200) of Division 1 of Title 5 of the Government Code.
10. The listing of the proposed site in the National Register of Historic Places or the California Register of Historical Resources pursuant to Section 5024.1 of the Public Resources Code.

The proposed amendments incorporate these restrictions where appropriate.

### Processing Requirements

The proposed amendments provide that SWES may be permitted pursuant to a major conditional use permit (Planning Commission jurisdiction) on residentially zoned property or a minor conditional use permit within all other zone districts.

### Development Standards

The proposed amendments include development standards for notice, tower height, setbacks, noise level, turbine approval, tower drawings, engineering analysis, or line drawings consistent with the following standards contained in Government Code Section 65892.13:

1. Notice of an application for installation of a SWES shall be provided to property owners within 300 feet of the property on which the system is to be located.
2. Tower heights of not more than 65 feet shall be allowed on parcels between one and five acres and tower heights of not more than 80 feet shall be allowed on parcels of five acres or more, provided that the application includes evidence that the proposed height does not exceed the height recommended by the manufacturer or distributor of the system.
3. Setbacks for the system tower shall be no farther from the property line than the height of the system, provided that it also complies with any applicable fire setback requirements pursuant to Section 4290 of the Public Resources Code (minimum fire safety standards related to defensible space).
4. Decibel levels for the system shall not exceed the lesser of 60 decibels (dBA), or any existing maximum noise levels applied pursuant to the noise element of a general plan for the applicable zoning classification in a jurisdiction, as measured at the closest neighboring inhabited dwelling, except during short-term events such as utility outages and severe wind storms.
5. The system's turbine must have been approved by the California Energy Commission as qualifying under the Emerging Renewables Fund of the commission's Renewables Investment Plan or certified by a national program recognized and approved by the Energy Commission.
6. The application shall include standard drawings and an engineering analysis of the system's tower, showing compliance with the Uniform Building Code or the California Building Standards Code and certification by a professional mechanical, structural, or civil engineer licensed by this state.
7. The system shall comply with all applicable Federal Aviation Administration requirements, including Subpart B (commencing with Section 77.11) of Part 77 of Title 14 of the Code of Federal Regulations regarding installations close to airports, and the State Aeronautics Act (Part 1 (commencing with Section 21001) of Division 9 of the Public Utilities Code).

8. The application shall include a line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the National Electric Code.

The amendments also establish additional development standards regarding view protection, aesthetics, aviation, and design safety requirements.

### Notice

Under the standard conditional use permit process, owners of property located within 300 feet of the lot boundaries of the SWES location would receive mailed notice of the public hearing on the requested conditional use permit. The proposed amendments also provide that, as allowed by Government Code Section 65892.13, if deemed necessary due to circumstances specific to the proposed installation, Planning and Development may also require that notice also be provided by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within Santa Barbara County. For example, this would be appropriate when the system would be significantly visible from public viewing areas or the standard notice requirement would not provide notice to nearby residential areas that might be adversely impacted by the system.

### Application Requirements

In addition to the normal application requirements for a conditional use permit, the amendments would also require additional information be submitted with any applications for SWES, including:

1. Information demonstrating that the system will be used primarily to reduce onsite consumption of electricity.
2. Evidence that the electric utility service provider that serves the proposed site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan to connect the system to the electricity grid.
3. A visual analysis of the proposed system as installed, demonstrating any visual impacts from one or more strategic vantage points. The visual analysis must also indicate the color treatment of the system's components and any visual screening incorporated into the project that is intended to lessen the system's visual prominence.

## **5.2 Wind Energy Conversion Systems (WECS)**

Articles II and IV currently do not address wind energy conversion systems (WECS) such that the proposed amendments to those Articles only add new ordinance sections addressing SWES. However, Article III does currently allow for similar wind energy conversion systems (WECS) under Sec. 35-300. Unlike SWES, these systems are limited to 50 feet in height and are not required to be located on lots one acre or more in size located outside of urbanized areas. WECS

are also not limited to one system per lot. The draft amendment to Article III proposes to amend the existing regulations regarding WECS in the following manner:

- The existing regulations allow for a single WECSs on residentially zoned property pursuant to a Major CUP. The new regulations **delete** this but allow for a SWES on residentially zoned land pursuant to a Major CUP.
- The existing regulations allow for a single WECS within commercial, industrial, mixed use, recreation and public utility zone districts subject to only a land use permit. The proposed regulations **delete** this provision, and require that such systems be processed as a SWES with a Minor CUP.
- The existing regulations allow for WECS with multiple turbines on the same parcel within commercial, industrial, mixed use, recreation and public utility zone district subject to an approved Minor CUP. The proposed regulations **retain** this provision.
- The existing regulations allow for WECS (with multiple turbines) on property zoned agriculture and resource management pursuant to a land use permit and pursuant to certain limitations (limited power output per turbine and per parcel, turbine spacing). The proposed regulations **retain** this provision as it relates to systems located in agricultural zones, but require that systems located in resource management zones are subject to the minor conditional use permit process.
- The existing regulations allow for WECS with a power output that exceeds 200 KW on agricultural and industrial zoned land subject to a Major CUP. The proposed regulations **retain** this provision.
- The proposed regulations would also update the existing development standards for WECS as well as add new ones.

### **5.3 Board of Architectural Review**

Under the conditional use permit process, projects may be referred to the County Board of Architectural Review (BAR) at the discretion of the planner processing the project. The project would also be reviewed by the BAR if the location fell under the Ridgeline/Hillside Development Guidelines (where there is a 16 foot decrease in elevation within 100 feet of the location of the structure). However, the height limit contained in the Guidelines (16 feet in inner-rural and rural areas; 25 feet in urban areas) would be pre-empted by the height limits in Government Code Section 65892.13 (65 feet on parcels between one and five acres; 80 feet on parcels of five acres or more). A SWES would also qualify as a structure requiring BAR review if located in the Article IV jurisdictional area.

### **6.0 ENVIRONMENTAL REVIEW**

Staff proposes that your Commission find these ordinance amendments exempt from the California Environmental Quality Act pursuant to Section 15308 of the State Guidelines for Implementation of CEQA. This section applies to actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for the protection of the environment.

The proposed regulations implement Government Code Section 65892.13 that allows local jurisdictions to adopt a permit process to allow the development of SWES. The section further provides that if a local jurisdiction fails to adopt such a permit process by July 1, 2002, then the jurisdiction must permit SWES as a matter of right subject to only the development standards contained in Section 65892.13 until such time as a local ordinance is adopted. The development standards contained in Section 65892.13 that must be utilized if the County fails to adopt a permit process are less restrictive than those contained in the proposed amendments.

The proposed amendments also require that SWES may only be permitted pursuant to a discretionary conditional use permit. Conditional use permits are discretionary applications such that the decision-maker may exercise discretion in deciding whether to approve or deny the proposed facility, and findings must be adopted to support the decision. To approve a conditional use permit the findings must include statements regarding the mitigation of environmental impacts, the lack of a detrimental impact on the surrounding area, and that if located in a rural area that the project is compatible and subordinate to scenic and rural character of the area.

Environmental review for SWES as part of the conditional use permit process will be conducted on a case-by-case basis such that the adoption of the proposed ordinance language will not create any significant environmental impacts. The amendment to Article III also reduces the potential number of wind energy conversion systems that may be allowed subject to only a ministerial land use permit.

Therefore, it is proposed that the Planning Commission accept Attachment A, a determination that CEQA Guidelines Section 15308 applies to the proposed amendments.

## **7.0 POLICY CONSISTENCY**

The primary issue that potentially will arise in the review of proposed SWES relates to the potential for impacts to aesthetics and public views. The adopted coastal, community and comprehensive Plans all contain goals and policies that require projects to be designed as located so as to minimize the potential for aesthetic impacts. The proposed amendments contain several development standards regarding the siting and construction of systems in order to minimize any visual impacts. These standards include, for example, painting the tower and equipment to blend with the surrounding landscape, locating the tower so that it does not project above visually prominent ridgelines, using natural landforms and vegetation to screen the system. These standards must be complied with in order for the system to be approved.

The development standards also require that the system be consistent with the noise levels established by the Noise Element of the Comprehensive Plan.

The proposed amendments require a discretionary conditional use permit and project specific environmental review for each proposed SWES. As part of this process, a policy consistency analysis will be performed during the review of the application, and projects will not be approved unless they are determined to be consistent with applicable policies, and the findings required for approval can be made.

The amendment to Article III regarding the existing regulations concerning wind energy conversion systems (WECS) would actually reduce the potential number of such systems approved subject to only a ministerial land use permit, and would add additional development standards to provide for additional protection of visual resources.

Therefore, these amendments may be found consistent with the applicable coastal, community and comprehensive plans.

## **8.0 ORDINANCE COMPLIANCE**

Government Code Section 65892.13 requires that any local ordinance adopted pursuant to this section may not require conditions on notice, tower height, setbacks, noise level, turbine approval, tower drawings, and engineering analysis or line drawings that are more restrictive than the standards contained in Section 65892.13. Section 65892.13 (f)(12) also states that "No other local ordinance, policy, or regulation shall be the basis for a local agency to deny the siting and operation of a small wind energy system under this subdivision."

The proposed amendments to Article II, III and IV are consistent with the limitations of Section 65892.13 as they relates to notice, setbacks, noise level, turbine approval, tower drawings, and engineering analysis or line drawings. However, the existing Articles are more restrictive than Section 65892.13 in regards to allowed tower height. Under the existing Articles, towers supporting wind turbines are considered similar to architectural projections and may only be allowed a maximum height of 50 feet unless a variance is granted (General Regulations - Height). Section 65892.13(d)(1)(B) allows tower heights of not more than 65 feet on parcels between one and five acres and not more than 80 feet on parcels of five acres or more. Therefore, a specific provision has been included in the amendments to Articles III and IV stating that towers associated with SWES are not subject to the height restrictions in the General Regulations section.

Government Code Section 65892.13(d)(3)(A) provides that a SWES shall not be allowed where otherwise prohibited by a local coastal program and any implementing regulations adopted pursuant to the California Coastal Act, Division 20 (commencing with Section 30000) of the Public Resources Code. On this basis, it is proposed that the height of a SWES located under the jurisdiction of Article II, the Coastal Zoning Ordinance, still be limited to 50 feet under the height restrictions of the General Regulations section unless a variance is granted. Article II, the Coastal Zoning Ordinance, is part of Santa Barbara County's Local Coastal Program that has been certified by the California Coastal Commission pursuant to the California Coastal Act. Also, the Coastal Act provisions, and the regulations providing for the adopting and implementing of Local

Coastal Programs, are located in the Public Resources Code, and therefore enjoys equal dignity with the Government Code.

## **9.0 PROCEDURES**

1. The Planning Commission may recommend approval, approval with revisions to text, or denial of staff recommendations for the proposed amendments to Articles II, III and IV.
2. Written recommendations and findings for text amendments to Articles II, III and IV must be transmitted to the Board of Supervisors pursuant to Government Code Section 65855.

## **10.0 APPEALS PROCEDURE**

Ordinance amendments are automatically forwarded to the Board of Supervisors for final action, therefore no appeal is required.

## **11.0 ATTACHMENTS**

- A. CEQA Exemption.
- B. Findings.
- C. Planning Commission Resolution recommending of adoption of Article II Ordinance Text Amendments including Exhibit 1, Article II Ordinance Amendment.
- D. Article III Ordinance Amendment.
- E. Article IV Ordinance Amendment.
- F. Government Code Section 65892.13



May 10, 2002

TO THE HONORABLE BOARD OF SUPERVISORS  
COUNTY OF SANTA BARBARA, CALIFORNIA

PLANNING COMMISSION  
HEARING OF MAY 1, 2002

**RE:** *Small Wind Energy Systems Ordinance Text Amendments, 02ORD-00000-00001, -00002, & -00003*

Hearing to consider the following ordinances amending the following:

- a) **02ORD-00000-00001**, Article II of Chapter 35 of the Santa Barbara County Code, amending Division 8, Services, Utilities and Other Related Facilities, to add a new Section 35-149 titled Small Wind Energy Systems;
- b) **02ORD-00000-00002**, Article III of Chapter 35 of the Santa Barbara County Code, amending Division 8, Energy Facilities, existing Section 35-300, Wind Energy Systems, and to add a new Section 35-301 titled Small Wind Energy Systems;
- c) **02ORD-00000-00003**, Article IV of the Santa Barbara County Code, amending Division 7, General Regulations, to add a new Section 34-474D titled Small Wind Energy Systems;

to implement new regulations allowing for the installation of Small Wind Energy Systems in the unincorporated portions of the County outside of urbanized areas as provided in Section 65892.13 of the Government Code and amend Article III (02ORD-00000-00002) to revise the existing permitting process regarding wind energy conversion systems, and to accept the Exemption pursuant to Section 15308 of the State Guidelines for Implementation of the California Environmental Quality Act.

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Dear Honorable Members of the Board of Supervisors:

At the Planning Commission hearing of May 1, 2002, Commissioner Tillman moved, seconded by Commissioner Oberdeck and carried by a vote of 5-0 to recommend that the Board of Supervisors:

1. Recommend that the Board of Supervisors find that these amendments are categorically exempt from the California Environmental Quality Act pursuant to Section 15308 of the Guidelines for Implementation of CEQA included in Attachment A of the staff report dated April 24, 2002;

2. Adopt the findings for approval of the proposed amendments included in Attachment B of the staff report dated April 24, 2002;
3. Adopt a recommending that the Board of Supervisors adopt 02ORD-00000-00001, amendments to Article II included in Attachment C of the staff report dated April 24, 2002, as revised at the hearing of May 1, 2002; and
4. Recommend that the Board of Supervisors adopt 02ORD-00000-00002 and 02ORD-00000-00003, amendments to Article III included in Attachment D and Article IV, included in Attachment E of the staff report dated April 24, 2002, as revised at the hearing of May 1, 2002.

Sincerely,

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Rita Bright  
Secretary Planning Commission

cc: Case File: 02ORD-00000-00001, -00002, -00003  
Planning Commission File  
Lisa Martin, Planning Technician  
Rita Bright, Deputy Director, Development Review  
David Allen, Deputy County Counsel  
Noel Langle, Management Specialist

**Attachments: Planning Commission Resolution No. 02-3**

RB:cm

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RESOLUTION OF THE SANTA BARBARA COUNTY PLANNING COMMISSION  
COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA

IN THE MATTER OF RECOMMENDING )  
AMENDMENTS TO THE SANTA BARBARA )  
COUNTY COASTAL ZONING ORDINANCE, ) RESOLUTION NO.: 02-3  
ARTICLE II OF CHAPTER 35 OF THE ) CASE NO.: 02ORD-00000-00005  
SANTA BARBARA COUNTY CODE TO )  
ADD REGULATIONS CONCERNING THE )  
CONSTRUCTION AND USE OF SMALL )  
WIND ENERGY SYSTEMS. )  
\_\_\_\_\_)

WITH REFERENCE TO THE FOLLOWING:

A. On January 7, 1980, by Resolution No. 80-12, the Board of Supervisors of the County of Santa Barbara adopted the Santa Barbara County Coastal Plan; and

B. On July 19, 1982, by Ordinance 3312, the Board of Supervisors of the County of Santa Barbara adopted the Santa Barbara County Coastal Zoning Ordinance, Article II of Chapter 35 of the Santa Barbara County Code; and

C. The Planning Commission now finds that it is in the interest of the orderly development of the County and important to the preservation of the health, safety and general welfare of the residents of the County to recommend that the Board of Supervisors amend the text of the Coastal Zoning Ordinance, Article II of Chapter 35 of the Santa Barbara County Code, as follows:

02ORD-00000-00001: Amend Article II of Chapter 35 of the Santa Barbara County Code, as follows:

1. Amend DIVISION 7, General Regulations, to add a new Section 35-149 titled Small Wind Energy Systems.

Said ordinance (Case Number 02ORD-00000-00001) is attached hereto as Exhibit 1 and is incorporated herein by reference.

D. The proposed amendments are consistent with the Coastal Act of 1976, the Santa Barbara County Coastal Plan, and the requirements of the State Planning and Zoning Laws.

E. The proposed amendments are in the interest of the general community welfare, since they will implement Government Code Section 65892.13 by providing a process to permit small wind energy systems without compromising community values, environmental quality, or the public health and safety.

F. This Commission has held a duly noticed public hearing, as required by Section 65854 of the Government Code, on the proposed amendments, at which hearing the amendments were explained and comments invited from the persons in attendance.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

1. The above recitations are true and correct.
2. Pursuant to the amendment initiation provisions of Article II, Section 35-180.3.4, the changes described have been initiated by the Director of Planning and Development as amendments to the Santa Barbara County Coastal Zoning Ordinance text (Article II).
3. Pursuant to the provisions of Section 65855 of the Government Code, this Commission recommends that the Board of Supervisors of the County of Santa Barbara, State of California, following the required noticed public hearing, approve and adopt the above mentioned recommendation of this Commission.
4. A certified copy of this resolution shall be transmitted to the Board of Supervisors.
5. The Chair of this Commission is hereby authorized and directed to sign and certify all maps, documents, and other materials in accordance with this resolution to show the above mentioned action by the Planning Commission.

PASSED, APPROVED AND ADOPTED this May 1, 2002  
by the following vote:

AYES: Robert Needham, Susan Jordan, Jon Tillman, Joe H. Valencia,  
Charles E. Oberdeck

NOES:

ABSTAIN:

ABSENT:

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Joe H. Valencia  
Chair of the Commission

ATTEST:

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Rita Bright  
Secretary to the Commission

APPROVED AS TO FORM:

STEPHEN SHANE STARK  
COUNTY COUNSEL

By \_\_\_\_\_  
Deputy County Counsel

EXHIBITS:

1. Proposed Ordinance - Article II (02ORD-00000-00001)

**ATTACHMENT D**

**NOTICE OF EXEMPTION**

TO: Santa Barbara County Clerk of the Board of Supervisors

FROM: Planning & Development  
Noel Langle, Management Specialist

The project or activity identified below is determined to be exempt from further environmental review requirements of the California Environmental Quality Act (CEQA) of 1970, as defined in the State and County Guidelines for the implementation of CEQA.

APN(s) : Not applicable.

Case No.: 02ORD-00000-00001, 02ORD-00000-00002, 02ORD-00000-00003

Location: The proposed ordinance amendments would apply to all unincorporated areas of Santa Barbara County.

Project Title: Small Wind Energy Systems Ordinance Text Amendments

Project Description: 02ORD-00000-00001 proposes to amend Division 7, General Regulations, of Article II of Chapter 35 of the Santa Barbara County Code (Coastal Zone) to add a new Section 35-149 titled Small Wind Energy Systems; 02ORD-00000-00002 proposes to amend Division 8, Energy Facilities, of Article III of Chapter 35 of the Santa Barbara County Code (Inland unincorporated areas, excluding Montecito) to amend Section 35-300 titled Wind Energy Conversion Systems and add a new Section 35-301 titled Small Wind Energy Systems; 02ORD-00000-00003 proposes to amend Division 7, General Regulations, of Article IV of Chapter 35 of the Santa Barbara County Code (Inland unincorporated areas of Montecito) to add a new Section 35-474D titled Small Wind Energy Systems.

Exempt Status: (Check one)

- Ministerial
- Statutory
- Categorical Exemption
- Emergency Project
- No Possibility of Significant Effect [§15061(b,3)]

Cite specific CEQA Guideline Section: 15308 regarding actions by regulatory agencies for protection of the environment.

Reasons to support exemption findings:

The proposed regulations implement Government Code Section 65892.13 that allows local jurisdictions to adopt a permit process to allow the development of SWES. This section further provides that if a local jurisdiction fails to adopt such a permit process by July 1, 2002, then the

jurisdiction must permit SWES as a matter of right subject to only the development standards contained in Section 63892.13 until such time as a local ordinance is adopted.

The development standards contained in Section 63892.13 that must be utilized if the County fails to adopt a permit process are less restrictive than those contained in the proposed amendments. The proposed amendments also require that SWES may only be permitted pursuant to a discretionary conditional use permit. Conditional use permits are discretionary applications such that the decision-maker may exercise discretion in deciding whether to approve or deny the proposed facility, and findings must be adopted to support the decision. To approve a conditional use permit the findings must include statements regarding the mitigation of environmental impacts, the lack of a detrimental impact on the surrounding area, and that if located in a rural area that the project is compatible and subordinate to scenic and rural character of the area.

Environmental review for SWES as part of the conditional use permit process will be conducted on a case-by-case basis such that the adoption of the proposed ordinance language will not create any significant environmental impacts.

The amendment to Article III also reduces the potential number of wind energy conversion systems that may be allowed subject to only a ministerial permit

Therefore, it is proposed that the Planning Commission accept Attachment A, a determination that CEQA Guidelines Section 15308 applies to the proposed amendments.

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Department/Division Representative	Date
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Acceptance Date: \_\_\_\_\_

Note: A copy of this form must be posted at P&D 6 days prior to a decision on the project. Upon project approval, this form must be filed with the County Clerk of the Board and posted by the Clerk of the Board for a period of 30 days to begin a 35 day statute of limitations on legal challenges.

distribution:      Hearing Support Staff  
                         Project file (when P&D permit is required)

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Date Filed by County Clerk

## **ATTACHMENT E: FINDINGS FOR APPROVAL**

### **CASE NOS. 02ORD-00000-00001, -00002 & -00003**

1. The proposed amendments will assist Planning & Development in accomplishing its goal to continually streamline, clarify, and update the land use regulatory process.
2. The proposed amendments are in the interest of the general community welfare, since the amendments will implement the requirements of Government Code Section 65892.13 regarding small wind energy systems without compromising community values, environmental quality, or the public health and safety. The proposed amendments include:
  - a) A permit process that requires discretionary review and analysis under the California Environmental Quality Act for individual applications.
  - b) Development standards that give decision-makers additional ability to regulate the siting of such facilities in order to minimize potential adverse impacts such as visual and noise.
3. The proposed amendments are consistent with the Santa Barbara County Comprehensive Plan including the Coastal Land Use Plan and adopted Community Plans, the requirements of State Planning and Zoning Laws, and Articles II, III and IV of Chapter 35 of the County Code, the zoning ordinances.
4. The proposed amendments are consistent with good zoning and planning practices to regulate land uses for the overall protection of the environment and community values.