

MINUTES OF THE SOLANO COUNTY PLANNING COMMISSION

Special Meeting of June 26, 2008

The special meeting of the Solano County Planning Commission was called to order at 7:00 p.m. in the Board of Supervisors' Chambers, Fairfield, California.

PRESENT: Commissioners Moore, Barnes, and Chairperson Barton

EXCUSED: Commissioner Mahoney

STAFF PRESENT: Mike Yankovich, Planning Program Manager; Ken Solomon, Contract Planner; Jim Laughlin, Deputy County Counsel; Kristine Letterman, Planning Commission Clerk

Items from the floor - none

APPROVAL OF THE MINUTES for the meeting of May 15, 2008 were approved with several corrections: Page 2, Harry Englebright should be listed as a Contract Planner and not as a representative of EDAW, and line 18 on page 61 should refer to Mr. Valdez not Mr. Fadl as the speaker.

The minutes of May 22, 2008 were approved with the following corrections: page 2 should refer to Harry Englebright as a Contract Planner and not as a representative of EDAW; page 3 of the index should reflect that the hearing pertains to the Draft General Plan and not the Draft EIR; line 24 on page 5 should refer to Chairperson Barton and not Commissioner McAndrew; line 12 on page 7 regarding a reference to an off the record discussion should be clarified by noting that the discussion related to the operation of the microphones, and was not a staff discussion about the proceedings; page 32, lines 5 and 18 referencing Rockville Trust Estates should read Rockville Trails Estates; page 51, line 19, the reference to Delva Ford should be Debra Ford; page 85, line 21 should also reflect Debra Ford not Delva Ford; page 135, line 1, the second number 16 should read 17; line 19 on page 155 should read Pippo not Quippel; and line 18 on page 4 should refer to Chairperson Barton not Commissioner McAndrew.

The minutes of May 29, 2008 were approved with several corrections: page 2 should reflect Commissioner Mahoney as an excused absence; line 16 on page 5 should read Chairperson Barton not member Barnes; line 18 on page 26 should read Ms. Guidotti not Mr. Guidotti; page 79, line 11, the word hardly should be heartily.

The approval of the minutes of June 5, 2008 were continued by the request of Commissioner Moore to allow for an expansion in the discussion on page 9 with regard to Commissioner Mahoney's comments.

1. **PUBLIC HEARING** to consider an appeal by **enXco** of the determination of the Zoning Administrator on the method by which, not the distance, wind turbine generator setbacks should be measured from a scenic roadway, property line, public road, transmission line, railroad, dwelling,

and other features or conditions. Wind turbine generator setbacks, as determined by the Zoning Administrator, are measured at the tip of the turbine blade in the 3 o'clock position when perpendicular to the setback line and calculated by measuring the full height of the wind turbine generator from ground level to the tip of the turbine blade in the 12 o'clock position.

Ken Solomon gave a brief description of staff's written report. He stated that enXco requests that the Commission consider accepting its interpretation of wind turbine setbacks from Highway 12, which would be measured at the base of the turbine tower, in place of the Zoning Administrator's interpretation. Otherwise, seven of the project turbines, numbered as B9-B12 and C1-C3 would not meet the Highway 12 setback because the blade of the turbines would extend up to approximately 152 feet into the setback area, depending on wind direction.

Mr. Solomon stated that to comply with the setback interpretation of the Zoning Administrator, enXco would need to relocate the seven turbines 152 feet southward. This, however, is not possible, as this would put the turbines at conflict with the turbine safety setback to the south. Setback waivers from the adjacent property owners would be necessary, but these, according to enXco, are presently unobtainable. Unless the appeal is upheld, enXco would be unable to install the seven turbines at the locations shown in the staff report. He noted that further details from enXco regarding the appeal are provided as Exhibit E in staff's report.

Mr. Solomon stated that due to other site constraints, according to enXco, the seven turbines cannot be relocated elsewhere within the project area. Elimination of the seven turbines is not a viable option, as they are under obligation to deliver 150MW of electricity that can be achieved only through installing all 75 of the project turbines.

Mr. Solomon stated that enXco claims that it had designed the Shiloh II project utilizing its setback interpretation, in the absence of direction from County regulations, and was unaware of the Zoning Administrator's setback interpretation. Another contention is that the seven turbines shown in Exhibit D1 in the staff report are in the same location identified in the Shiloh II EIR and, as a result, the visual impact for these turbines were already assessed and approved by the Planning Commission.

Commissioner Moore inquired about the determination made by the Zoning Administrator for setback criteria. Mr. Solomon explained that all of the existing wind projects that are within the jurisdiction of the county have been held to this standard. Commissioner Moore wanted to know if any of those projects were adjacent to a scenic roadway. Mr. Solomon stated that Shiloh II is the first project to have turbines abutting a scenic highway. Commissioner Moore commented that the applicant had no way of knowing that this was the Zoning Administrator's criteria unless it was documented in some way or transmitted to them verbally.

Mr. Yankovich noted that up until this point in time there has never been an issue with this particular interpretation. Commissioner Moore stated that he did not understand why this applicant is being subjected to making an appeal for something that they were not told was required. He wanted to know if the Environmental Impact Report (EIR) would have to be revisited if the commission were to set a standard that is different than what the applicant used.

Jim Laughlin explained that this is not an appeal of the commission's past action, it relates to one issue that was left unaddressed. He indicated that the applicant had one understanding of what standard would be applied, and the county had a different understanding. After the project was

approved that misunderstanding was discovered, and now it is back before the commission for review.

Commissioner Moore stated that he could see where there would be a misunderstanding on the applicant's part because the county never identified their position. He stated that if the Zoning Administrator needs help with setting a standard he would agree to the commission doing that, but he did not understand why this applicant is being subjected to this action.

Mr. Yankovich indicated that the measurement of height has always been at the 12 o'clock position from blade tip, and is not something that has changed. Commissioner Moore believed that height is an entirely different issue. He stated that the applicant knows that they have to meet FAA rules and regulations with regard to height. Mr. Moore stated that the applicant was told that the measurement was $\frac{1}{4}$ mile, and now staff is telling them $\frac{1}{4}$ mile minus 152 feet which is long after the entire process has been completed.

Jim Laughlin stated that when the commission approved this project they did not grant a waiver from existing standards. This is a matter of interpreting what was the existing standard at the time the project was approved.

Commissioner Moore stated that it is the county's responsibility for identifying the criteria which is $\frac{1}{4}$ mile. Staff did not specify $\frac{1}{4}$ mile to the edge of the structure or the centerline or to the blade tip.

Jim Laughlin stated that the county standard has always been $\frac{1}{4}$ mile, and the question is how is that standard measured.

Commissioner Moore stated that he believed the applicant took a reasonable course in setting the turbines back from the road $\frac{1}{4}$ mile, and have gone through the process and followed the rules and regulations in place at that time. He stated that his concern is not with the criteria, but with applying it to a project that has already gone through the process. Mr. Moore questioned if this would become a legal issue if the commission were to make a decision that puts this company in a situation where they lose 7 turbines.

Jim Laughlin explained that at the time the commission approved the use permit, they were not approving the exact location of every turbine, just turbines in general locations. After the project was approved, the applicant performed survey work and provided staff with the exact distances. These turbines would be near the edges of property lines and right-of-ways, and at that point staff discovered there was a problem with the number of feet available versus what the county standards were as applied by the Zoning Administrator.

Commissioner Barnes inquired about the locations of the turbines at the time of use permit approval. Jim Laughlin explained that at the time of any use permit approval, the commission only approves a site plan and does not approve a footprint or dimension drawings.

Commissioner Barnes stated that he did not understand why this information was not presented to the commission at the time of use permit approval so that the commission and the applicant would be informed.

Michael Yankovich explained that when a project comes before the commission the commission only sees preliminary plans. The specific plans are submitted at the time of building permit. He stated that an applicant does not put the engineering into their plans prior to the hearing because it is unknown if the application will be approved. Mr. Yankovich stated that this project is currently at the building permit stage. He noted that this process is standard with all projects that come before the commission where only preliminary plans are submitted.

Commissioner Barnes stated that this is the first time he could recall that staff has come back with this type of issue. Mr. Yankovich stated that this is the first time, and therefore, the commission will be setting a policy from this point forward.

Commissioner McAndrew mentioned that maybe the applicant should have come to county staff and inquired as to the location of the line of delineation. She inquired as to why this criteria is not included as part of the zoning regulations or in written procedure. Mr. Yankovich agreed that it would have been best to have this written or in ordinance form. He spoke to a survey that staff conducted of other jurisdictions with regard to this issue, and noted that only two out of the 7 surveyed have written policies. Commissioner McAndrew suggested that this might be something that should be incorporated into the General Plan update that is currently taking place.

Commissioner McAndrew referred to Exhibit A in the staff report stating that there is no language with regard to blade throw distance being used as an alternative. She said if the county is going to refer to the different ways of making a determination it would be incumbent upon the county to include this information.

Ken Solomon stated that the 3 times the turbine height setback requirement is a function of blade throw. It was based on a design that existed in the 1980's involving smaller turbines with less technology, which no longer exists. He said the blade throw of the particular model was three times compared to what today's turbines would throw, so it does include that standard. This is how the three times the turbine height setback came about.

Commissioner McAndrew stated that when the commission adopted the EIR it included a Statement of Overriding Considerations in regard to the scenic view corridor. She stated that it seems to her that this discussion before the commission tonight is moot because that Statement would cover this impact.

Mike Yankovich indicated that from an environmental standpoint staff would agree, and this is why the interpretation is being brought before the commission.

Commissioner McAndrew spoke with regard to Caltrans' future expansion and improvements along Highway 12, and inquired as to how this project will be impacted by that future expansion. If the commission makes a determination to allow these turbines closer to the roadway and Caltrans widens Highway 12, that would place the turbines even closer to the roadway. Mr. Yankovich stated that in the conversations that staff has had with Caltrans, the expansion would vary depending on the area of Highway 12. It could be as much as 60 feet to as little as 10 to 15 feet.

With regard to staff's earlier comments regarding the difference between a site plan and a finished engineering drawing, Commissioner Moore made note that he knows the difference between these two documents. He stated that the issue is with the specifications, and if the ¼ mile measurement

included the language “measured from tip of the blade at 3 o’clock” those specifications would have been easily understood. He stated that what is missing is that documentation. Mr. Moore said this is not the applicant’s fault, it is staff’s fault.

Chairperson Barton stated that she believed this commission and the county has shown over and over again their support for these types of projects. She stated that she did not believe it was a problem for the commission to make policy, but to affect the company at this stage is difficult. She inquired if there were other options for the commission to consider.

Mr. Yankovich stated that the project approved by the commission included fewer turbines than were initially requested by the applicant, so when staff and the applicant became aware of the situation, there was an expectation by staff that the turbines could be relocated in the areas where the other turbines were removed. However, the applicant has stated that for various reasons they could not do that, which left very little room for a compromise. Typically, in the past, waivers have been available from adjoining property owners because they were interested in having turbines and leases on their property. Staff’s position was that if enXco could get the waivers from the property owners to the south, there would be no problem and they could just move the turbines 152 feet and still have the project.

Chairperson Barton asked if there was some special dispensation that could be applied to this project only, but then to go ahead and support the further setback.

Jim Laughlin explained that what the commission is being asked to do is to interpret the county’s standard as it currently exists. He stated that there is always the possibility that if the commission believes the existing standard should be changed, they could amend those standards in the future and those new standards would then apply to all future projects. Mr. Laughlin stated that if the commission were to interpret the existing standard as going to the centerline it would not be giving special consideration to this project, it would just be an interpretation of the county’s existing standard. If the commission were to believe that a different standard should be applied to all future projects, staff could bring back a proposal for clarification and the commission could amend the existing standard.

Dennis Scullion, Southwest Region Director, enXco, stated that this project is at a critical point because the turbines are currently coming from overseas aboard cargo ships. He stated that they believed they had met all the requirements of the permit, and are now facing a situation where an interpretation of the setback rules are required. He stated that this causes serious problems for them.

Annie Mudge, attorney for enXco, stated that this project came before the commission in March of this year in which a use permit for 75 turbines was approved. She stated that that approval assumed a row of 15 turbines along Highway 12. She said that the EIR assumed in a visual analysis that those turbines would be located $\frac{1}{4}$ mile from the centerline of the turbine tower, which is depicted in the county’s own visual impact documents. The EIR showed the turbines to be located a $\frac{1}{4}$ mile from the right-of-way measured from the center of the tower, not from the blade tip at 3 o’clock, so the assumptions that went into the project approval included what they believed is a reasonable assumption of a $\frac{1}{4}$ mile measured from the center of the tower. She stated that this is the way the applicant understood the project was approved. Ms. Mudge stated that it was not until after project approval that they were told that staff has an interpretation of the setback that in fact

includes an additional 152 feet to include the length of the blade. She noted that this was not in written form or had ever been communicated to the applicant.

Ms. Mudge explained that they can accommodate this setback requirement for 8 of the 15 turbines along Highway 12, but it is not feasible for the remaining 7 turbines because of the setbacks to the south. She noted that this issue has never been interpreted before along Highway 12. She said it is their understanding that staff has verbally told other applicants about their interpretation of property line setbacks, but the county has never had occasion to interpret the scenic setback. Ms. Mudge stated that one option staff suggests is disallowing any blade overhang. She indicated that this option is not feasible at the present time and would eliminate 7 turbines. The second option is to measure the $\frac{1}{4}$ mile from the outer edge of the turbine tower. This would force the turbines into a very slight overhang of the property line setback to the south. She stated that the third option is the preferred option by the applicant. The applicant believes that this is the best option and the option by which the project was approved, which is to measure the $\frac{1}{4}$ mile from the center of the turbine tower. She said this option would involve an overhang of the blade into the scenic setback area. Ms. Mudge noted that a 4th option that was not discussed in the staff report, which they are willing to do, is to center the turbines in the middle of the two setbacks so that the blades would overhang slightly in both areas.

Ms. Mudge stated that because these rules have never been interpreted before, the commission is not overriding anything that is written in the code. She said the commission could allow an overhang into a property line setback should they choose to do so. She stated that the applicant would agree with Option 3 because it makes the most sense, given that it is the scenic setback and not the property line setback, and they believe it would resolve this issue and allow them to move forward.

Ms. Mudge explained that only 18% of the 5,800 acres are developable because of property line setbacks, safety setbacks, scenic setbacks, and other resource protection measures. So again, they believe that Option 3 makes the most sense, allowing a slight overhang into the northern scenic roadway setback.

Ms. Mudge mentioned that the applicant also did a survey of other jurisdictions and how they measure setbacks. She noted that their results were slightly different from staff's analysis. She indicated that Kern County has written rules that allow blade overhang into setbacks; Riverside County and Palm Springs also have written rules allowing overhang measuring from the centerline; SMUD also measures from the centerline. She stated that this appears to be an industry standard, but noted that they are aware there are jurisdictions that measure differently. Again, she noted that there are no written rules in Solano County, and assumed the normal way would be followed.

Ms. Mudge stated that this is not a unique or foreign concept, even in Solano County, since encroachments and overhangs are allowed into setbacks. She said there are sections of the code that allow for this in other context such as with accessory buildings and signs. She stated that they understand that staff has interpreted this one way with respect to property line setbacks, but they believe there has been a mutual agreement that this has never been interpreted with respect to scenic setbacks. She noted that property line setbacks are for safety and scenic setbacks are for visual impacts and are measured differently. She stated that blade overhang does not create a visual impact. She said that the visual simulations show that there is virtually no distinction from Highway 12 by looking at the gray vs. the green turbines.

Ms. Mudge stated that another argument in the staff report is that the siting plan does not allow for waivers. She stated that they agree that the siting plan does not allow for waivers from the scenic roadway setback, but they are not asking for a waiver, they are asking for an interpretation. She stated that Option 1 is not feasible and will cause significant impacts. The first impact is the significant environmental loss. She explained that these are 2 megawatt turbines, and losing 7 of them is 14 megawatts of renewable zero emissions energy which is enough to power 4,200 homes. It will impair PG&E's ability to meet its renewable portfolio standard, and is a lost opportunity to reduce green house gas emissions. She indicated that there are also economic losses. These 7 turbines will bring \$150,000 per year to landowners, which would be 3 million over the 20 year life of the project. She also noted the enormous cost of having to ship these turbines someplace else.

Ms. Mudge stated that staff's interpretation does not advance the scenic purpose of the setback and there is no improvement in visual impact. There would be a serious loss of clean energy without any corresponding public benefits. Ms. Mudge asked the commission to consider Option 3 which would allow a slight overhang and to allow the project to move forward.

Commissioner McAndrew inquired if the 7 turbines could be placed in the area where a number of turbines were previously removed. Ms. Mudge stated that they re-optimized the project and moved things around and now those sites are no longer available.

Commissioner McAndrew referred to Exhibit E in the staff report regarding the blade throw distance study. She stated that her concern is that the study was done on a GE turbine and the turbines the applicant is using are different. She said that she would have a hard time referring to this information because it is not accurate for the project at hand.

Ms. Mudge stated that Exhibit E is included in the report for illustrative purposes to show that engineers use the centerline of the tower to measure setbacks. It is merely to show that for all of the studies that were conducted and accepted by the county, even for property line setbacks for which this was prepared, the centerline of the tower was used.

Commissioner McAndrew urged the applicant in the future to question the county and get the specifications and not make assumptions.

Commissioner Barnes wanted to know how much this appeal hearing cost the applicant. Ms. Mudge stated that the appeal fee is \$150, but that fee is insignificant in comparison to the other expenses they incurred to get ready for this hearing. Mr. Barnes inquired about the cost of the application process. Ms. Mudge stated that it falls into the hundreds of thousands of dollars.

Commissioner Barnes stated that he believed the commission will be setting a precedent tonight. He stated that he felt the applicant has been wronged and should not have had to come before the commission.

Chairperson Barton opened the public hearing.

Janice Rogala, 7125 Birds Landing Road, Birds Landing, stated that 4 of the 7 turbines under discussion are located at the front of their property. She stated that they checked with the county when they first heard about the wind turbines and they were told that it was a recommended ½ mile setback. She said now they are hearing it is ¼ mile. They were assured by the county that the

measurement was at the blade at 3 o'clock. Ms. Rogala stated that last week was the first time they were approached about giving an easement for the Highway 12 turbines. She stated that she believes they have been victimized by the process. She stated that they believe the wind turbines will devalue their property and they are entitled to some compensation for that devaluation. Ms. Rogala stated that they believe the applicant needs to negotiate with them for the use of their property for the turbines that are blocking their view.

Alice Harron, PG&E, 245 Market Street, San Francisco, 94602, stated that PG&E has a contract with Shiloh II to receive 150 megawatts of wind energy. She stated that they expect an output of about 509,000 megawatt hours per year of wind energy. Ms. Harron noted that PG&E has counted this energy towards their California RPS goal. She stated that while they understand there is a setback issue, removing 14 megawatts of energy from their contract would result in approximately 47,000 megawatt hours per year less towards their RPS goal.

Ryan Drobek, Project Manager, Center of Energy Efficiency and Renewable Technology, 1904½ E Street, Sacramento, 95811, strongly urged the commission to uphold the appeal. He stated that his organization is made up of both environmental and renewable energy affiliates and are committed to promoting the use of clean energy to lessen impacts to the environment. Mr. Drobeck stated that he believed this project furthers this goal, and the environmental and economic benefits make Shiloh II a win-win for the people of Solano County.

Frankie Freese, 6498 Birds Landing Road, Birds Landing, 94512, stated that one thing that has been forgotten is the majority of time the wind blows from the west and so the blades will be behind the tower which will alleviate the concern about the 152 foot encroachment. She encouraged the commission to approve the project.

Alan Freese, 6498 Birds Landing Road, Birds Landing, 94572, stated that he has farmed around the wind turbines since they came to the Montezuma hills. He noted that they provide income to the landowners and make agriculture sustainable.

Since there were no further speakers, Chairperson Barton closed the public hearing.

Commissioner Barnes wanted to know if staff favored Option 3. Mr. Yankovich stated that this option is what the applicant is requesting, and if the commission prefers to go with this option staff would agree. He stated that after the commission makes a determination, staff will codify it in the zoning ordinance so there is no question in the future about where a measurement is taken. Mr. Yankovich stated that the options the commission have been given involve some type of setback waiver request either to the south or to the north. He said it will affect one, the other, or both. Mr. Yankovich stated that staff believes the safety setback which is to the south is the one the commission should uphold unless a waiver is obtained from the property owners to the south.

Commissioner McAndrew inquired in Option 2 if that will be measured from the base of the tower or from the center of the tower. Mr. Yankovich stated that the second motion in the staff report, which is Option 2, would measure the setback from the outside portion of the tower. And, another option, Option 3, would be to measure the setback from the center of the tower.

Commissioner McAndrew stated that the planning commission's staff report only shows two motions, not three. She believed that the most important point about this issue is an EIR has

already been adopted with a Statement of Overriding Considerations with regard to the scenic view corridor and she believed makes this entire meeting moot. She stated that there is no safety issue involved here as long as the setback does not encroach into the safety area. She suggested that the turbines be sited so that the measurement is made from the center of the tower. She said the county needs to address the inadequacies and incorporate language into the zoning regulations and be reflected in the general plan update.

Commissioner Moore stated that the motion that has been provided has too many opportunities for interpretation such as with having a pedestal or junction box on the side of the turbine. Someone would not know to measure it from that device or from the concrete, so the centerline of the turbine is the appropriate place for this particular issue. There is no question where that is, it is surveyed, everybody knows where it is, and there is no question about any other appendage that might be associated with the design of the towers as they change.

Mr. Moore stated that the one thing he would be concerned with in this particular motion is dealing with scenic roadway issues, and whatever wording is put together, the measurement to the center of the tower be related to scenic roadway setbacks with the understanding that regardless of the blade design, that would be the criteria for the setback even though that setback might involve blade overhang. He stated that when staff approaches the issue of developing a criteria for safety, throw rate would then have to be addressed and perhaps overhang would not be allowed, so this has to be something that is considered. He wanted to make sure that the wording with respect to overhang is added.

Commissioner Barnes stated that he would like staff to provide some language to the commission within the next 90 days that could be added to the zoning regulations to avoid this issue in the future.

A motion was made by Commissioner Moore and seconded by Commissioner McAndrew to uphold the appeal reversing the Zoning Administrator's determination and establishing that wind turbine setbacks from a scenic roadway shall be measured from the center of the turbine tower. The motion passed 4-0 with Commissioner Mahoney being absent.

2. **ANNOUNCEMENTS and REPORTS**

3. Since there was no further business, the meeting was **adjourned**.