

Code Section 65896 (**Exhibit C**), the state will also require those agencies which have not adopted an ordinance, or have adopted an ordinance after that date, to be audited on the number of applications received, the number approved, as well as on lot size and system specifications such as tower and system heights and generating capacity. The audit period will continue for a total of five years, until January 1, 2016.

Discussion:

Staff has prepared a draft ordinance based on input from other ordinances, industry information and standards, and consideration of the potential use for such systems within the county. The draft ordinance is basically compatible with state regulations; however, it differs by providing options and flexibility in the development of WECS, additional public safety requirements, and no requirement for public noticing other than for discretionary applications. The draft also provides standards for microturbines to be utilized for residential and smaller commercial development on lots less than one acre while state law does not address this use.

Any agency adopting an ordinance after January 1, 2011 will not be allowed to create regulations more restrictive than state law on matters of public notice, tower height, setback, noise level, visual effects, turbine approval, tower and line drawings, and engineering analysis. In addition, between this date and the time of adoption of a subsequent ordinance, the County will be required to approve a small WECS, which is one system with a rated capacity of up to 50 kilowatts, through ministerial permit only. As a result, failure on the County's part to adopt an ordinance prior to the deadline date will prevent it from complying with General Plan Measure LU-D that requires standards and discretionary review for the development of WECS to ensure compatibility with adjacent land uses and the protection of sensitive receptors.

Zoning Ordinance Update Process:

General Plan Implementation Measure PS-O directs staff to "develop standards for energy-efficient site development and construction." A draft WECS Ordinance was prepared by staff and released to the public on January 5, 2010 as part of Article 4 of the updated draft Zoning Ordinance (Special Use Regulations). Subsequent minor revisions have been made to this Article, but none that would significantly change the WECS Ordinance. Since the beginning of this year, weekly workshops have been held with the regulatory reform sub-committee of the Economic Development Advisory Committee (EDAC). The sub-committee members reviewed the ordinance, provided minimal comments, and approved it, as drafted. To date, no comments from the public have been received by staff.

Section 17.10.010 of the Zoning Ordinance requires any proposed amendments to the Ordinance to be initiated by either: A. an affected property owner; B. the Board of Supervisors; or C. the Planning Commission. The projected schedule for adoption of the comprehensive update to the Zoning Ordinance, authorized by the Board under Resolution 44-2008 (**Exhibit D**), will be sometime after the first of next year. In light of the state requirement for adoption of a WECS ordinance before the end of this year, staff is requesting the Planning Commission forward a recommendation to the Board to amend Chapter 17.14 (Miscellaneous Development Standards), by adopting the WECS Ordinance prior to adoption of the comprehensive Zoning Ordinance.

CEQA Discussion:

Under the General Plan EIR, development of new electric energy generating facilities were evaluated and found to have potential impacts that, specific to WECS, include impacts on the visual character of a site or its surroundings, disturbance to wildlife, exposure to seismic events, and operational noise. Mitigation Measure 5.6-6 and, by reference, 5.1-3(b) were implemented to reduce any impacts from all forms of electric energy generating facilities on adjacent incompatible land uses, but “without project- and site-specific information from all future facilities it would be speculative to determine whether all land use incompatibility impacts would be less than significant.” The resultant determination under the EIR was that impacts from development and operation of such facilities would be significant but unavoidable unless evaluated on a project-by-project basis.

The requirements for ministerial review under the draft ordinance conform to the policies of the General Plan and development and design standards under the Zoning Ordinance ensuring compatibility with adjacent land uses that meet or exceed the regulatory mandates of the state. Discretionary review, where required in Table 17.14.240.1 based on rated capacity of the WECS, will require larger and utility-scale WECS to be reviewed and approved on a project-by-project basis to ensure compatibility with adjacent land uses and protection of sensitive receptors, in compliance with Mitigation Measure 5.6-6 of the General Plan EIR.

Staff has prepared an Initial Study of the draft ordinance (**Exhibit E**). Based on the analysis in the Initial Study, staff will prepare a Negative Declaration for the adoption of said ordinance.

ATTACHMENTS

Attachment 1 Findings

Exhibit A Proposed WECS Ordinance (Section 17.14.240)

Exhibit B General Plan Policies

Exhibit C Government Code Section 65896

Exhibit D Resolution 44-2008

Exhibit E..... Initial Study (Environmental Checklist Form)

Exhibit F..... El Dorado County Annual Wind Power Map