From: Jesse Noell
To: opinion@madriverunion.com; Bohn, Rex; Fennell, Estelle; Bass, Virginia; Wilson, Mike; Madrone, Steve; Planning Clerk
Subject: Practice Direct Democracy /delay on Humboldt Wind until an informed vote of the people
Date: Friday, December 6, 2019 2:16:48 PM
Attachments: CUP info.docx

An overwhelming majority of people in Humboldt opposed the Humboldt Wind/TerraGen project at each meeting this year.

It is time that Supervisors delay their decision on Humboldt Wind and let the Humboldt County voters make the decision by direct democracy. Such a delay is contemplated by the CUP. (see below)

Last month in Wisconsin, residents invoked their right to direct democracy (see https://www.leadertelegram.com/news/front-page/clear-creek-passes-moratorium-on-wind-farm-development/article_1aad6fd8-8d24-5f0d-8389-74635a758792.html) :

'More than 100 people showed up for last week's meeting at Clear Creek Town Hall, with many calling for a moratorium to give residents more time to study the pros and cons of wind energy. After much discussion, town residents then voted 60-15 to direct the board to draft and approve a one-year moratorium.

"We were directed by the people to pass the moratorium, so we did," said Lotty Macik, town chairman. "It's one of the last forms of direct democracy we have."'

Likewise, it is time for Humboldt County Supervisors to stand down in order to assure citizen's rights to practice direct democracy.

Jesse Noell

Authority to Delay:

Permit Streamlining Act:

The Permit Streamlining Act (Section 65920, et seq.) establishes time limits within which the review and approval or denial of a conditional use permit proposal must occur. For instance, if an BIR was certified for a conditional use permit, the application must be acted upon within one hundred eighty days from the date of certification (Section 65950(a)(l)). A proposal for which a negative declaration was adopted or a CEQA exemption used must be acted upon within sixty days of that action (Section 65950(a)(2)(3)). A conditional use permit cannot be disapproved solely to comply with these deadlines.

The Permit Streamlining Act provides that failure to meet its deadlines will result in automatic approval of the conditional use permit (Section 65956(b)).

The Permit Streamlining Act does not apply to administrative appeals within a state or local agency (Section 65922). Therefore, if a permit is appealed to a higher body there is no strict time frame within which the appeal must be heard.

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California case law has established a number of fundamental principles relating to conditional use per mits. In addition to the basic uses permitted within a zoning district, a city or county zoning ordinance can provide other specified uses which may be permitted after consideration and resolution by an administrative agency that the proposed use is in the best interest of public convenience and necessity and will not be contrary to the public health, morals, or welfare *(Upton v. Gray* (1969) 269 Cal.App.2d 352).

As a quasi judicial act, the approval of a conditional use permit requires the board or administrator to adopt written findings to support their action. Whether the proposal has been approved or denied, the decision can be appealed to a higher body, usually the board of appeals, the planning commission, or city council, in accordance with the city or county zoning ordinance. The appeals body may reverse or affirm, wholly or partly, or may modify the decision, and may make such decision as should be made, and its action is final (Section 65903).

Section 65903 delegates to local legislative bodies the authority to establish procedures for an appeal but not the power to restrict the right of appeal. Thus, a county zoning ordinance cannot attempt to restrict the right of appeal to solely the applicant and exclude the general public,

especially adjacent property owners *(Concerned Citizens ofMurphys v. Jackson* (1977) 72 Cal.App.3d 1021).

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hich limit the applicant's authority to use the property. Under certain conditions, however, local governments may incorporate provisions from federal laws and broaden the range of uses permitted *(Sports Arena Properties, Inc. v. City ofSan Diego* (1985) 40 C.3d 808).

General Welfare Standard:
"The establishment, maintenance or conducting of the use for which a use permit is sought will not, under the particular case, be detrimental to the public welfare or injurious to property or improvements in the neigh borhood" *(Hawkins v. County of Marin* (1976) 54 Cal.App.3d 586).

Nuisance Standard:
"Any use found to be objectionable or incompatible with the character of the city and its environs due to noise, dust, odors or other undesirable characteris tics may be prohibited" *(Snow v. City ofGarden Grove* (1961) Cal.App.2d 496).

Written "findings of fact" are required in order to support the decision of the hearing body to approve or deny a conditional use permit *(Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 C.3d 506). Findings are the legal footprints left by local decision-makers to show how the decision-making process progressed from the initial facts to the decision. Findings are important. They "bridge the analytical gap between the raw evidence and ultimate decision" *(Topanga,* supra). **If the decision is challenged, a court will examine the evidence supporting the findings to determine whether the hearing body abused its discretion when acting on a conditional use permit. Such an abuse ofdiscretion is to be found when: (1) the. agency did not proceed in a manner prescribed by law; (2) the agency's decision is not supported by findings; and (3) the**

agency's findings are not supported by evidence in the administrative record.

Just as there are limitations in approving a conditional use permit, there are also limitations in establish ing conditions of approval. Four general rules of thumb in applying conditions of approval include: (1) the jurisdiction must be acting within its police powers; (2) the condition must substantially further a legitimate public purpose; (3) the condition must further the same public purpose for which it was imposed; and (4) the property owner may not be required to carry a disproportionate load in furthering the public purpose (*Cali fornia Land-Use and Planning Law*, 9th edition).

For a detailed discussion of findings requirements, see OPR' s publication entitled *Bridging the Gap.*