

RESOLUTION 88-2023

COPY

A RESOLUTION IMPOSING A TEMPORARY MORATORIUM ON WASHINGTON COUNTY'S PROCESSING OF APPLICATIONS FOR BATTERY ENERGY STORAGE SYSTEMS IN ALL UNINCORPORATED PORTIONS OF WASHINGTON COUNTY PENDING CONSIDERATION OF AMENDMENTS TO THE WASHINGTON COUNTY ZONING REGULATIONS

WHEREAS, the development of battery energy storage systems (BESS) is a rapidly developing and evolving industry across Colorado and particularly in unincorporated areas with substantial open agricultural land;

WHEREAS, the use of agricultural and other large tracts of land for BESS has a significant impact on the health, safety and welfare of the citizens of Washington County (the "County") in a number of ways, including without limitation loss of land for traditional agricultural uses, increased noise and traffic, reduced, fragmented, or degraded habitat for wildlife, fish, and plants, noxious weeds and other disturbances, and potential impacts on air, water, soil, floodplains, water, storm water, drainage and erosion control, and commitment to agricultural production;

WHEREAS, in its role administrating the County transportation system, the County is concerned about the potential increased impacts due to increased wear and tear on roads from heavy truck traffic used to install and maintain BESS resulting in greater need for road and bridge improvements and maintenance;

WHEREAS, the Local Government Land Use Control Enabling Act, C.R.S. § 29-20-101 *et seq.*, provides the County with the broad authority to plan for and regulate the use of land in order to provide for orderly development while balancing the health, safety and welfare of its citizens;

WHEREAS, the Local Government Land Use Control Enabling Act authorizes local governments within their respective jurisdictions to plan for and regulate the use of land by, among other actions, regulating development and activities in hazardous areas; protecting land from activities that would cause immediate or foreseeable material danger to significant wildlife habitat; regulating the use of land on the basis of the impact thereof on the community or surrounding areas; and otherwise planning for and regulating the use of land so as to provide for the planned and orderly use of land;

WHEREAS, the Board believes it has the responsibility to its residents to plan for and regulate the use of land for the purposes laid out in the Local Government Land Use Control Enabling Act as well as those purposes specified in other applicable state and federal statutes and common law grants of authority, and to promote the health, safety and general welfare of its residents;

WHEREAS, the Board, pursuant to its land use authority, has from time to time adopted planning, zoning and other regulations governing land use in the unincorporated portions of the County;

WHEREAS, the County currently has no zoning regulations specifically regulating BESS;

WHEREAS, the County needs a reasonable period of time to consider regulating BESS in an orderly manner to protect the public's health, safety and welfare;

WHEREAS, the Board estimates that the time needed to perform the appropriate study and to determine appropriate BESS regulations is approximately six (6) months;

WHEREAS, if applications requesting review and approval of BESS are submitted prior to the County having adequate time to conduct the appropriate studies and adopt appropriate regulations, the Board believes irreparable harm will be done to the public health, safety and welfare;

WHEREAS, the U.S. Supreme Court and the Colorado Supreme Court recognize that in the field of land use regulation, temporary moratoria of reasonable duration are often employed to preserve the status quo in a particular area while developing a long-term plan for development;

WHEREAS, in countering the incentive of property owners to develop their property quickly to avoid the consequences of an impending land use plan for the jurisdiction, moratoria are a crucial tool for local governments and, therefore, pursuant to express and implied authority granted by the Colorado Revised Statutes and multiple Colorado and federal legal decisions upholding temporary moratoria on land use applications while amendments are considered, the Board has the legal authority to adopt a temporary moratorium in this situation;

WHEREAS, at its meeting on December 18, 2023, the Washington County Planning Commission recommended that the Board of County Commissioners impose a moratorium on applications for BESS; and

WHEREAS, in light of the foregoing recitals and findings, after a duly noticed public meeting held on December 27, 2023, the Board desires to adopt this temporary moratorium to protect the public health, safety, and welfare, and to avoid development which, during the County's planning and land use regulation amendment process, may contravene the results of this study and process put the public at risk.

NOW BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF WASHINGTON COUNTY, COLORADO:

1. This temporary moratorium shall take effect immediately. The County shall not accept, process, or approve any applications for uses of land that involve the development of BESS.
2. This temporary moratorium shall remain in place until July 1, 2024, unless terminated or extended.
3. County staff is hereby directed to work with the Washington County Planning Commission to analyze and develop regulations addressing BESS sufficient to protect the public health, safety and welfare.

DATED this 27th day of December, 2023.

**BOARD OF COUNTY COMMISSIONERS
WASHINGTON COUNTY, COLORADO**

Lea Ann Laybourn

Lea Ann Laybourn, Chairman

Kent Vance

Kent Vance, Commissioner.

Gisele Jefferson

Gisele Jefferson, Commissioner

ATTEST:

Annie Kuntz

Annie Kuntz, Clerk to the Board

