



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

Chris Bazar
Agency Director

Agenda Item: 56 March 10, 2015

Albert Lopez
Planning Director

224
West Winton Ave
Room 111

Hayward
California
94544

phone
510.670.5400

fax
510.785.8793

www.acgov.org/cda

February 27, 2015

Honorable Board of Supervisors
County of Alameda
1221 Oak Street, Suite 536
Oakland, CA 94612

Dear Board Members:

SUBJECT: Appeal by Audubon California from the decision of the East County Board of Zoning Adjustments (EBZA) to certify the Supplemental Environmental Impact Report (SEIR) for Conditional Use Permit, PLN2014-00028, application of Altamont Winds Inc. for modifications to existing conditional use permits (extension to October 31, 2018, of permits currently set to expire on October 31, 2015), for 828 turbines owned and operated by Altamont Winds Inc. located throughout the approximately 14,436-acre Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), with a rated capacity of approximately 85.8 megawatts (MW), bearing numerous Assessor's Parcel Numbers and different owners as shown in the attachments.

RECOMMENDATION:

East County Board of Zoning Adjustments (EBZA): On February 2, 2015 the EBZA certified the Supplemental Environmental Impact Report (SEIR), by a vote of two in favor and one opposed.

Planning Department Recommendation: Staff recommends that the Board of Supervisors uphold the certification of the SEIR by the EBZA.

SUMMARY:

Proposal: To extend 16 conditional use permits (CUPs) for three (3) years, through October 31, 2018, under specified conditions, beyond their current expiration date of October 31, 2015, for operation of an estimated 828 existing utility-scale wind turbines with a combined existing (current) generation capacity of 85.8 megawatts (MW).

General Plan and Zoning: The APWRA is subject to the East County Area Plan (ECAP), within which it is designated Large Parcel Agriculture (LPA), permitting among other uses, "windfarms and related facilities" The zoning designation of the APWRA is a combination of A-BE 160 and A-BE-320 (Agriculture, Minimum Building Site Area 160 and 320 acres, respectively), which allows windfarms (privately-owned wind electric generators) as conditional uses.

Background, Including CEQA Status: The Board of Supervisors approved 29 CUPs in 2005, of which 14 contained turbines owned or beneficially-owned by AWI or its affiliate WindWorks, Inc., subject to various and numerous conditions, including phased decommissioning requirements in expectation of repowering (replacing the older turbines with fewer, larger and more efficient turbines), with 10 percent of its 920 turbines removed by 2009 (92 turbines), an

Board of Supervisors

Appeal of Audubon California and Regional Affiliates, of the Certification of the Supplemental EIR for Altamont Winds Inc. Application PLN2014-00028, for Permit Modifications (Extension to 2018)

March 10, 2014

Page 2

additional 25 percent removed by September 30, 2013 (230 more), another 50 percent of the original turbine number (for a cumulative total of 85 percent or 782 turbines) by September 30, 2015, and the remaining 15 percent of turbines (138) by September 30, 2018. Another two CUPs (C-8216 and C-8243) for AWI turbines on properties owned by the Alameda County Waste Management Authority (ACWMA), were approved in early 2006 subject to the same conditions.¹ After litigation by a coalition of environmental organizations in 2006, a Settlement Agreement was approved in 2007 by the Board of Supervisors and three wind energy companies, that required greater commitments to repowering and cessation of most of their operations after 2015, but also eliminated their decommissioning requirements. AWI was not one of the Settling Parties, and under modifications approved by the Board of Supervisors to implement the Settlement Agreement (Resolution R-2007-111) AWI therefore remained subject to the 2005 CUP requirements for phased decommissioning. As required in late 2009, AWI shut down and discontinued operation of 92 turbines, thereby resulting in the current operation of 828 turbines, with a rated or nameplate capacity of 85.8 MW.

In July 2011, AWI applied for modifications to its CUPs to eliminate its requirements for phased decommissioning and proposed to eliminate the winter season shutdown. To be consistent with the aspect of the Settlement Agreement that required the other three operators to cease operations after 2015, AWI also proposed to cease operations of its turbines on October 31, 2015. An EIR was prepared to evaluate these CUP modification proposals, ongoing operations and future decommissioning impacts associated with repowering (required by the Board's Resolutions in 2005 and 2007), including three alternatives: No Project; permanent shutdown as proposed in 2015 with retention of the winter season shutdown (applicable to all other alternatives); termination on October 31, 2016; and termination on October 1, 2018 (consistent with expiration date of the CUPs as approved in 2005 and amended in 2007). Only the No Project alternative would continue the phased decommissioning requirement. The EBZA held a public hearing and certified the Final EIR (FEIR) on July 18, 2013, and approved the modifications, with continued winter seasonal shutdown, and some other conditions.

The 2013 EIR and the decision by the EBZA to approve the request by AWI was in large part based on a comparison of the 2011 proposal and four alternatives, including the No Project Alternative, using total MWs of installed capacity, over the five-year period of October 2013 through 2018, as a common metric that could also be linked *generally*² and proportionally to anticipated levels of avian mortality, including the fatality of the four focal raptor species that have been a major focus of Avian Mortality Reporting since 2006. The Supplemental EIR, prepared in 2014 and made final in 2015 with its certification by the EBZA on February 2, 2015, used the same metric – total installed capacity – to estimate the level of avian mortality likely to result from the proposed CUP extensions through 2018.

In 2014, AWI applied for new modifications to its CUPs, to allow implementation of Alternative 3 as described in the prior 2013 EIR, that provided for operation through October 1, 2018 (and requested operation through October 31, 2018, the last day prior to the winter season shutdown as scheduled since November 1, 2008). The County determined that a Supplemental Environmental Impact Report (SEIR) would be required to address continued operations only and not the effects of decommissioning addressed

¹ Distinguished in this case because the CUPs on properties owned by the Waste Management Authority were withdrawn from the application at the hearing and all of AWI's assets under those CUPs were conveyed to Green Ridge Power LLC as part of an asset exchange completed on February 23, 2015.

² Mortality rates for the 2013 proposed project, without a winter season shutdown, were deemed to be under-estimated, because mortality rates were derived from years in which the winter season shutdown was at least partly in effect, and it is well-established that use and migration by most avian species increases substantially in the winter.

in the 2013 EIR; provide the basis for findings related to operations through 2018; incorporate new mitigation options; and provide for appropriate public review.

East County Board of Zoning Adjustments Hearing: On February 2, 2015 the EBZA held a hearing to consider the SEIR, and after deliberation, voted to certify the SEIR with two votes in favor and one opposed. The Members voting in favor had achieved consensus that the SEIR provided them with sufficient information to make a decision about the proposed project, and that it was complete and complied with CEQA requirements. The vote against certification appeared to be based on the perception by the dissenting Board Member that substantial additional testimony had been submitted at the hearing, such that he could not support the required finding that no new comments or information had been submitted that would change the analysis or conclusions of the Final SEIR (Finding # 8). He supported all other findings made for certification.

Appeal: Audubon California and a number of regional chapters of the Audubon Society appealed the decision by the EBZA on February 2, 2015 to certify the SEIR. The appeal letter asserts in eight bullet point paragraphs that the SEIR does not meet the requirements of CEQA, and is inadequate in the following respects:

1. It relies on an incorrect baseline, that results in underestimation of bird mortality due to the project;
2. It underestimates bird mortality due to a flawed analysis method;
3. The SEIR does not acknowledge that the golden eagle population has an overall mortality rate of 12 percent per year, whereas the U.S. Fish and Wildlife Service (USFWS) has indicated that a mortality rate in excess of 5 percent per year is not sustainable;
4. It does not adequately identify and assess all of the significant impacts attributable to the project;
5. It does not adequately assess cumulative impacts;
6. It fails to adequately identify potential and feasible mitigation measures to address project impacts;
7. It defers and/or inadequately describes the identified mitigation measures, such that the public and decision-makers could not effectively assess their adequacy; and
8. It did not recognize additional project impacts, including the potential delay of repowering of the APWRA, disruption of monitoring efforts, and its conflict with the rationale used for approval of the 2013 modifications.

Discussion. The appeal essentially reiterates the same comments that were submitted to the County on the Draft SEIR, and does not raise issues that were not addressed in the Response to Comments Section of the Final SEIR. With respect to the first comment (# 1 above), the Appellant had previously expressed objection to using the baseline used in the 2013 EIR, that the baseline instead should be conditions without any turbines operating in the period 2016 to 2018, consistent with the approval in 2013 to terminate all turbine operations after October 31, 2015. As stated in the Final SEIR/Response to Comments (Master Response 2), the SEIR is a *Supplement* to the 2013 FEIR, and as such the baseline used in the SEIR is primarily the same baseline as described in the 2013 FEIR. Although a different baseline would be appropriate for a *new* EIR, it is not advisable CEQA practice to consider a different baseline for a *Supplemental EIR*.

It should be recognized that the 2013 baseline represented continued but very limited operation of AWI's turbines through 2018, with phased decommissioning (460 turbines operating during 2014 and 2015,

which would have been reduced to 138 operating during the years 2016 to 2018). Consistent with the 2013 EIR, the SEIR simply compares the proposed permit extension across the MWs of installed nameplate capacity that would be operated *over the total remaining months and years of each alternative* across the five years between October 2013 and October 2018, and also enables comparison between the 2013 approved CUP modifications – the baseline the Appellant requests – and the proposed CUP extension.

The statement that the SEIR employs a flawed analysis of projected bird mortality is based on an apparent mis-understanding, addressed in Master Response 2 of the Final SEIR, that the rates were based on only a portion (0.708) of a “MW-year” that is defined in the annual APWRA-wide Avian Mortality Monitoring Reports, and that the analysis reflects a “subtraction” of the projected bird mortality. In fact, as stated above, the analysis simply added up the installed capacity that could operate over the five-year period, as shown in Table 3-2 in the Final SEIR, with MWs ranging from 116.5 MWs under the prior CUPs as approved in 2005, to 128.7 MWs in the years 2014 to 2015 for the current CUPs, to 311 MWs under the proposed CUP extensions. No “subtraction” was made, and the method is fundamentally sound and consistent with the 2013 certified EIR.

With respect to the third statement by the Appellants, regarding the golden eagle mortality rate, the FSEIR, in Master Response 5 (Cumulative Impacts discussion), acknowledges the proposed CUP extensions would have significant, cumulative and unavoidable adverse impacts on the broad ecological character of the APWRA, including a number of golden eagle fatalities that would be severe through the life of the CUP extensions. However, it was pointed out in the Final SEIR and it remains appropriate CEQA practice to avoid adding a substantially different baseline model of analysis to the SEIR – which is a *Supplement* to the prior 2013 EIR.

The fourth and fifth specific comments made by the Appellant generally reiterate the view that the SEIR was incomplete in identifying the impacts of the CUP extensions, to which County staff can only repeat that the SEIR does recognize the significant, cumulative and unavoidable adverse impacts, and that furthermore, additional analysis would not result in a different determination. The subsequent criticism that the mitigation measures identified in the SEIR are inadequate or infeasible refers to prior comments by the Appellants (on the Draft SEIR) that greater certainty and accountability is required to support the proposed Mitigation Measures. In recognition of this criticism, Mitigation Measure BIO-17a was modified for the SEIR to require greater accountability, if the Applicant did not choose power pole retrofits (Mitigation Measure BIO-17) as the only means of mitigation its avian impacts. In addition, BIO-17a is an additional measure unique to the SEIR (i.e., not in the 2013 EIR) that was added in recognition that the impacts of the CUP extensions would be more severe and substantially greater than the “baseline” effects of the current CUPs. Mitigation Measure BIO-17a would enable the Applicant to mitigate avian mortality through certain conservation options, that could involve either applying for an eagle take permit from the USFWS, or completing a Resource Equivalency Analysis (REA) that would identify appropriate avian habitat conservation strategies including contributions to regional raptor habitat conservation. The Final SEIR specifies that if the Applicant opts to use BIO-17a, the REA must be completed and approved within six months by the USFWS and the County.

The final point raised by the Appellants is that the SEIR does not address the potential impacts that the extension could have on repowering by other companies in the APWRA, and conflicts with the rationale

Board of Supervisors

Appeal of Audubon California and Regional Affiliates, of the Certification of the Supplemental EIR for Altamont Winds Inc. Application PLN2014-00028, for Permit Modifications (Extension to 2018)

March 10, 2014

Page 5

used in 2013 to approve the previous use permit modifications. Planning staff do not consider the coordination and sequencing of repowering activities to represent potential environmental impacts. With the transfer of assets, and cessation of operations south of I-580, there would be no delay of repowering of the Golden Hills I project area, which is the only approved repowering project that overlaps with AWI's turbines.

Recommendation: Staff recommends that the Board of Supervisors uphold the certification of the SEIR by the EBZA.

The complete record is attached.

Very truly yours,



Chris Bazar, Director
Community Development Agency

Attachments

cc: Audubon California
Altamont Winds., Inc.
East County Board of Zoning Adjustments