



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

Chris Bazar
Agency Director

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

Memorandum

To: Altamont Pass Wind Resource Area Scientific Review Committee (SRC)
CC: Board of Zoning Adjustments – East County
Altamont Winds, Inc., Altamont Infrastructure Co.
From: Sandra Rivera, Assistant Planning Director
Date: October 15, 2009
Re: SRC Discussion on Altamont Winds, Inc. (AWI) Analysis on Avian Mortality Reduction as it relates to their Third-Year Review of 16 Conditional Use Permits, Windworks, Inc. & Altamont Infrastructure Company, LLC – PLN2009-00120

Background: At the public hearing on the above-referenced application on September 17, 2009 the East County Board of Zoning Adjustments (EBZA) continued the matter to a date to be determined, with the following motion:

That the Third-Year Review of the Conditional Use Permits held by Windworks Inc. and Altamont Infrastructure Co. LLC be continued to a subsequent hearing with a request that at least one representative from the Altamont Pass Wind Resource Area Scientific Review Committee (APWRA SRC) be available at the hearing to address questions (related to the AWI analysis on avian mortality reduction) and report on the SRC's process of making decisions, at a date to be determined by staff and depending on the availability of SRC members, and for which relevant information expected to be read and understood by the BZA members in advance of the hearing shall be provided to the BZA by 5:00 p.m. on the Friday prior to the hearing (or posted to the BZA members by U.S. mail that day) and any information submitted at a later time or date will be considered only as verbal testimony submitted at the hearing itself.

Although the EBZA had scheduled a hearing on the Third-Year Review of the 16 CUPs for turbines owned by Windworks (and its affiliate Altamont Winds, Inc. (AWI)¹ in April 2009, an extensive letter was submitted by Dr. Shawn Smallwood, a member of the SRC, just prior to the hearing which disputed the findings and recommendations of the Staff Report for that hearing, and as a result, the matter was continued to its next meeting without discussion to enable Staff to prepare a response to the letter and its attachments. Dr. Smallwood's letter was not limited to the Third-Year Review, but addressed all of the County's CUPs for wind energy operations, and asserted that the County and the wind companies had failed to adopt or implement the SRC's recommendations and severely compromised its effectiveness by various means. A comment letter had also been submitted by CALifornians for Renewable Energy (CARE) which requested that the subject CUPs be revoked for non-compliance with

¹ Altamont Infrastructure Company, LLC (AIC) is also an applicant because it holds 14 CUPs for properties with turbines that include both AWI turbines and other operator's turbines. However, AIC is only a management company, and only AWI is responsible for meeting the requirements of the Third-Year Review of the 16 CUPs, because it is a Non-Settling Company under the terms of the Settlement Agreement.

the terms of the Resolution adopted by the Board of Supervisors in September 2005 (and the subsequent January 2007 Resolution which set aside the requirement for the Third-Year Review of the Settling Parties but not for the Non-Settling Party, i.e., AWI).

Discussion: At the September 17, 2009 hearing Staff presented the Supplement to the prior Staff Report to respond to Dr. Smallwood's and CARE's comments. The Supplement also reported that AWI would relocate 31 high-risk turbines (ranked as HRT-10, -9.5 and -9) to lower risk locations (from which derelict turbines had been removed). However, AWI had requested that before it completed the relocation of those turbines, the SRC should review recent research by AWI and its researchers, that there was an 85% reduction in the number of bird deaths found among the focal species (golden eagle, red-tailed hawk, American kestrel and burrowing owl) for the first seven months of 2009, as compared to the first seven months of 2007. To validate the necessity of removing the 31 HRT-ranked turbines, AWI asked for a scientifically-supported analysis that would conclude that the reduction of avian mortality between 2007 and 2009 was not substantial. In response to this request as presented in the Supplement and further comments by Dr. Smallwood, the Golden Gate Audubon Society asked that the SRC review the avian mortality data that AWI had provided (attached).

In addition, the EBZA members determined that they did not have an adequate understanding of how the SRC operates or makes decisions and recommendations, and decided to request a verbal report from the SRC on its processes and obstacles that it faces to serving in its capacity as an independent panel of experts tasked with developing strategies to reduce avian injury and fatalities in the APWRA. It therefore approved a motion to continue the matter to a future hearing when at least one SRC member could be present to report on the SRC's activities and be able to respond to questions from the EBZA members.

At the next meeting of the EBZA on October 22, 2009, Staff will present a request by AWI to amend the provisions of the continuance, specifically to replace the request that a representative from the SRC attend a hearing on the Third-Year Review, with a request that a representative of the EBZA attend a meeting of the SRC. The Applicant believes that the EBZA's objective of obtaining information on how the SRC operates and how it makes decisions and recommendations to the County on wind farm operations would be best served by having a BZA member attend a meeting of the SRC.

Planning Staff is not opposed to the request to amend the provisions of the EBZA's action to continue the Third-Year Review, to replace the objective of having an SRC member make a report to and answer questions for the EBZA, with having a member of the EBZA attend a meeting of the SRC and be able to observe the deliberations of the SRC and ask questions of any one of the SRC members. Staff recognizes the potential merit of an EBZA member attending an SRC meeting, either as a simple reversal as requested, or as an additional "exchange" of information that would supplement a presentation by an SRC member to the EBZA. However, it is more common or 'natural' for an advisory body such as the SRC or one of its representatives to appear before a decision-making body such as the EBZA.

Next Steps: Staff requests that the SRC provide comments to the EBZA regarding the August 20, 2009 letter report from AWI (attached). As part of this response, it is important that the SRC make recommendations to confirm the necessity and rationale for relocating the 31 individual AWI turbines that have been ranked as HRT-10, -9.5 and -9,

Secondly, assuming that the EBZA retains the provisions of its continuance to request that a member of the SRC attend a hearing on the Third-Year Review of AWI's permits and turbines, the SRC should select one or two of its members to attend the EBZA hearing on November 19, 2009 or December 10, 2009.