



**ALAMEDA COUNTY COMMUNITY DEVELOPMENT
AGENCY
PLANNING DEPARTMENT**

Decision of the Planning Director

Removal and Relocation of High Risk Turbines and Towers in the Altamont Pass Wind Resource Area (APWRA) and Adaptive Management Plan Requirements

Planning File Name(s): C-8161, C-8201, C-8203, C-8233, C-8234, C-8235, C-8236, C-8237, C-8238, C-8239, C-8241, C-8244, C-8023, C-8036, C-8037, C-8134, C-8136, C-8137, C-8173, C-8182, C-8225, C-8231, C-8232, C-8240, C-8263, C-8243

Lead County Staff:

Sandra Rivera, Assistant Deputy Director, Planning Department, (510) 670-5400

Location/Zoning/General Plan Land Use Designation:

Parcels located in the APWRA where wind turbines are owned beneficially solely by EDF (formerly enXco) or Forebay Wind/FloDesign Wind Turbine (formerly SeaWest Power Resources, LLC). Parcels are designated as Large Parcel Agriculture under the *East County Area Plan* and Agriculture under the County Zoning Ordinance.

Relevant Dates:

On November 13, 2003 and on January 29, 2004, the East County Board of Zoning Adjustments (EBZA) approved CUPs for the continued maintenance and operation of wind turbines in APWRA. On September 22, 2005, the Alameda County Board of Supervisors (County) upheld the EBZA decision with inclusion of several conditions. A lawsuit was filed against the County to set aside the issuance of the CUPs. After extensive negotiations, a Settlement Agreement was agreed to in November 2006. On January 11, 2007, the County modified the CUPs of the Settling Party wind companies consistent with the terms of the Settlement Agreement. In October 2007, the Settlement Parties began mediation, and Agreed to Terminate Mediation in October 2008. On March 10, 2011, the EBZA modified the Conditional Use Permits to incorporate conditions from the widely discussed Adaptive Management Plan.

Background:

In 2007, the Scientific Review Committee (SRC) had established a rating system for turbines in order to identify turbines that, because of topographic, siting or other geographical factors, are at higher risk of causing avian fatalities. The goal of the rankings was to prioritize higher-risk turbines for removal or relocation. The full SRC or an SRC subcommittee went to the field to rank turbines in 2007 and 2010.

Most, but not all, turbines have been ranked. The AMP established a schedule, based on the rankings, for periodic removals or relocations of turbines, beginning with those ranked highest.

The AMP, adopted pursuant to Condition 7 of the 26 amended Conditional Use Permits (CUPs) modified by Resolution R-2007-111, states that the SRC shall consider on the ground conditions of High Risk Turbines (HRTs) ranked 8.0 and make recommendations on their removal or relocation by the dates in Section 1 of the AMP. Section 1 (d) (iii) of Exhibit G-1.a Addendum for Settling Parties states, in part, the following:

- A. ESI shall have removed its HRTs ranked 8.0 (up to 98 HRTs), if and as recommended by the SRC.
- B. enXco shall have removed its HRTs ranked 8.0 (up to 44 HRTs), if and as recommended by the SRC.
- C. SeaWest shall have removed its HRTs ranked 8.0 (up to 20 HRTs), if and as recommended by the SRC.

In October 2012, EDF (formerly enXco) notified the County that it had removed 14 HRTs ranked 8.0 and requested (letter attached), as provided in Section 1 (f) of the AMP, additional credit for removing 42 wind turbines, unranked or ranked 7.0 or less, as part of a repowering effort. Section 1 (f) of Exhibit G-1.a Addendum for Settling Parties states the following:

- (f) If a wind company removes HRTs for purposes of a repowering project or to otherwise satisfy a requirement of section 6, then the County, in consultation with the SRC, will grant that wind company credit for removals of HRTs ranked 8 or greater as part of a repowering project or to otherwise satisfy a requirement of section 6 and the wind company will be eligible to receive credit for such removals toward the removal requirements in section 1(d), as determined by the County based on recommendations of the SRC. Notwithstanding the foregoing, Sections 1.d(ii) and (iii) shall not apply to ESI if it removes turbines for Phase I of its repowering plan by February 15, 2012.

On December 5, 2012, at the SRC in-person meeting, the SRC discussed and considered the HRT turbines owned by EDF (formerly enXco) and ForeBay Wind/FloDesign (formerly SeaWest). The involved turbines include four turbines owned by ForeBay Wind/FloDesign, and 44 turbines owned by EDF. ESI completed Phase I of its repowering plan in 2012 and is not subject to Section 1 (d) (iii) A of Exhibit G-1.a Addendum for Settling Parties.

SRC Recommendations:

The SRC agreed to recommend an exemption for four 8.0 ForebayWind/FloDesign turbines the Adaptive Management Plan had identified for removal, because the turbines are part of a study to test whether a new turbine design reduces avian mortality.

EDF has 38 turbines (remaining as of the December 5th meeting) the Adaptive Management Plan identified for removal/relocation. EDF had requested a credit toward these removals, because it has removed 56 turbines, an entire project area responsible for seven golden eagle fatalities. All SRC members agreed to recommend accepting credit for 32 of the 38 turbines. All turbines had less than three associated fatalities. The SRC looked intensively at 6 additional turbines, which either had three associated fatalities or two golden eagle fatalities. The SRC had a split recommendation:

- Two SRC members recommended removing the 6 turbines, as called for under the Adaptive Management Plan;
- Two SRC members recommended accepting the full EDF credit request;
- One SRC member abstained.

Public Comment:

The California Department of Fish and Game (DFG) had concerns that each of the 38 HRT 8.0-ranked turbines was not reviewed individually. There was expressed interest in removing 8.0-ranked HRTs that had associated Golden Eagle and other Migratory Bird Treaty Act species fatalities.

The US Fish and Wildlife Service expressed support for the EDF credit of the 32 8.0-ranked HRTs and recommended removal of the 8.0-ranked HRTs that have associated Golden Eagle fatalities.

Evaluation:

The SRC recommended exempting Forebay Wind from the AMP removal requirements because the turbines are controls in the FloDesign avian mortality study, which is funded by the California Energy Commission – PIER. The recommendation is consistent with the County's goal of encouraging research regarding strategies to reduce bird fatalities and injuries for consideration and potential incorporation into the AWPRAs.

As provided by the AMP, the SRC members agreed to grant credit for 32 of the 38 8.0-ranked HRTs. However, after extensive deliberation, the SRC was unable to reach a consensus recommendation on granting EDF credit for the remaining six 8.0-ranked HRTs. In consideration of the differing SRC viewpoints and the Resource Agency representative comments, staff supports granting additional credit for three of the six 8.0-ranked HRTs that do not have associated Golden Eagle fatalities.

Staff notes that the monitoring team and facilitation team reviewed the meeting notes and revised the list of EDF 8.0-ranked HRTs - Table P257 (attached) to correct some turbine labels and ID numbers. The six turbines identified by the SRC for close review are: 306/1344, 305/1343, 1211/178, 1210/177, and 298/3402. The turbines identified with associated Golden Eagle fatalities and are subject to removal are:

306/1344, 305/1343, and 1205/172. Turbine 306/1344 had no Golden Eagles fatalities directly associated with it but is an end-row turbine with an adjacent turbine showing two Golden Eagle fatalities. Staff would also note that turbine 1205/172 was incorrectly removed from the list of turbines that were closely reviewed by the SRC due to confusion about turbine IDs. Based on the criteria noted, staff has included the turbine for removal.

Decision:

Based upon the recommendations, discussions, and available information set forth above, it is concluded that the Conditional Use Permits – Adaptive Management Plan condition Section 1 (d) (iii) of Exhibit G-1.a Addendum for Settling Parties require the following actions:

EDF (formerly enXco) is required to remove three of its HRT-ranked 8.0 turbines, which are identified as turbine numbers 306/1344, 305/1343, and 1205/172.

EDF is granted credit for the remaining HRT-ranked 8.0 turbines per provisions of Section 1 (f) of Exhibit G-1.a Addendum for Settling Parties.

Forebay Wind/FloDesign (formerly SeaWest) will keep the four HRTs ranked 8.0 for research purposes.

Appeal Procedures/Expiration:

Any person who is adversely affected or aggrieved by this decision may appeal the decision pursuant to Condition 5 of the 26 amended Conditional Use Permits (CUPs) modified by Resolution R-2007-111 . The Planning Director’s decision will become effective unless an appeal is received within 10 days of the date of this decision. In this case, any appeal must be received by March 15, 2013, at the County Planning Department, 224 W. Winton Avenue, Rm. 111, Hayward, 94544, or with the Clerk of the Board, Alameda County Board of Supervisors, Administration Building, 1221 Oak Street, Oakland, 94612.