

THE HONORABLE BOARD OF SUPERVISORS

Form 11A

APPEAL of Commercial WECS Permit No. 3R2 & Variance 1735

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The project evolved a number of times during county staff and Planning Commission review. One of the more significant evolutions during this time was the submission of a Substantial Conformance application in July 2002 which sought to allow four of the original WECS3R1 ten WECS to be installed in locations closer to the easterly lot lines, provided an adjoining residence was removed. This substantial conformance application was ultimately approved, after appeal by nearby property owner, by the Board in September 2002. The adjoining residence was removed. As a result, the four WECS subject to that substantial conformance were constructed, being in conformance with WECS setback and other requirements. This brought the total authorized and existing WECS on the property to seven.

Construction activities for the seven WECS (three outright permitted and four allowed through substantial conformance) and one additional WECS (still under consideration under WECS3R2) proceeded during August 2002. While construction permits were obtained, actual construction work exceeded the scope of these permits, such as significant expansion of grading for access roadways. Code Enforcement action and stop work orders were issued due to public complaints.

The project returned to the Planning Commission on September 12, 2002. The applicant at this time sought approval of the newly constructed, un-permitted access roadways, relocation of the remaining three WECS with variance approval and extension of the permit's life from 2021 to 2031. Staff recommended the project be continued due to lack of department clearances including unresolved issues, including the grading and widening of the access roadways. The commission heard public testimony regarding the un-permitted grading and construction work, excessive fugitive dust, noise problems, negative visual impacts of wind turbines, lighting concerns, and alleged truck traffic damage to streets. The Planning Commission expressed considerable irritation with the extensive scale of un-permitted work. The applicant was not present at this hearing to offer explanations, although staff had advised the applicant to be present. The Planning Commission denied the project based on the finding that it was not consistent with the public health, safety and welfare.

Shortly after September 12, 2002, the Planning Department forwarded a Notice of Decision to the Board of Supervisors agenda. Within the time frame established by ordinance, the applicant filed an appeal, submitting the appeal on October 17, 2002. Concurrently, the applicant withdrew Variance Case No. 1735 and changed the name of the applicant from "Whitewater Energy Corporation" to "Cannon Power Corporation".

Since the time of the Planning Commission action in September, the applicant's representative, Krieger & Stewart, Inc., has worked with staff to address outstanding issues and complete an initial study and proposed mitigated negative declaration for EA 38694. Additional information from Krieger & Stewart has included a Rehabilitation Plan, a clearance letter from the California Department of Fish & Game, and a revised PM10 Plan. The applicant has submitted an amended exhibit which deleted the three remaining approved, but not constructed, WECS authorized under WECS3R1 (the one WECS which started construction prior to commission hearing has been

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removed from the property). The applicant also requests approval for the "as-built" access roadways with appropriate environmental mitigation and extension of the permit's life to 2031.

Planning staff has been able to complete an initial study and proposed mitigated negative declaration for EA 38694 and has prepared conditions of approval for the revised WECS permit for your Board's consideration. Staff notes that the proposed mitigated negative declaration will need to be circulated with the state CEQA Clearinghouse due to required streambed alteration permits from the Department of Fish & Game, a responsible agency. This circulation period for state agencies is a minimum of 30 days, not including transit and administration time.

Recognizing the Planning Commission's denial action, the recommendation by Planning Department staff is indicated below. However, given the applicant's actions to modify the project, your Board may wish to consider alternative actions with regards to this project given the new situation since the commission's action.

Your Board may consider the following actions with regards to this project:

1. Agree with the Planning Commission's denial action and deny the appeal and deny the project as recommended. No further actions by staff or the Planning Commission being necessary.
2. Refer this project back to the Planning Commission for reconsideration with a new public hearing for the revised WECS permit and proposed mitigated negative declaration. The action of the commission would later be placed on your Board's future agenda as an administrative action item as provided by ordinance.
3. Refer this project back to the Planning Commission for a report, without public hearing, with direction to Planning Department staff to circulate the attached initial study and proposed mitigated declaration with the state CEQA Clearinghouse and have the Clerk of the Board re-advertise this project (30 day advertising period) for Board hearing.
4. Direct the Planning Department staff to circulate the attached initial study and proposed mitigated negative declaration with the state CEQA Clearinghouse and have the Clerk of the Board re-advertise this project (30 day advertising period) for Board hearing.

CONTROVERSIAL ISSUES: Opposition to the wind turbines from surrounding residents, unpermitted grading for new service roads in areas of high slope, fugitive dust, visual impacts, noise and lighting. The Planning Commission denied the request for revised WECS permit based on discussion and public testimony. As a result of the denial, the developer filed an appeal to the Board of Supervisors.

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RECOMMENDED MOTION:

**The Planning Department recommended Discussion and Continuance; but
THE PLANNING COMMISSION BY UNANIMOUS VOTE RECOMMENDS:**

DENIAL of FAST TRACK VARIANCE CASE NO. 1735; and

DENIAL of FAST TRACK COMMERCIAL WECS PERMIT NO. 3, REVISED PERMIT NO. 2; and

DENIAL of APPLICANT'S APPEAL of the Planning Commission's above action, based upon the finding that the project is contrary to the public health, safety and welfare.

**COUNTY OF RIVERSIDE
TRANSPORTATION AND LAND MANAGEMENT AGENCY
PLANNING DEPARTMENT**

APPLICATION FOR APPEAL

RE: CASE NO: COMMERCIAL WECS PERMIT NO. 3, REVISION NO. 2 (WCS00003R2)

ATTACHMENT REGARDING BASIS FOR APPEAL:

The Project Applicant, Cannon Power Corporation (Cannon), is appealing the Riverside County Planning Commission's decision to deny Commercial WECS Permit No. 3, Revision No. 2. Said project was denied despite a recommendation from the Planning Department and a request from Cannon (via a letter from the Project Engineer, Krieger & Stewart) to continue the item (Item 3.5 on the 9/12/2002 Planning Commission Meeting Agenda). The reason Cannon asked the Planning Commission for a continuance was two fold: first, Cannon had just assumed responsibilities of the project from the previous applicant (Whitewater Energy Corporation) and was not fully aware of the issues under discussion, and second, to change the scope of the Revised Permit request. Cannon is withdrawing the previous request to relocate approved, but not constructed wind turbines as a part of WECS Permit No. 3, Revision No. 2. More specifically, Cannon withdraws the previous request to relocate wind turbine V-101 to the south end of "U" row and rename it U-104, and to relocate wind turbine X-107. In fact, because of the objection from adjacent landowners regarding WTG X-107, Cannon will eliminate WTG X-107 as well as V-101 from the project. Cannon is therefore also withdrawing the request for a variance. Consequently, Cannon's only request for WECS Permit No. 3, Revision No. 2 is to extend the life of the permit and obtain County approval for the current as-built road configuration.

With regard to the request for extension of the permit life, Commercial WECS Permit No. 3, Revision No. 1 was approved by the County Board of Supervisors on July 24, 2001. Condition of Approval 20.PLANNING.2 terminates the permit on July 1, 2021. However, the site lease for the project, the expected turbine life, and the financing plan all run longer than the term of the approved permit. More specifically, the site lease expires July 1, 2031, the turbine life is a minimum of 20 years (according to the manufacturer's conservative guarantee), and the financing plan is based on the term of the lease. If any of the turbines were not functioning properly after 20 years, Cannon (or the project owner) would be able to replace the applicable major components to extend the turbine(s) life to July 1, 2031. Therefore, Applicant proposes to extend the life of WECS Permit No. 3 (approved) from July 1, 2021 until July 1, 2031 so that all these dates are coterminous.

With regard to approval of the as-built road configuration, the original project grading plan was prepared in February 2002 and was subsequently approved by the County's Building and Safety Department. At that time, the project construction team was not fully in place and the equipment that was to be utilized had not yet been determined. When construction finally commenced in the summer of 2002 (grading permits were pulled on June 27, 2002), the site superintendent became concerned that the equipment he was using (large cranes and low-boy trucks) could not safely traverse the slopes as shown in the approved grading plan (slopes were about 13 to 14%); he therefore proceeded with construction of what he considered a different but equivalent road system. He proceeded with the understanding (mistakenly) that the as-graded condition could be submitted to Riverside County for their records, and at that time he would pay any additional fees required for any additional grading and site disturbance.

Cannon has now stepped in and assumed full responsibility for resolving all permitting and grading issues in connection with the project. Even though the grading is complete, Cannon is taking all steps necessary to mitigate for the completed work and to satisfy the various impacted County Departments and outside agencies, including:

1. The project biologist, AMEC, which has been on site continuously during all construction on the site, did perform a clearance survey prior to grading commencing and has prepared a report documenting same.
2. Cannon has notified the California Department of Fish and Game (DF&G) and has conducted a site visit with them. They have also submitted to the DF&G an application for a streambed Alteration Agreement. DF&G has indicated that some of the ravines that were crossed are within their jurisdiction but is not riparian habitat. They have already provided their mitigation requirements and Cannon is prepared to fully comply.
3. The project geotechnical engineer has prepared a report addressing the new access roads and has performed extensive testing of the roads. In their report, they have recommended some minor remediation including applying a soil stabilizer to the new slopes and regrading any fill slopes that are less than 2:1 to make them a minimum of 2:1. The geotechnical engineer has contacted Wayne Harrison, the County Geologist, and has advised him of their findings and recommendations. The project geologist's report has been submitted to planning staff; a separate submittal will be made directly to the County Geologist.
4. A revised grading plan has been prepared reflecting the as-graded condition and was submitted to the Riverside County Building & Safety Department on July 29, 2002.
5. At the request of the County staff and DF&G, a Site Rehabilitation and Revegetation plan has been prepared.

Cannon's goal is to obtain approvals just as if proper County protocol was followed and the revised grading was approved prior to work commencing. To that end, Cannon has committed to undertake and perform the mitigation measures recommended by the project biologist, geologist, and the Department of Fish and Game, as well as any remediation proposed by the County. Based on that commitment and undertaking, Cannon requests that the Board of Supervisors approve Commercial WECS Permit No. 3, Revision No. 2.

cc: Paul Clark, Riverside County Planning Department
Gary Hardke, Cannon Power Corporation
Kenneth Graff, Board of Supervisors Office

MINUTE ORDER: SEPTEMBER 12, 2002
INDIO - REGULAR MEETING

- I. AGENDA ITEM 3.5 FAST TRACK COMMERCIAL WECS PERMIT NO. 00003, REVISED PERMIT NO. 2 - (FTA#01-08) - EA 38694** - Whitewater Energy, Corp. - Third Supervisorial District - Painted Hills Zoning District - Located northerly of Interstate 10, westerly of Highway 62, southerly of 16th Street - 165 Acres - W-E Zone - REQUEST: Relocate seven approved, but not constructed, WECS (wind turbines) at a height of approximately 330 feet within an existing WECS array.

WITH

FAST TRACK VARIANCE CASE NO. 01735 (FTA#01-08) - EA 38694 - Whitewater Energy, Corp. - Third Supervisorial District - Painted Hills Zoning District - Located northerly of Interstate 10, westerly of Highway 62, southerly of 16th Street - 165 Acres - W-E Zone - REQUEST: Variance to Section 18.41d of Ordinance 348 to reduce safety setbacks from 1.1 times total WECS height from adjoining lot line (362 feet) to 50 feet and reduce safety setbacks from 3 times total WECS height from adjoining lot line with a habitable dwelling (987 feet) to 520 feet.

II. MEETING SUMMARY

The following staff presented the subject proposal:

Jay Olivas, Indio Planning Department
Paul Clark, Principal Planner; Indio
Bob Lyman, Regional Office Manager; Indio

The following spoke in opposition to the subject proposal:

Samantha Ireland, Wallace L. Hannibal, Les Starks, representing Painted Hills did not speak; gave their 3 minutes to Joyce Manley.
Sam Millett representing Painted Hills
Kendon Jacobs representing himself
Joyce Manley representing Painted Hills

III. CONTROVERSIAL ISSUES:

None

IV. PLANNING COMMISSION ACTION:

The Planning Commission, by a vote of 5-0, Denied Fast Track Commercial WECS Permit No. 00003, Revised Permit No. 2 (FTA #01-08)- EA 38694 WITH Fast Track Variance Case No. 01735 (FTA#01-08)

V. TAPES:

The entire discussion of this agenda item can be found on Tape Nos. 2A and 2B. For a copy of the tapes, please contact Dorothy Bradberry, Planning Commission Secretary, at (909) 955-3251.

**MINUTE ORDER: JULY 10, 2002
DESERT - REGULAR MEETING**

I. AGENDA ITEM 4.6: FAST TRACK COMMERCIAL WECS PERMIT NO. 00003, REVISED PERMIT NO. 2 - (FTA #01-08)/FAST TRACK VARIANCE NO. 1735 (FTA #01-08).

II. PROJECT DESCRIPTION: This WECS Permit with Variance requests to relocate seven approved, but not constructed WECS (wind turbines) at a height of approximately 330 feet within an existing WECS array. The Variance requests that a variance to Section 18.41d of Ordinance 348 to reduce safety setbacks from 1.1 times total WECS height from adjoining lot line with a habitable dwelling (987 feet) to 520 feet.

III. MEETING SUMMARY:

The following staff presented the subject proposal:

Jay Olivas, Planning Department, Indio, California.

The following spoke in favor to the subject proposal:

Patrick Watson 3602 University Ave. Riverside, CA 92501

The following spoke in a neutral position to the subject proposal:

Ernie Blank 19826 Buttonwillow Drive Canoga Park, CA 91306

The following spoke in opposition to the subject proposal:

| | | |
|------------------|-------------------------|---------------------------|
| Joyce Manley | 15401 Painted Hills Rd. | Whitewater, CA 92282 |
| Samantha Ireland | P.O. Box 580464 | N. Palm Springs, CA |
| Les Starks | 15981 Snow Creek Rd. | Whitewater, CA 92282 |
| Wallace Hannibal | 15581 Desert View Rd. | Whitewater, CA 92282 |
| Pete Wright | 60875 Fairview | N. Palm Springs, CA 92258 |
| John Warner | P.O. Box 580387 | N. Palm Springs, CA 92258 |
| Kendon Jacobs | 15775 Desert View Rd. | Whitewater, CA 92282 |

IV. CONTROVERSIAL ISSUES:

Noise, turbine fires, encroachment on residents, property values, quality of life.

V. PLANNING COMMISSION ACTION:

The Planning Commission, by a vote of 4-0 (Chairman Snell absent) CONTINUED this project to *Thursday*, September 12, 2002.

VI. TAPES:

The entire discussion of this agenda item can be found on Tape No. 5B, 6A and 6B. For a copy of the tape, please contact Donna Matlock, Planning Commission Secretary, at (909) 955-3251.

Zoning District: Painted Hills
Existing Supervisorial District: Third
Future Supervisorial District: Fifth
Regional Team No.: Three
Project Planner: Jay T. Olivas

FAST TRACK COMMERCIAL WECS PERMIT
NO. 3, REVISED PERMIT NO. 2 (FTA#01-08)
FAST TRACK VARIANCE CASE NO. 1735
E.A. Number: 38694
Planning Commission: September 12, 2002
(Continued from July 10, 2002)
Agenda Item No.: 3.2
Applicant: Whitewater Energy Corporation
Engineer/Rep.: Krieger & Stewart

COUNTY OF RIVERSIDE PLANNING DEPARTMENT STAFF REPORT

PROJECT DESCRIPTION:

Fast Track Commercial WECS Permit No. 3, Revised Permit No. 2 proposes to modify the configuration of the access roads to the turbine sites and relocate two approved, but not constructed, WECS (wind turbines) at a height of approximately 330 feet within an existing WECS array located northerly of Interstate 10, westerly of Marion Road, southerly of Avenue 16.

Fast Track Variance Case No. 1735 proposes to modify Section 18.41d of Ordinance No. 348 to reduce safety setbacks from 1.1 times total WECS height from adjoining lot line (362 feet) to 50 feet and reduce safety setbacks from 3 times total WECS height from a habitable dwelling (987 feet) to 520 feet.

FURTHER PLANNING CONSIDERATIONS (9/12/02):

As the result of recent grading and building activity on the project site, and proposed changes to the revised WECS permit, the applicant has submitted new site plan exhibits (Amended No. 2). The revised exhibits reflect reconfiguration of the service roads to the turbine sites based on "as built" conditions along with the revised location of two turbines. The new service roads were built to provide access for construction equipment and for transporting turbine components to the individual building sites for previously approved WECS. In addition to the reconfigured roads, the revised exhibits propose to relocate two turbines, including turbine V-101 from the central portion of the site to the southerly portion of the property (renamed "U-104") and relocate turbine X-107 further to the west to a potential "alternative location", which may be used, or X-107 may remain in the same location as previously approved. The previous request for RVP #2 was to relocate seven approved, unbuilt turbines further to the west; the proposal now is to relocate two turbines along with the variance request to reduce safety setback requirements.

The project is recommended to be continued due to the recent amended exhibits which have not received department clearances, due to the lack of an updated biology report with mitigation measures which addresses newly disturbed areas (i.e. access roads) and potential crossing of jurisdictional waters including blue-line streams, and lack of a re-stabilization plan for the slope areas. This additional information is recommended in order to complete Environmental Assessment No. 38694. Due to potential impacts to jurisdictional waters, which may cause involvement from the California Department of Fish & Game and U.S. Fish and Wildlife Service, EA38694 may be required to be circulated with the state clearinghouse for a 30 day review period.