

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA** 326 B



FROM: TLMA/Planning Department

SUBMITTAL DATE: June 10, 2003

SUBJECT: APPEAL of FAST TRACK COMMERCIAL WECS PERMIT NO. 3, REVISED PERMIT NO. 2 and FAST TRACK VARIANCE CASE NO. 1735 (FTA#01-08) - EA38694 - Cannon Power Corporation - Fifth Supervisorial District - Painted Hills Zoning District - 165 Acres - W-E Zone - Northerly of Interstate 10, southerly of Avenue 16 and westerly of Highway 62 - REQUEST: Modify configuration of the access roads to existing WECS (wind turbine) sites and relocate approved, but not constructed, WECS at a height of approximately 330 feet, within an existing WECS array and a variance request to Section 18.41d of Ordinance No. 348 to reduce safety setbacks from 1.1 times total WECS height measured from adjoining lot line (362 feet) to 50 feet and reduce safety setbacks from 3 times total WECS height from a lot line of a lot containing a habitable dwelling (987 feet) to 520 feet.

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, scaled back the project and withdrew the variance application.

BACKGROUND: On April 29, 2003, your Board continued the Appeal of Fast Track Commercial WECS Permit No. 3, Revised Permit No. 2, with its related variance to June 17, 2003. At that time, staff was directed to circulate the completed initial study for Environmental Assessment (EA) No. 38694 with the State CEQA Clearinghouse and re-advertize the project. Since that time, staff has completed the circulation and re-advertisement. No comments have been received from any state agencies.

REVIEWED BY EXECUTIVE OFFICE

DATE 6-11-03 KAL



Ron Goldman, Interim Planning Director
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Policy
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Consent
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Department Recommendation:

Per Executive Office:

COUNTY OF RIVERSIDE
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EXECUTIVE

THE HONORABLE BOARD OF SUPERVISORS

Form 11A

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

PAGE 2 of 6

Commercial WECS Permit No. 3, Revised Permit No. 2 (WECS3R2), along with Variance Case No. 1735, was submitted on May 22, 2002. Previous approvals for this property included 55 existing smaller WECS authorized in the early 1980s under Commercial WECS Permit No. 3; the 55 pre-existing WECS are 110 feet in height. Commercial WECS Permit No. 3, Revised Permit No. 1 (WECS3R1), approved an additional ten WECS at an approximate height of 330 feet in 2001. Of the ten WECS approved by WECS3R1, three were constructed, being in compliance with WECS setback and other requirements. WECS3R2, with related variance, sought to allow the relocation of the remaining seven WECS to locations generally closer to exterior lot lines. The variance sought to reduce safety setbacks from 1.1 times total WECS height from adjoining lot lines (362 feet) to 50 feet and reduce safety setbacks from 3 times total WECS height from lot lines of a lot containing a habitable dwelling (987 feet) to 520 feet, impacting property to the south and east.

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.

THE HONORABLE BOARD OF SUPERVISORS

Form 11A

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

PAGE 3 of 6

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 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.

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 approval of the project given the new situation since the commission's action. Staff has provided an alternative approval recommendation, as indicated below:

RECOMMENDED MOTION REFLECTING PLANNING COMMISSION ACTION:

**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;
based upon the finding that the project is contrary to the public health, safety and welfare.**

ALTERNATIVE RECOMMENDED MOTION TO APPROVE:

The Planning Department recommends:

ADOPTION of a De Minimis Finding as follows: An Initial Study has been prepared by the Riverside County Planning Department for the project described in Environmental Assessment No. 38694, so as to evaluate the potential for adverse environmental impact, and, while there is evidence that the proposed project will have a potential for non-significant adverse effect on

THE HONORABLE BOARD OF SUPERVISORS

Form 11A

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

PAGE 4 of 6

wildlife resources, payment of appropriate fees required by the Fish and Game Code have been previously paid; and

ADOPTION of a **MITIGATED NEGATIVE DECLARATION NO. 38694**, based on the findings incorporated in the initial study and the conclusion that the project will not have a significant effect on the environment; and,

APPROVAL of **FAST TRACK COMMERCIAL WECS PERMIT NO. 3, REVISED PERMIT NO. 2**, subject to the attached conditions of approval; and,

ACCEPTANCE of the applicant's withdrawal of **FAST TRACK VARIANCE CASE NO. 1735**, based upon the findings and conclusions stated below:

CONCLUSIONS:

1. The proposed project is in conformance with all elements of the Riverside County Comprehensive General Plan and the Western Coachella Valley Plan.
2. The proposed project is consistent with the W-E zoning classification and all other applicable provisions of Ordinance No. 348.
3. The proposed project is designed to protect public health, safety and general welfare.
4. The proposed project is conditionally compatible with the present and future logical development of the area.
5. The proposed project is adequately served by roads and other public and private services and facilities.
6. The proposed project will not have a significant effect on the environment.

FINDINGS:

1. The applicant for Commercial WECS No. 3, Revised Permit No. 2, proposes to extend the life of the permit from July 1, 2021 to July 1, 2031, modify the site disturbance plan for the project to reflect as-built grading and access driveways, delete three previously approved but not built wind turbines (WECS); the project area contains 62 existing WECS, comprising 55 Bonus/Micon WECS at heights up to 110 feet, and seven ENRON WECS at heights up to 330 feet, on an approximately 165 acre property located northerly of Interstate 10, westerly of Highway 62 and southerly of Avenue 16.

THE HONORABLE BOARD OF SUPERVISORS

Form 11A

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

PAGE 5 of 6

2. The findings of the initial study performed pursuant to Environmental Assessment No. 38694 are incorporated herein by reference and are attached to the staff report; the initial study concluded that the proposed project would not have a significant effect on the environment, while there is evidence the project will have a potential for adverse, but not significant, effects on wildlife resources, fees required under the Fish and Game Code to the Department of Fish and Game has been previously paid under Commercial WECS Permit No. 3, Revised Permit No. 1 (CFG01730), and the initial study incorporated a mitigation monitoring/reporting program. The proposed mitigated negative declaration was circulated with the state CEQA Clearinghouse between April 28, 2003 and May 27, 2003 with no comments being received.
3. This project is a designated "Fast Track" case as determined by the Economic Development Agency.
4. The project site is zoned W-E; the W-E zone allows the development of wind turbines subject to the approval of a Commercial WECS permit.
5. The project site is bordered by property zoned R-1, R-R, W-2 and W-E.
6. The project site contains vacant lands, utility transmission lines, and a pre-existing WECS array with 62 existing wind turbines.
7. The project will be conditionally compatible with surrounding land in that surrounding property contains buffers such as vacant desert areas, mountainous areas, utility facilities, and similar uses such as other WECS arrays. Nearby residential dwellings are setback from existing WECS a minimum of three time total WECS heights, such WECS having been built previously pursuant to the original Commercial WECS Permit No. 3 entitlement or as approved under Commercial WECS Permit No. 3, Revised Permit No. 1.
8. Wind potential at this site is considered excellent based on the data contained within EIR/EIS No. 158 (San Geronio Wind Resource Study).
9. The project is consistent with the circulation and utilities land use standards of the Public Facilities and Services Element of the Comprehensive General Plan, in that access to the project will be from Avenue 16 abutting the project site and electrical interconnection with Southern California Edison facilities is expected to be to existing power lines along the northerly site boundary. Inspections of county maintained roadways indicate previous construction related traffic of this project did no damage to these streets.

THE HONORABLE BOARD OF SUPERVISORS

Form 11A

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

PAGE 6 of 6

10. The project will conform with the noise and energy resources land use standards of the Environmental Hazards and Resources Element of the Comprehensive General Plan; for example, compliance is demonstrated by, (a) the operational noise standard for the proposed WECS array being 55 db(A) at the nearest residential use, (b) while access drives may intrude in steep slope areas, WECS are not proposed on slopes in excess of 25 percent, and (c) security and safety measures are incorporated into the project requirements.
11. Land form alteration/visual quality was addressed in the project environmental analysis; the project EA No. 38694 identified mitigation measures for this impact, including soil stabilizer to slope facings and other measures in a re-habilitation/re-vegetation plan, dust control measures as contained in a PM10 Construction Mitigation Plan, limiting grading to the existing areas shown on the site disturbance plan, hooding and proper directing of on-site lighting (except as required by FAA for air navigation safety) and utilizing a low gloss color/finish in WECS components.
12. The project will require permits from the California Department of Fish and Game, a responsible agency, and mitigation measures addressing the requirements of that department have been included in the project initial study, found in EA No. 38694, including the reduction of the graded 34 foot access driveways by restricting vehicles to inside a 15 foot delineated area, the placement of rip-rap and natural drainage swales and the purchase of mitigation land at a ratio of 3:1 for all excess acreage subject to streambed alteration disturbance.
13. The existing WECS array and proposed alternative wind turbines provide an alternative energy source and have an estimated useful life of between 20-30 years.
14. The applicant has modified the project from the time of the denial action of the Planning Commission in order to address the issues which caused the original commission action; the applicant's modifications have included withdrawal of Variance Case No. 1735, deletion of three approved ENRON WECS from the project (one of the three, while partially built, has been pulled down and removed from the site) and taken measures to stabilize the areas graded outside of the previous approvals.