

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

680



FROM: County Counsel

SUBMITTAL DATE: July 10, 2003

SUBJECT: Environmental Assessment No. 38147 and Ordinance No. 348.4042 (WECS – Free Area Amendment)

RECOMMENDED MOTION: That the Board of Supervisors vacate, set aside and rescind the following actions taken with respect to the above-referenced project.

1. Adoption of the Negative Declaration for Environmental Assessment No. 38147; and
2. Adoption of Ordinance No. 348.4042 an Ordinance of the County of Riverside Amending Ordinance No. 348 Relating to Zoning.

BACKGROUND: On July 8, 2003, judgment was entered against the County on the first cause of action in Christensen, et al. v. County of Riverside, et al., Riverside County Superior Court Case No. RIC 370927. The judgment directs the County to take the above-referenced actions. The County has stipulated not to appeal the judgment.

Katherine A. Lind
Katherine A. Lind, Deputy County Counsel

G:\Prop\AJKAL\Ord348.doc

C.E.O. RECOMMENDATION:

APPROVE

Lisa Bravell

County Executive Office Signature

Policy
 Policy

Consent
 Consent

Department Recommendation:
Per Executive Office:

Prev. Agn. ref.

Dist.

AGENDA NO.

3.60


JUL 02 2003

1 COUNTY OF RIVERSIDE
2 OFFICE OF THE COUNTY COUNSEL
3 WILLIAM C. KATZENSTEIN, 61681
4 JOE S. RANK, 113607
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FILED
RIVERSIDE COUNTY

JUL 08 2003

6 REMY, THOMAS, MOOSE and MANLEY, LLP
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10 455 Capitol Mall, Suite 210
11 Sacramento, California 95814
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By  L. Martin
Deputy

10 Attorneys for Respondents COUNTY OF
11 RIVERSIDE; BOARD OF SUPERVISORS
12 OF THE COUNTY OF RIVERSIDE

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF RIVERSIDE**

14 STEVEN M. CHRISTENSEN, MARY SUE
15 CHRISTENSEN KEY, PATRICK J.
16 CHRISTENSEN, AND MAYME P.
17 CHRISTENSEN, as CO-TRUSTEES TO
18 THE STEVEN H. CHRISTENSEN TRUST,

Case No. RIC 370927

[Consolidated with Case. No.
RIC 371022 for pretrial, hearing
and trial purposes only]

17 Petitioners,

STIPULATION AND
[PROPOSED] ORDER FOR
ENTRY OF JUDGMENT

18 v.

[Code Civ. Proc., § 664.6]

19 COUNTY OF RIVERSIDE; BOARD OF
20 SUPERVISORS OF THE COUNTY OF
21 RIVERSIDE; and DOES 1 through 10,

VIA FACSIMILE

22 Respondents.

Judge Assigned for all purposes:
Honorable Gloria Trask
Department 4

23 GE WIND ENERGY, LLC, (successor in interest
24 to Enron Wind Systems, Inc. herein)

Filing Date of Action:
February 14, 2002

25 Real Party in Interest:

Trial Date: August 2, 2002

26 ///

BY FAX

27 ///

1 Pursuant to Code of Civil Procedure section 664.6, Petitioners STEVEN M.
 2 CHRISTENSEN, MARY SUE CHRISTENSEN KEY, PATRICK J. CHRISTENSEN;
 3 AND MAYME P. CHRISTENSEN; AS CO-TRUSTEES TO THE STEVEN H.
 4 CHRISTENSEN TRUST ("Christensen") and GE WIND ENERGY, LLC (successor to
 5 Enron Wind Systems, Inc.) ("GE" or "Enron" as appropriate) (collectively "Petitioners"),
 6 and Respondent, COUNTY OF RIVERSIDE and the BOARD OF SUPERVISORS OF
 7 THE COUNTY OF RIVERSIDE ("County") (Petitioners and Respondent are collectively
 8 referred to as the "parties") stipulate and agree to settle all remaining claims pending
 9 between the parties on terms set forth below.

10 **RECITALS**

- 11 1. On February 13 and 14, 2002, Enron and the Christensens filed petitions
 12 for writ of mandate and complaints for declaratory relief and damages challenging the
 13 County's approval of Ordinance Amendment No. 348.4042 (the "Ordinance" or
 14 "Ordinance No. 348.4042").
- 15 2. On May 3, 2002, the actions filed by the Christensens and Enron were
 16 consolidated for purposes of trial.
- 17 3. On November 14, 2002, the Court issued a statement of decision ruling on
 18 Petitioners' first two causes of action. A copy of the statement of decision is attached to
 19 this stipulated judgment and is incorporated by reference.

20 **STIPULATION**

21 NOW, THEREFORE, the parties stipulate and agree as follows:

- 22 1. As to the First Cause of Action, the petition shall be granted.
 23 2. As to the Second Cause of Action, the petition shall be denied.
 24 3. As to the Third Cause of Action, the parties stipulate and agree that the
 25 petition shall be dismissed without prejudice as unripe. It is understood by the parties
 26 that the sole basis for dismissal is lack of ripeness, and dismissal does not represent any
 27 admission as to the merits of the Third Cause of Action.
 28 4. In exchange for dismissal of the Third Cause of Action the County waives

1 its right to appeal from the judgment entered hereon.

2 Dated: ~~June~~ ^{July} __, 2003

NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

3
4 By: _____

JOHN J. FLYNN III

5 Attorneys for Petitioners Steven M. Christensen; Mary
6 Sue Christensen Key; Patrick J. Christensen and
7 Mayme P. Christensen, all individually and as
8 Co-Trustees to the Steven H. Christensen Trust

8 Dated: June __, 2003

ARNOLD & PORTER

9 By: _____

BRIAN K. CONDON

10 Attorneys for Petitioner GE Wind Energy, LLC

11
12 Dated: June __, 2003

COUNTY OF RIVERSIDE OFFICE OF COUNTY
COUNSEL

13
14 By: _____

WILLIAM C. KATZENSTEIN

15 Attorneys for Respondents County of Riverside; Board
16 of Supervisors of the County of Riverside

REMY, THOMAS, MOOSE AND MANLEY, LLP

17
18 By: _____

WHITMAN F. MANLEY

19 Attorneys for Respondents County of Riverside; Board
20 of Supervisors of the County of Riverside

21 * * *

22
23 IT IS HEREBY ORDERED that judgment be entered in accordance with the
24 Court's statement of decision and the stipulation set forth above. Pursuant to the Court's
25 November 14, 2002, statement of decision, the petition for writ of mandate is granted. It
26 is ordered that a peremptory writ of mandate issue directing the County to set aside the
27 adoption of the Negative Declaration for EA No. 38147 (revised) and Riverside County
28 Ordinance Amendment No. 348.4042. Prior to any reconsideration or reapproval of

1 its right to appeal from the judgment entered hercon.

2 Dated: June __, 2003 NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

3 By: _____

4 JOHN I. FLYNN III
5 Attorneys for Petitioners Steven M. Christensen; Mary
6 Sue Christensen Key; Patrick J. Christenson and
7 Mayme P. Christensen, all individually and as
8 Co-Trustees to the Steven H. Christensen Trust

9 Dated: June 30, 2003 ARNOLD & PORTER

10 By: Bill Condon

11 BRIAN K. CONDON
12 Attorneys for Petitioner GE Wind Energy, LLC

13 Dated: June __, 2003 COUNTY OF RIVERSIDE OFFICE OF COUNTY
14 COUNSEL

15 By: _____

16 WILLIAM C. KATZENSTEIN
17 Attorneys for Respondents County of Riverside; Board
18 of Supervisors of the County of Riverside

19 RYTHOMAS, MOOSE AND MANLEY, LLP

20 By: _____

21 WHITMAN F. MANLEY
22 Attorneys for Respondents County of Riverside; Board
23 of Supervisors of the County of Riverside

24 * * *

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Ordinance Amendment No. 348.4042. Prior to any reconsideration or reapproval of

RYTHOMAS, MOOSE AND MANLEY, LLP
433 Capitol Mall, Suite 310
Sacramento, CA 95833

2
STIPULATION AND [PROPOSED] ORDER FOR ENTRY OF JUDGMENT

Printed on back of page

1 right to appeal from the judgment entered hereon.

2 Dated: June __, 2003 NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

3
4 By: _____

5 JOHN J. FLYNN III
6 Attorneys for Petitioners Steven M. Christensen; Mary
7 Sue Christensen Key; Patrick J. Christensen and Mayme
8 P. Christensen, all individually and as Co-Trustees to
9 the Steven H. Christensen Trust

8 Dated: June __, 2003 ARNOLD & PORTER

9
10 By: _____

11 BRIAN K. CONDON
12 Attorneys for Petitioner GE Wind Energy, LLC

12 Dated: June 24, 2003 COUNTY OF RIVERSIDE OFFICE OF COUNTY
13 COUNSEL

14 By: William C. Katzenstein

15 WILLIAM C. KATZENSTEIN
16 Attorneys for Respondents County of Riverside; Board
17 of Supervisors of the County of Riverside

18 REMY, THOMAS, MOOSE AND MANLEY, LLP

19
20 By: _____

21 WHITMAN F. MANLEY
22 Attorneys for Respondents County of Riverside; Board
23 of Supervisors of the County of Riverside

24 * * *

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REMY, THOMAS, MOOSE
and MANLEY, LLP
455 Capitol Mall, Suite 210
Sacramento, CA 95814

1 its right to appeal from the judgment entered hereon.

2 Dated: June __, 2003 NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP

3
4 By: _____

5 JOHN J. FLYNN III
6 Attorneys for Petitioners Steven M. Christensen; Mary
7 Sue Christensen Key; Patrick J. Christensen and
8 Mayme P. Christensen, all individually and as
9 Co-Trustees to the Steven H. Christensen Trust

10 Dated: June __, 2003 ARNOLD & PORTER

11 By: _____

12 BRIAN K. CONDON
13 Attorneys for Petitioner GE Wind Energy, I.L.C

14 Dated: June 30, 2003 COUNTY OF RIVERSIDE OFFICE OF COUNTY
15 COUNSEL

16 By: _____

17 WILLIAM C. KATZENSTEIN
18 Attorneys for Respondents County of Riverside; Board
19 of Supervisors of the County of Riverside

20 REMY, THOMAS, MOOSE AND MANLEY, I.LP

21 By: Whitman F. Manley

22 WHITMAN F. MANLEY
23 Attorneys for Respondents County of Riverside; Board
24 of Supervisors of the County of Riverside

25 * * *

26 IT IS HEREBY ORDERED that judgment be entered in accordance with the
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adoption of the Negative Declaration for EA No. 38147 (revised) and Riverside County
Ordinance Amendment No. 348.4042. Prior to any reconsideration or reapproval of

1 Ordinance No. 348.4042, the County shall prepare an environmental impact report
 2 consistent with the Court's statement of decision. The Court shall retain jurisdiction over
 3 Ordinance No. 348.4042 proceedings pursuant to Public Resources Code section 21168.9,
 4 subd. (b). Nevertheless, the Court intends this to be a final, appealable judgment. Costs and
 5 attorney fees, if any, may be claimed pursuant to California Rules of Court, rules 870,
 6 870.2. Under Public Resources Code section 21168.9, subd. (c), the Court does not direct
 7 the County to exercise its lawful discretion in any particular way. Nothing in the judgment
 8 or peremptory writ should be construed as requiring the County to go forward with
 9 Ordinance No. 348.4042, or to reapprove Ordinance No. 348.4042, or to take any
 10 particular action other than as specifically set forth in the Court's statement of decision.

11 The County shall file a return to the peremptory writ no later than 90 days after the
 12 date of the issuance of the peremptory writ, which shall state that the County either has
 13 appealed or will appeal the judgment or has complied with the order to set aside its approval
 14 of Ordinance No. 348.4042.

15 Dated: July 2, 2003

GLORIA CONNOR TRASK
 HONORABLE GLORIA CONNOR TRASK,
 JUDGE OF THE SUPERIOR COURT,
 STATE OF CALIFORNIA

19 30625091.0131