

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

124B



FROM: TLMA - Planning Department

SUBMITTAL DATE:

June 7, 2007

**SUBJECT:** APPEALS BY THE ESTATE OF REBA JO WOLF AND BY SEVEN FORTUNE PARTNERS III OF THE BOARD OF SUPERVISORS REVEIVE AND FILE ACTION OF THE PLANNING COMMISSION DECISION TO APPROVE COMMERCIAL WECS PERMIT NO. 116 / VARIANCE NO. 1797 (FTA No. 2005-17) – CERTIFY EIR – Applicant: Dillon Wind, LLC - Engineer/Representative: Stantec, Inc. - Fifth Supervisorial District - Pass & Desert Zoning District - Western Coachella Valley Area Plan: Rural Desert (RD) (10 Acre Minimum); Estate Density Residential (EDR) (2 Acre Minimum) - Location: Northerly of Dillon Road, easterly of State Highway 62, westerly of Indian Avenue, and southerly of Two Bunch Palms Trail - 620 Gross Acres - Zoning: Wind Energy (W-E); Controlled Development Areas (W-2) (20,000 sq. ft. minimum lot size) - REQUEST: Commercial WECS permit to Install up to 20 wind turbines up to 327 feet in height and variance request to reduce scenic setbacks from 1320 feet to not less than 740 feet along the project's easterly boundary adjacent to State Highway 62, and reduce wind access setbacks from five (5) times rotor diameter (1007 feet) to 360 feet along the easterly boundary of WECS 116.

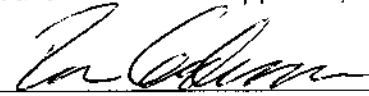
**RECOMMENDED MOTION:**

**CONSIDERATION** of the referenced appeals of the Planning Commission decision received on June 7, 2007.

**THE PLANNING COMMISSION** took the following action on May 16, 2007.

**CERTIFIED ENVIRONMENTAL IMPACT REPORT NO. 487**, based on the findings and conclusions incorporated in the attached staff report; and,

**APPROVED COMMERCIAL WECS PERMIT NO. 116**, for up to 20 wind turbines not greater than 327 feet in height, subject to the attached conditions of approval, and based upon the

  
Ron Goldman  
Planning Director

RG:vc

Policy

Consent

Dep't Recomm.:

Policy

Consent

Per Exec. Ofc.:

Prev. Agn. Ref.

District: FIFTH

Agenda Number: 1.5 (6/5/07)

15.4

The Honorable Board of Supervisors

RE: APPEALS BY THE ESTATE OF REBA JO WOLF AND BY SEVEN FORTUNE  
PARTNERS III OF THE BOARD OF SUPERVISORS REVIEW AND FILE ACTION OF THE  
PLANNING COMMISSION DECISION TO APPROVE COMMERCIAL WECS PERMIT NO. 116  
/ VARIANCE NO. 1797 (FTA No. 2005-17)

June 7, 2007

Page 2 of 2

findings and conclusions incorporated in the staff report; and,

**APPROVED VARIANCE CASE NO. 1797**, to reduce scenic setbacks from 1320 feet to not less than 740 feet, and reduce wind access setbacks from 1007 feet to not less than 360 feet, subject to the attached conditions, and based upon the findings and conclusions incorporated in the staff report.

# COUNTY OF RIVERSIDE

## TRANSPORTATION AND LAND MANAGEMENT AGENCY

### Planning Department

*Ron Goldman · Planning Director*

## APPLICATION FOR APPEAL

Hrg. set for  
6:19  
7:07 e  
1:30 p.m.

DATE SUBMITTED: June 1, 2007

Appeal of application case No(s): Dillon Wind, LLC Project: Commercial WECS Permit No. 116; Variance No. 1797; EIR No. 487 (EA40878, EA40879) (including approved CEQA Findings and the Statement of Overriding Considerations)

Name of Advisory Agency: Planning Commission *List all concurrent applications*

(1.5 6.5.07)

Date of the decision or action: May 16, 2007

Appellant's Name: Estate of Reba Jo Wolf, by and through its attorney David Cosgrove, Esq. E-Mail: dcosgrove@rutan.com

Mailing Address: 611 Anton Blvd., Suite 1400

Costa Mesa

*Street*  
CA 92626

*City*

*State*

*ZIP*

Daytime Phone No: ( 714 ) 641-5100

Fax No: ( 714 ) 546-9035

| ADVISORY AGENCY<br>WHOSE ACTION IS<br>BEING APPEALED | HEARING BODY TO WHICH APPEAL IS<br>BEING MADE                                                                                                                                                                                                             | APPEAL TO BE FILED WITH                                                                                                                                                                                        |
|------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Planning Director                                    | <ul style="list-style-type: none"> <li>• <b>Board of Supervisors</b> for: Temporary Outdoor Events, Substantial Conformance Determination for WECS, and Fast Track Plot Plans.</li> <li>• <b>Planning Commission</b> for: all other decisions.</li> </ul> | <ul style="list-style-type: none"> <li>• <b>Clerk of The Board</b> for: Appeals before the Board of Supervisors.</li> <li>• <b>Planning Department</b> for: Appeals before the Planning Commission.</li> </ul> |
| Planning Commission                                  | <b>Board of Supervisors</b>                                                                                                                                                                                                                               | <b>Clerk of the Board of Supervisors</b>                                                                                                                                                                       |

| TYPE OF CASES BEING APPEALED                                                                                                                                                                                                                                                                                                                                                                                                                      | FILING DEADLINE                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Change of Zone denied by the Planning Commission</li> <li>• Commercial WECS Permit</li> <li>• Conditional Use Permit</li> <li>• Hazardous Waste Facility Siting Permit</li> <li>• Public Use Permit</li> <li>• Variance</li> <li>• Specific Plan denied by the Planning Commission</li> <li>• Substantial Conformance Determination for WECS</li> <li>• Surface Mining and Reclamation Permit</li> </ul> | <p>Within 10 days after the notice of decision appears on the Board of Supervisors</p> <p style="text-align: center;"><b>RIVERSIDE COUNTY</b><br/><b>CLERK OF THE BOARD</b><br/><b>OF SUPERVISORS</b></p> <p style="text-align: center;">PAID<br/>DATE <u>6/1/07</u><br/>AMOUNT <u>\$483.28</u><br/>RECEIVED <u>[Signature]</u></p> |

Riverside Office · 4080 Lemon Street, 9th Floor  
P.O. Box 1409, Riverside, California 92502-1409  
(951) 955-3200 · Fax (951) 955-3157  
Form 295-1013 (12/22/06)

Indio Office · 82-675 Hwy 111, 2nd Floor  
Room 209, Indio, California 92201  
(760) 863-8277 · Fax (760) 863-7555

Murrieta Office · 39493 Los Alamos Road.  
Murrieta, California 92563  
· Fax (951) 600-6145

2007-06-059480

# COUNTY OF RIVERSIDE

## TRANSPORTATION AND LAND MANAGEMENT AGENCY

### Planning Department

*Ron Goldman - Planning Director*

## APPLICATION FOR APPEAL

Hrg. set for  
6:19  
7:17:07 e

DATE SUBMITTED: June 1, 2007

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Appeal of application case No(s): Dillon Wind, LLC Project: Commercial WECS Permit No. 116; Variance No. 1797; EIR No. 487 (EA40878, EA40879) (including approved CEQA Findings and the Statement of Overriding Considerations)

Name of Advisory Agency: Planning Commission

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| Planning Commission                                  | <b>Board of Supervisors</b>                                                                                                                                                                                                                           | <b>Clerk of the Board of Supervisors</b>                                                                                                                                                                   |

| TYPE OF CASES BEING APPEALED                                                                                                                                                                                                                                                                                                                                                                                                    | FILED DEADLINE                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>Change of Zone denied by the Planning Commission</li> <li>Commercial WECS Permit</li> <li>Conditional Use Permit</li> <li>Hazardous Waste Facility Siting Permit</li> <li>Public Use Permit</li> <li>Variance</li> <li>Specific Plan denied by the Planning Commission</li> <li>Substantial Conformance Determination for WECS</li> <li>Surface Mining and Reclamation Permit</li> </ul> | <p>Within 10 days after the notice of decision appears on the Board of Supervisors</p> <p style="text-align: center;"><b>RIVERSIDE COUNTY</b><br/><b>CLERK OF THE BOARD</b><br/><b>OF SUPERVISORS</b></p> <p style="text-align: center;">PAID</p> <p>DATE <u>6/1/07</u></p> <p>AMOUNT <u>483.28</u></p> <p>RECEIVED <u>FDW</u></p> |

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2007-06-054980

## **APPLICATION FOR APPEAL**

|                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>• Land Division (Tentative Tract Map or Tentative Parcel Map)</li><li>• Revised Tentative Map</li><li>• Minor Change to Tentative Map</li><li>• Extension of Time for Land Division (not vesting map)</li></ul> | Within 10 days after the notice of decision appears on the Board of Supervisor's Agenda.                                                                                                                                        |
| <ul style="list-style-type: none"><li>• Extension of Time for Vesting Tentative Map</li></ul>                                                                                                                                                         | Within 15 days after the notice of decision appears on the Board of Supervisor's agenda.                                                                                                                                        |
| <ul style="list-style-type: none"><li>• General Plan or Specific Plan Consistency Determination</li><li>• Temporary Outdoor Event</li></ul>                                                                                                           | Within 10 days after date of mailing or hand delivery of decision of the Planning Director.                                                                                                                                     |
| <ul style="list-style-type: none"><li>• Environmental Impact Report</li></ul>                                                                                                                                                                         | Within 10 days of receipt of project sponsor or Planning Director determination, or within 7 days after notice of decision by Planning Commission appears on the Board's agenda.                                                |
| <ul style="list-style-type: none"><li>• Plot Plan</li><li>• Second Unit Permit</li><li>• Temporary Use Permits</li><li>• Accessory WECS</li></ul>                                                                                                     | Within 10 calendar days after the date of mailing of the decision.                                                                                                                                                              |
| <ul style="list-style-type: none"><li>• Letter of Substantial Conformance for Specific Plan</li></ul>                                                                                                                                                 | Within 7 days after the notice of decision appears on the Board of Supervisor's agenda.                                                                                                                                         |
| <ul style="list-style-type: none"><li>• Revised Permit</li></ul>                                                                                                                                                                                      | Same appeal deadline as for original permit.                                                                                                                                                                                    |
| <ul style="list-style-type: none"><li>• Certificate of Compliance</li><li>• Tree Removal Permit</li></ul>                                                                                                                                             | Within 10 days after the date of the decision by the Planning Director.                                                                                                                                                         |
| <ul style="list-style-type: none"><li>• Revocation of Variances and Permits</li></ul>                                                                                                                                                                 | Within 10 days following the mailing of the notice of revocation by the Director of Building and Safety, or within 10-days after the notice of decision of the Planning Commission appears on the Board of Supervisor's agenda. |

### **PLEASE STATE THE REASONS FOR APPEAL.**

Please state the basis for the appeal and include any supporting evidence if applicable. If appealing one or more specific conditions of approval, indicate the number of the specific condition(s) being protested. In addition, please include all actions on related cases, which might be affected if the appeal is granted. This will allow all changes to be advertised and modified at the same time. AN APPEAL OF ONE OR MORE CONDITIONS OF APPROVAL SHALL BE DEEMED AS AN APPEAL OF THE ACTION AS A WHOLE, AND THE APPEAL BODY MAY APPROVE OR DENY THE ENTIRE MATTER, AND CHANGE ANY OR ALL OF THE CONDITIONS OF APPROVAL.

Please see Attachment 1 attached hereto.

## APPLICATION FOR APPEAL

Use additional sheets if necessary.  
David B. Cosgrove, Esq. attorney

for the Estate of Reba Jo Wolf  
PRINTED NAME OF APPELLANT

SIGNATURE OF APPELLANT

June 1, 2007

DATE

### THE APPEAL FILING PACKAGE MUST CONSIST OF THE FOLLOWING

1. One completed and signed application form.
2. Public Hearing Notice Label Requirements mailing address labels for notification of the appeal hearing.
3. All appropriate filing fees (the base fee plus other fees specifically for the Department of Building and Safety, Fire Department, Flood Control District and/or Transportation Department conditions if applicable).

PLEASE NOTE: Obtain surrounding property owners label package/instructions (Form 295-1051) from a County Public Information Services Center or download it from the Planning Department web page.

- \* Fees are enclosed.
- \* Mail labels have been prepared by TLMA and are enclosed.

June 1, 2007

**VIA FACSIMILE AND COURIER**

Ms. Nancy Romero  
Clerk of the Board  
Riverside County Board of Supervisors  
4080 Lemon Street, 1st Floor  
Riverside, CA 92501  
Tel: 951-955-1060  
Fax: 951-955-1071

**With Copy Via Fax and Fed Ex To:**

Mr. Jay Olivas  
Planning Department  
County of Riverside  
2nd Floor, Room 211  
82-675 Highway 111  
Indio, CA 92201  
Tel: 760-863-8277  
Fax: 760-863-7555

**Re: Appeal from Planning Commission Decision- Dillon Wind, LLC Project**

Commercial WECS Permit No. 116  
Variance No. 1797  
EIR No. 487 (EA40878, EA40879) (Incl. Findings and Statement of Overriding Considerations)

Dear Madam Clerk:

This office, and the undersigned in particular, represents the Estate of Reba Wolf, the owner of the property located immediately north of the proposed Dillon Wind, LLC project that was approved (some parts of it, relating to WECS No. 117, tentatively subject to further action by the Board of Supervisors) by the Riverside County Planning Commission on May 16, 2007. On May 31, 2007, the Notice of Decision for the above-referenced project appeared on the Board of Supervisor's June 5, 2007 regular meeting.

The purpose of this letter and accompanying documents is to appeal the May 16, 2007 decision of the Planning Commission, pursuant to Riverside County Code section 17.192.070.

Enclosed with this letter are the following items:

1. A completed Application for Appeal;
2. Attachment 1 to the Application for Appeal, providing the basis for the appeal and attaching relevant correspondence supporting such bases (such correspondence was part of the existing record at the Planning Commission);
3. A check made payable to the County of Riverside in the amount of \$983.28 for the appeal fee, pursuant to Riverside County Ordinance Nos. 348 and 671. This

Ms. Nancy Romero  
June 1, 2007  
Page 2

amount is based on a Base Fee of \$964 plus a 2% Land Management System Fee. (Please note that the copy transmitted to Mr. Olivas includes a copy of the check.)

4. Three (3) public hearing notice label packets, prepared and certified by Riverside County's TLMA Geographic Information Staff at our request. (Please note that Mr. Olivas is being provided copies but not the original labels.)

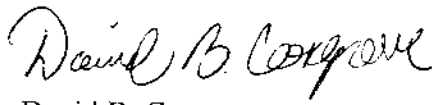
We reserve our right to supplement this appeal information prior to or at the *de novo* hearing that will be scheduled by the Board of Supervisors as required by Riverside County Code section 17.192.080. We hereby request that we be timely provided any notices of hearings and any staff reports, Board packets, and communications or submittals by, to, or from any other interested parties (including, without limitation, the project applicant) prior to any hearing scheduled on this appeal.

The filing fee (item 3) and the notice labels (item 4) are not being faxed. They will be delivered by courier with the original of this appeal document.

If you have any questions please contact me at (714) 641-5100.

Very truly yours,

RUTAN & TUCKER, LLP



David B. Cosgrove

DBC:MRWH  
Attachments

cc: Mr. Charles B. Wolf (via Electronic Mail, w/o items 3 & 4)  
Renee L. Robin, Esq. (via Fed Ex, w/o items 3 & 4)

Ms. Nancy Romero  
June 1, 2007  
Page 3

Attachment 1

Reasons for Appeal

The Estate of Reba Jo Wolf appeals the Riverside County Planning Commission's May 16, 2007 decision to approve the Dillon Wind, LLC project as more particularly specified on page 1 of the Application for Appeal for the following reasons:

1. The decision on the approvals violates, *inter alia*, the California Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*) and its implementing Guidelines (14 Cal. Code Regs. § 15000 *et seq.*), the state Planning and Zoning Law and provisions of the Riverside County Code of Ordinances for those reasons stated in the letters submitted by the Estate of Reba Jo Wolf on:
  - a. January 29, 2007 (due to their length, the attachments to this letter are not included; these attachments are located in full as part of Comment Letter Z to the FEIR),
  - b. April 17, 2007, and
  - c. May 15, 2007.

These letters are attached hereto and they, along with all attachments to these letters, are incorporated into this appeal by this reference.

2. All reasons raised by any person providing written or oral comments on the Dillon Wind, LLC project, which comments are part of the record for this project.
3. Any further reasons as may be raised prior to or during the appeal hearing scheduled for this matter.

If this appeal is granted the following other actions might be affected:

- A. Fast Track Authorization No. 2005-17
- B. General Plan Amendment No. 811
- C. Change of Zones Nos. 7346 & 7449
- D. WECS Permit No. 117
- E. Variance No. 1798



January 29, 2007

VIA FEDERAL EXPRESS

Jay Olivas  
Planning Department  
County of Riverside  
2nd Floor, Room 211  
82-675 Highway 111  
Indio, CA 92201

Re: Comments to Draft Environmental Impact Report for the Dillon Wind Project,  
Riverside County WECS 116 and 117, General Plan Amendment No. 811,  
Change of Zone Nos. 7346 and 7449, Variance Nos. 1797 and 1798, City of Palm  
Springs CUP 5.115, and Variance 6.493

Dear Mr. Olivas:

This office, and the undersigned in particular, represent the Estate of Reba Wolf, the owner of the property located immediately north of the area designated as Area 3 in the Draft Environmental Impact Report ("DEIR") referenced above. My client was given until January 31, 2007, to provide these comments, and appreciates this accommodation.

My client opposes this project for a number of reasons. My client's property, and the property for the proposed project, particularly Area 3, presently serve as a transitional buffer between more intensive, established wind energy uses to the west, and the area east of Indian Avenue, on which wind energy production facilities are prohibited. As such, this area retains a number of characteristics of its open, desert nature, particularly the broad and sweeping view sheds to the San Jacinto and San Geronio mountains. The proposed project runs roughshod over any notion of transitioning the environmentally intrusive wind energy uses to the west, with the more natural and scenic areas to the east. It does so by essentially cramming the maximum possible number of turbines -- 33-story, 400 foot wide megastructures -- up the very limits of where existing law permits them to be, and in many cases beyond those limits.

It does so based on an environmental analysis that turns a blind eye to a host of very real environmental impacts, which it glosses over with insufficient analysis and extrapolated evidence. Moreover, the DEIR attempts to justify the environmental intrusiveness of the proposed project with an assertion of air quality and other environmental benefits from displaced pollution from fossil fuels. These benefits are based on exaggerated production from the project's proposed facilities, a complete disregard for the limitations of the current electrical grid to utilize what power the project can generate, overstated figures on pollutants generated by

Jay Olivas  
January 29, 2007  
Page 2

existing sources, and an entirely theoretical presumption that wind power generated by the project will somehow displace fossil fuel generation. These series of fictions are the sole basis the DEIR uses to dismiss what limited and insufficient project alternatives it does examine. The DEIR therefore offers no reasonable basis for the County to conclude that the project proposed is actually the environmentally superior alternative.

The County of Riverside Planning Department itself has already exposed the fallacy of the DEIR's presumed beneficial impacts. In its WECS policy memorandum, dated October 2, 2003, to the Board of Supervisors, Mr. Robert C. Johnson listed no less than five hurdles of speculation wind energy advocates were relying on to argue the exact type of pollution avoidance benefits this project now claims. These are:

1. How the engineered capacity of WECS projects translate into actual energy output, which varies considerably depending upon weather patterns.
2. Whether a replacement source would indeed be necessary, which depends on future market conditions, weather, and energy efficient technology.
3. The market conditions and technical feasibility of various replacement options.
4. The polluting potential of various replacement options, which varies depending on the energy source chosen by the energy project proponent.
5. The precise location of replacement energy sources and that location's prevailing meteorological conditions, which depends on the decisions of future energy project proponents and weather.<sup>1</sup>

That same memorandum goes on to identify the serious aesthetic impacts attributable to WECS facilities, their threat to regional tourist revenues, and the destruction WECS development creates to specialized desert habitats, vegetation, and wildlife. (*Id.*, at pp. 4, 7.)

The County had it right in 2003, and this DEIR offers no logical or evidentiary basis for reversing itself. This project is poorly conceived, environmentally insensitive, and jarringly inconsistent with prevailing land use designations and regulations. Indeed, one need only look at the string of General Plan Amendments, Variances, and other land use special privileges the applicant needs to request, to see that this is an exercise in pounding a round peg into a square hole.

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<sup>1</sup> See, Memorandum from Robert C. Johnson to Honorable Board of Supervisors, dated October 2, 2003, Tab 1, p. 15-16.

Jay Olivas  
January 29, 2007  
Page 3

The specific areas of deficiencies we have found in the DEIR and its analysis, and the evidence refuting the DEIR's analysis and unsupported conclusions, are included under separate headings below.

1. Project Description and Objectives.

An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) A curtailed or distorted project description can stultify the objectives of the environmental impact report's reporting process. Only through an accurate view of the project may affected outsiders and public decision makers balance the proposal's benefits against its environmental costs, consider mitigation measures, and assess the advantages of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance. (*Id.*, at 192-193.)

The DEIR's project description fails in this important task, both because it contains internally contradictory statements, and because it leaves too many aspects of the project, upon which serious environmental impacts turn, unspecified.

One example is with respect to fencing. At p. 4-8 and 4-16, the DEIR indicates that security fences "may be installed." Such installation would effect both aesthetics and biology, in terms both of creating available places for bird perching and potential barriers to wildlife movement. If security fences are a part of the project, they need to be specified, as to dimension, configuration, and location, in order for impacts to be assessed.

In addition, the project description omits critical components of the proposed wind turbine design and operation. For example, each turbine has 186 tons of weight, 400 tons of concrete foundation, generates 107 decibels of sound, and has up to 142.5 mph blade speed. More important, each turbine extends up to 327 feet in height. These ominous statistics are buried in the WECS project application.<sup>2</sup> They should be included as part of the project description.

The meteorological towers included in the project are another item of uncertainty. Referenced at p. 4-14 of the DEIR, the number and precise location of these meteorological towers is not specified. It is therefore impossible to assess view impacts, impacts from shadow, and potential avian perching tendencies and subsequent impact on species and habitat, from these structures. Nor are these towers merely incidental. In its approval of Plot Plan No. 21093, the County allowed a meteorological tower on the project area to be built to height of 193 feet. The DEIR proposes additional towers some 32 feet higher. This important component of the project must be described and assessed.

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<sup>2</sup> See Tab 2, pp. 4-5.

Jay Olivas  
January 29, 2007  
Page 4

The same uncertainty occurs with the utility interconnection facilities the project will implement. Referenced at pp. 4-8 and 4-16 through 4-17, these facilities are apparently to be some 40-50 feet in height, within 400 feet of right-of-way. The routes on these interconnection facilities need to be specified and depicted, to assess what impacts they will have, and what mitigation is required.

In addition, the DEIR seems to leave open the issue of whether electrical transmission lines created by the project will be above ground or below ground. This "hedge" appears in a number of places in the DEIR. For example, at p. 1-1, the Executive Summary indicates the three areas will be connected electrically by an underground electrical collector cable system connecting to an new substation. At p. 2-3 of the Biological Assessment in the Appendices, however, the DEIR states that the substation electrical collectors will be either by underground or overhead collector cable systems. Page 4-2 references "underground or overhead electrical transmission and communication lines." Page 4-16 references offsite construction of "about 3.2 miles of underground or overhead collector cables." The placement of the electrical transmission and collector lines the project will utilize, whether overhead or underground, has serious environmental consequences. Overhead lines would create view impacts, provide an attraction for migratory birds and raptors, potentially increase avian mortality, have electromagnetic field implications, and impact interference with radio and television transmission signals. The precise plan for the location and nature of all such lines must be included in the project description.

The DEIR's description of turbine color is internally contradictory. At p. 4-13, the turbine color is listed as white, but in assessing aesthetic impact, at p. 6.1-1, the DEIR says that they will be a pale gray or off-white color. The FAA has already required all turbines to be painted a "bright white color." (Appendix C, p. 3.) This inconsistency must be remedied and the aesthetic impacts must be assessed, not with respect to the originally proposed, muted gray or off-white coloring, but the actual bright white coloring that the project apparently now must adopt.

There is also some question whether the project description has appropriately characterized the areas of ground disturbance. Page 4-18 indicates the cleared compacted area around each turbine would be approximately 200 feet, but does not indicate whether this is a rounded foundation, square, rectangular or other configuration. One would presume it is round, because of the reference of a diameter of 48 feet. This should be specified. In addition, the County's approval of Plot Plan No. 21093 included a requirement of vegetation clearing for a 10 foot radius around all transformers and wind turbine towers.<sup>3</sup> The areas of calculated disturbance for each proposed turbine should therefore include this 10 foot additional area already required by the County.

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<sup>3</sup> See Tab 3.

Jay Olivas  
January 29, 2007  
Page 5

There is also some uncertainty with respect to the strobe lighting to be placed on the turbines. The DEIR, at p. 4-15, indicates that "up to" 17 turbines would be lit. Appendix C, p. 3, indicates that the FAA requires all 17 to be lit.

At p. 4-19, the project description references maintenance and a need for cranes. It is my understanding these are not ordinary cranes, but rather super-sized cranes commensurate with the outsized dimensions of the wind turbines themselves. The specification of the type of cranes that will be brought on to the property, their height and weight, and their ability to access the site with existing roadways must be identified and described, for aesthetic, transportation, and safety impacts analysis.

There is also an indication at p. 6.3-27 that one of the collector routes will cross the Garnett Wash, which is habitat for the threatened Coachella Valley Fringe Toed Lizard. The DEIR project description must specify what collector routes are being proposed and will be pursued, including the one impacting Garnett Wash.

## 2. Existing Environment.

The DEIR is somewhat inaccurate in its characterization of the existing environment and project surroundings. At p. 4-6, it indicates that Area 1 previously contained WECS facilities, but this is misleading. There may be certain foundations and concrete block structures, but no WECS turbines or generation facilities were there at the time of the baseline condition. Indeed, p. 6.1-17 indicates that there are no WECS where the project now proposes to place them. This inaccuracy is apparently designed to characterize the project area as already hopelessly overrun with the industrial uses and the detrimental environmental impacts of existing WECS uses, but this simply is not the case.

There are a number of residential uses, proposed and underway, for this area. The Skyborne residential development is being constructed at State Route 62 and Pierson, which is a master-planned residential community.<sup>4</sup> I understand that other residential projects are being proposed for the area by Mayer-Luce and Roger Snellenberger. Alpine Development is also contemplating a residential development on Pierson Avenue's south side. A ten acre combination of retail and residential uses, called Center Point, is also advertised near the project site. (See, Tab 4.)

The DEIR should fairly characterize the surrounding General Plan uses and zoning of the property in the area of the project, and not just Areas 1, 3 and 5 themselves. Moreover, there should be some description of all development proposals, including informal consultations that

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<sup>4</sup> A brochure put out by D.R. Horton, the developer of the project, explaining its character is attached at Tab 4.

Jay Olivas  
January 29, 2007  
Page 6

have occurred with County Planning staff, for development within a 1-2 mile radius of the project site, as part of the cumulative impacts analysis. Such additional information would reflect the transitional buffer this area serves from existing WECS facilities to the areas east of Indian Avenue, where no WECS facilities are permitted.

In addition, the existing environment section should contain some explanation of flight paths and the potential for navigational interference from overflights with the Palm Springs International Airport. The DEIR's assertion that risks to both aircraft safety and national defense capabilities have been eliminated by the move of radar facilities to Edom Hill ( DEIR, p. 6.6-1) is inadequate, since those facilities have apparently now been moved back to the Palm Springs International Airport. In addition, the assertion that the area only constitutes 2% of Palm Springs' delegated air space unrealistically minimizes its significance to air traffic. A better explanation needs to be furnished of flight patterns in and around of the Airport, to provide a more accurate picture of the impact to the location and frequency of air traffic corridors actually used.

### 3. Land Use Impacts.

It appears that the proposed project has improperly invoked Fast Track processing at the County. The Fast Track rules promulgated by the Economic Development Agency on March 7, 2003, Board Policy A-32, indicate that no applications requiring an EIR are eligible for such processing.<sup>5</sup> The very existence of the DEIR, and the Fast Track nature of the application, seem to point up a processing irregularity for this project.

Spearheading the project with review by the Airport Land Use Commission, which occurred on November 9, 2006, also seems inappropriate. It is questionable how the ALUC could assess environmental impacts, including navigational interference and national defense implications, before the environmental disclosure document for the project was released on December 1, 2006.

Moreover, Areas 1 and 3 are located within the Desert Hot Springs sphere of influence. As the County is certainly aware, the City of Desert Hot Springs has passed a resolution stating its opposition to the project, and has called upon the Riverside County Planning Commission and Board of Supervisors to deny further windmill applications within the City of Desert Hot Springs' sphere of influence, based in part on the environmental costs associated with the placement and operation of wind turbines and their destruction of the desert flora and fauna.<sup>6</sup>

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<sup>5</sup> See Tab 5, p. 2.

<sup>6</sup> See Resolution No. 2006-134, at Tab 6.

Jay Olivas  
January 29, 2007  
Page 7

The DEIR makes reference to the San Geronio Wind Energy Community Policy Area, alleging consistency. Policy PASS 6.3 from that document indicates otherwise. It requires other renewable resources, including solar generators, to complement wind energy uses. This project creates a proliferation of wind energy turbines and precludes devotion of the project area to such alternative renewable energy uses. Policy PASS 6.3 also calls for limited industrial/commercial uses to be integrated with existing wind parks, consistent with residential uses. This project accomplishes none of that and, in fact, requires safety and scenic setback variances that are inconsistent with residential uses. Page 5-9 of the DEIR asserts that the project addresses the San Geronio Pass Wind Energy policies, but nowhere recognizes its inconsistency with Policy PASS 6.3.

At p. 5-4, the DEIR reaches the somewhat Orwellian conclusion that the project is consistent with the Rural Foundation Component for Areas 1 and 3. According to the RCIP, the Rural Foundation Component is for "remote cabins, residential estates, limited agriculture, equestrian, and animal keeping uses." The noise, vibration and disturbances of WECS turbines is totally inconsistent with these uses. On Area 3, the Community Development Foundation Component calls for "urban and suburban development." The WECS use is inconsistent with these as well. The W-2 uses listed at pp. 5-11 and 5-12 of the DEIR – for dwellings, light agricultural, grazing of farm animals, and animal husbandry – are similarly inconsistent.

The land use consistency of the project must be assessed against not only existing, but also proposed, uses for the area. The very fact that the project needs to change General Plan designations, safety setbacks, habitable dwelling setbacks, and scenic setbacks says all one needs to know about the project's consistency with existing land use regulations.

Moreover, the land use section of the DEIR points out a fundamental flaw running through the entire document. At p. 5-11, in connection with the wind access setback of 1007 feet, it states "Without a variance allowing greater space between turbine strings, an economically viable project could not be developed."<sup>7</sup> This broad and dubious assertion is completely unsupported by any evidence. Mere increased costs or decreased profits do not *ipso facto* lead to a conclusion of infeasibility. (Citizens of Goleta Valley v. Board of Supervisors (1988) 197 Cal.App.3d 1167, 1181.) If infeasibility is to be asserted, it must be supported with specific financial information. This holds true both for the asserted infeasibility of mitigation measures and for project alternatives. The DEIR is wholly deficient in providing this required evidentiary support.

The project attempts to secure a variance from the scenic highway setback on the basis that Highway 62 has reduced scenic value. (See, DEIR p. 5-11.) The DEIR's own view study

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<sup>7</sup> The same economic viability argument is invoked in rejection of each one of the alternatives listed under Section 9 of the DEIR.

Jay Olivas  
January 29, 2007  
Page 8

contradicts this conclusion. At p. 6.1-19, the "before project" photo of KOP-3 belies any assertion that there is a "reduced scenic value" in the existing condition.<sup>8</sup>

The DEIR similarly fails to indicate any justification for waiver from the setback requirements from habitable structures. It is important to note that all habitable structures here are in the immediate vicinity of Area 3, which supports a need for a project alternative that abandons any WECS turbines in Area 3 whatsoever. There is no asserted justification for this variance, other than existing utility constraints and the alleged economic viability of the project, neither of which is supported by any type of evidence or alternatives analysis. In addition, waiver of setbacks to habitable dwellings creates a serious safety issue. Turbines do catch fire, as demonstrated by an attached Press-Enterprise article dated July 8, 2006.<sup>9</sup> That article records an eye-witness account of a WECS turbine fire with "chunks of burning fiberglass the size of an egg raining down," and noxious fumes. This was a real-world occurrence, not a fear of what might happen. It speaks strongly to preserving the integrity of the habitable dwelling setback requirements.

#### 4. Aesthetics.

The DEIR's sole admission of significant adverse environmental impact is to aesthetics, and even that admission is grudging, and too narrow. The County has already determined "The development of WECS entails significant environmental impacts to air quality, *visual resources*, wildlife, and ambient noise. (Tab 1, p. 4; emphasis added.) In addition, Appendix G to the CEQA regulations specifically references rock outcroppings and State scenic highways as features which are presumptively significant for aesthetic impacts. Both are implicated with this project.

The DEIR's aesthetic view analysis is based on an unduly restrictive study. That study takes only six points of view, none of which includes the view impacts from my client's property, immediately north of Area 3, looking southward. Nor are there any view analyses from Pierson Avenue, which the DEIR acknowledges at p. 6.15 as a designated scenic corridor in the Western Coachella Valley Plan. Any fair analysis of aesthetic impacts must include impacts to these view sheds.

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<sup>8</sup> To remedy this and other deficiencies in the DEIR's aesthetics impacts analysis, we are submitting a DVD of recorded views and vistas in and around the project area, including views taken from a car traveling north on State Route 62, and east on Pierson. It is attached under Tab 7. This video record demonstrates the exact quality of views in the area from a number of different vantage points, not merely the six selected for the limited DEIR view study. This video record refutes any characterization the DEIR attempts to make of "reduced scenic value" for this area.

<sup>9</sup> Attached as Tab 8.

Jay Olivas  
January 29, 2007  
Page 9

In an attempt to remedy this truncated analysis, we are submitting a DVD transcription of a video taken on January 10, 2007, of the project area and its environs. This DVD, attached under Tab 7, shows a number of important aspects of the site and its characteristics, all of which will be impacted aesthetically by the project. There are view angles taken from a standing ground view, from the northwest corner of Area 3 looking southeasterly, and from Indian Avenue looking westerly. The DVD contains extended footage of a view from a passenger car traveling northward on State Route 62, and traveling eastward on Pierson Avenue. It also contains views of Area 5 and Area 1, and indicates surrounding developments, including the Skyborne development, signs announcing additional commercial and residential development, and an example of the type of aesthetic impact we can expect from this project by looking at existing WECS facilities right next to Area 3, with security fencing and loose parts stored on the ground.

Perhaps more to the point, the DVD shows what the DEIR's view analysis conspicuously avoids – the relationship of the existing meteorological tower and background mountain views. This meteorological tower was approved to be built to 193 feet by Plot Plan 21093. The meteorological tower is an incomplete reference for view impacts, because it is at least **134 feet lower** than each of the proposed WECS towers, and has no lateral turbine rotors to blot out views. Still, view depictions including the tower show it extends significantly above scenic mountain skyline views. This paints a troubling picture of the significance of view impacts from the project's proposed arrays of much larger, more intrusive WECS towers, from all viewing angles. The significance of all of these view impacts must be recognized, assessed, and mitigated.

In an attempt to minimize the impacts of these views, the DEIR characterizes the importance of scenic vistas on the valley floor as "less critical." (DEIR, p. 6.1-6.) Again, refutation of this point comes from the County itself:

Areas in the San Geronio Pass that are located on flat terrain on the valley floor, which were described above as "less critical," can still be very important to the visual character of the area. This depends largely on where such areas of flat terrain are located. If flat terrain areas are located in the foreground of important view sheds or in high traffic areas, the blanket designation "less critical" may not be appropriate. Studies of existing WECS development on flat terrain indicate that this development can have a significant impact on visual resources in the area.<sup>10</sup>

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<sup>10</sup> See, Tab 1, p. 6.

Jay Olivas  
January 29, 2007  
Page 10

The same is true here. The broad views of the San Jacinto and San Geronio mountains from the project area and the high traffic areas of State Route 62, Indian Avenue, and Pierson refute the "less critical" designation this DEIR relies upon.

In addition, the DEIR is completely silent on impacts of shadows from the large WECS turbines the project proposes. Perhaps not coincidentally, all photos included in the DEIR were taken on a stormy day, when lighting conditions were muted and shadows were indistinct. (DEIR, p. 6.1-15.) This is suspect, and offers an incomplete picture of impacts.

The effects of shadows, particularly those from broad, moving rotors, are important, and cannot be ignored as part of the project's impact analysis. In her article "Wind Turbine Syndrome: Noise, Shadow Flicker, and Health," Nina Pierpont, M.D., Ph.D., talks about the health impacts of "shadow flicker" from the moving shadows cast by rotating turbines. She indicates that such shadows can trigger migraine headaches, vertigo, or epileptic seizures.<sup>11</sup> Such impacts are too important to be ignored.<sup>12</sup>

In an effort to fill the complete evidentiary void the DEIR creates on this issue, my office conducted a field study of shadows in the area on January 24, 2007. In the absence of a 327 foot structure, shadows were measured from an existing telephone pole at various times throughout the day. The results of this shadow study are attached under Tab 11.

Calculated from field measurements, the height of the phone pole was 33 feet. This pole cast a shadow as far as 1980 feet, at 7:46 a.m. By simple arithmetic calculation, a WECS tower of almost 330 feet would therefore cast a shadow of 19,800 feet, *or over three and three quarter miles*. The DEIR should undertake a shadow analysis, at a minimum using these figures, and more properly undertaking a full formal analysis of the shadow range of each one of the 47 WECS turbines proposed, under both winter and summer sun conditions. Only then can the full aesthetic impact, including the strobe effect of shadows from rotating turbines, be realistically assessed.

Further, what mitigation measures are proposed for aesthetic impacts are vague. The contribution to the WIMP, referenced at p. 6.1-28, does not provide any identifiable mitigation standard against which the project proponent's performance can be assessed, or any real mitigation at all. Mere contribution to a funding of a future study may be an appropriate condition of approval, but it is not mitigation. Further, the mitigation measure for onsite lighting

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<sup>11</sup> See, Tab 9, p. 8-9.

<sup>12</sup> Similar conclusions were offered by Jon Boone before the Maryland Public Utilities Commission in testimony given July 25, 2005. Mr. Boone indicated that shadow impacts affect nearby residences, and can cause sickness or nausea. (Tab 10, p. 31.) The shadow impacts are potentially significant, on both existing and potential future housing, and impact wildlife as well.

Jay Olivas  
January 29, 2007  
Page 11

states: "The brightness of this lighting shall be kept relatively low." (DEIR, p.6.1-28.) This is impermissibly vague. What type of lighting will be utilized? How low will the lighting be kept? Relative to what? Again, some type of standard must be set for mitigation performance, and the mitigation monitoring program must set up an effective, discernible way to assess whether the identified measure has been met.

##### 5. Biological Impacts.

The DEIR concludes that there will be no significant impacts to any biological resources. With all due respect, the Biological Assessment relied upon to reach this conclusion is inadequate. Appendix E, p. 3-4, says all field work for the Biological Assessment occurred from March 23, 2006 to July 24, 2006. Page 3-5 says wildlife surveys began in March 2006, but fails to identify what specific surveys were done when.

A survey of literature and resource agency guidelines indicates this falls far short of the type of biological data collection required to properly assess biological impacts from a proposed wind farm development. The California Energy Commission has issued its "Assessment of Avian Mortality From Collisions and Electrocutions," dated June 2005, attached under Tab 12. It is a comprehensive study pointing up the dangers of wind turbines to birds, including threatened and endangered species. That report recites a number of dangers that the DEIR does not address, and deficiencies the DEIR does not remedy. For example, it indicates that information collected by utilities to date may be grossly underestimating impacts to avian resources in California. (Tab 12, p. 2.) Up to 85% of collisions and electrocutions may be undetected. (Tab 12, p. 4.) It also indicates that wind turbines kill disproportionately large numbers of golden eagles, red-tailed hawks, burrowing owls, and other raptors. (Tab 12, p. 14.) Virtually every bird killed by wind turbines results in a violation of Federal or State law and regulations. (Tab 12, p. 25.) Further, the expansion of rotor-swept areas of turbine blades puts even more birds at risk of collision. (Tab 12, p. 3.)

The DEIR apparently attempts to cover the paucity of its field data, by reference to an earlier study of avian use of the San Geronio Pass area conducted by Dick Anderson, and an August 31, 2006 letter attached to the Biological Assessment as Appendix E. Unfortunately, neither of these provide any evidence of the nature, range, or expected species distribution of likely avian fatalities from the project. As the CEC has pointed out, the Anderson study did not estimate bird fatality due to the high uncertainty of long search intervals, and the unknown impact of scavenging rates. (Tab 12, pp. 20-21.) Moreover, Mr. Anderson's vague, conclusory statements that he believes "bird fatalities will be low" offers no quantitative analysis, point of reference, or other evidentiary support for what Mr. Anderson might consider to be low, and what kind of birds are involved.<sup>13</sup> Indeed, Anderson himself acknowledges that there will be

<sup>13</sup> For example, the Bald and Golden Eagle Protection Act has no provision for any take, such

Jay Olivas  
January 29, 2007  
Page 12

red-tailed hawk and burrowing owl fatalities from the project. (Biological Assessment, Appendix E.) More broadly, he admits the failure of his 2004 study to serve as a basis for predicting bird fatalities:

It would be difficult to extrapolate the number of bird fatalities in San Geronio per year from our data due to long intervals between carcass searches at each carcass search site. If I were starting the research today, I would search fewer sites more often. (Id.)

This admittedly flawed study therefore cannot serve as substantial evidence supporting the extrapolated conclusion of 1.3 bird strikes per year, per turbine, appearing in the Biological Assessment at p. 5-8.

More fundamentally, the assignment of a ratio of bird kills per turbine is flawed analytical methodology. This was demonstrated in the California Energy Commission's "Response to Public Comment on the Staff Report Titled 'Assessment of Avian Mortality From Collisions and Electrocutions' (CEC-700-2005-015) (Avian White Paper) written in support of the 2005 Environmental Performance Report and the 2005 Integrated Energy Policy Report."<sup>14</sup> There, the CEC found that for avian studies of the duration that have been done for San Geronio, and taking into consideration statistical confidence intervals, estimates of fatalities per turbine dipped below zero. (Tab 14, pp. 10-13; 28-29.) As the CEC staff noted, this is absurd. WECS turbines kill birds; they do not create them. The CEC critique points up the fundamental inaccuracy of the primary artifice the DEIR uses to estimate avian impacts from the project.

The CEC recommends a significantly more detailed protocol for siting wind turbines and reducing impacts to avian species. It references the U.S. Fish & Wildlife Service Interim Guidance, which calls for a three-year baseline survey and avoidance measures (such as seasonal shutdown) when there are concentrations of bird use at the sites. (Tab 12, p. 8.) The "Service Interim Guidance On Avoiding And Minimizing Wildlife Impacts From Wind Turbines" are attached under Tab 15. Those guidelines call for an average of three years of monitoring data, including acoustic, radar, infrared, or observational monitoring to be collected. (Tab 15, p. 4.) The five months of data collected here falls far short of that three-year standard.

In addition, the DEIR finds that there is bat foraging habitat onsite. (DEIR, p. 6.3-23.) According to the CEC, bat surveys should be done from April through October. (Tab 12, p. 16.)

that any golden eagle fatality would be considered significant. (Tab 12, p. 7.) At least one local homeowner in the area indicates personal observation of golden eagles in the area, and the negative impact WECS facilities have had in driving them away. (See e-mail from Abby Silverstone dated January 9, 2007, attached as Tab 13.)

<sup>14</sup> Attached as Tab 14.

Jay Olivas  
January 29, 2007  
Page 13

Here, no bat surveys of any type were done, and no surveys of any type were done during the fall, for either bird or bat species.

The DEIR's flawed studies, leading to conclusions of low bird use of the project area, are refuted by the Los Angeles Audubon Society. Its letter of June 9, 2006, to the California Energy Commission, cites studies indicating that an estimated 70,000,000 songbirds pass through the San Geronio Pass annually. (Tab 16, p. 2.) It also indicates such songbirds are most vulnerable to collision in the two or three hours after sunset, as they begin night migratory activity. The DEIR contains no study, discussion, or assessment of nighttime avian activity in the project area, since its field observations were limited to daytime, personal observations.<sup>15</sup> The Audubon Society recommends use of existing radar data to assess night bird use of proposed wind turbine sites, which should be required of the project applicant here.

The significance of the likely avian mortality cannot simply be willed away. The DEIR indicates there are likely to be no collisions from burrowing owls because they forage low to the ground. (DEIR, p. 6.3-39.) Mr. Anderson himself indicates there will be burrowing owl fatalities in his "Comments Regarding the Dillon Wind Project." (See, Biological Assessment, Appendix E. See also, Tab 12, p. 14.)

The DEIR also makes the totally unsupportable assertion that bird deaths will be lowered by a larger rotor with slower revolutions per minute (RPMs). (See, DEIR p. 1-8.) According to respected experts on bird mortality, the true determinants are tip speed, rotor invisibility due to tip speed, and rotor swept area. Tip speed is determined from RPM plus blade length, not RPM alone. (See, C.G. Thelander, Smallwood, K.S., and L. Rugge; Bird Risk Behaviors and Fatalities at the Altamont Pass Wind Resource Area; Period of Performance: March 1998-December 2000, December 2003; NREL/SR-500-33829 [Tab 17, pp. 27-28]; National Avian Wind Power Planning Meeting IV; Meeting Summary; May 16-17, 2000; Carmel, California [Tab 18, p.3].) The 19.8 RPM cited as relatively harmless in the DEIR (DEIR, p. 1-8 ) is therefore meaningless. The real statistic, and the real threat, is three rotor blades of some fifteen total tons, moving at 142.5 miles per hour. Evolution has yet to produce a bird, or any living creature, that can withstand a blow of this force.

The biological deficiencies in the DEIR are not limited to bird analyses, however. For example, the DEIR, p. 6.3-20 indicates no impact to the Coachella Valley Fringe-Toed Lizard because of a lack of preferred habitat. Nevertheless, at p. 6.3-6, the figure shows the Fringe-Toed Lizard area as a big part of Area 1, and a portion of Area 3. In addition, p. 3-6 of the Biological Assessment states blowsand transport to the White Water Flood Plain Reserve could

<sup>15</sup> The Biological Assessment, at p. 3-6, indicates that the avian surveys were limited to four dates, of approximately 30 minutes each. It also references an illustration of the areas observed as being depicted in Fig. 2, which is not attached to the Appendix.

Jay Olivas  
January 29, 2007  
Page 14

be impacted by the project, which contains Coachella Valley Fringe-Toed Lizard habitat. These inconsistencies must be reconciled.

In addition, the DEIR states that no special plant species occur on the site based upon a pedestrian field investigation. (DEIR, p. 6.3-16.) It is questionable whether the field investigation referenced is sufficient to determine the existence of these species. The U.S. Fish & Wildlife Service is currently undergoing a spectral analysis from satellite imagery in connection with habitat characterization for the San Bernardino Wash Plan Habitat Conservation Plan. This technique takes enhanced satellite imagery and characterizes habitat based on a spectral analysis of superior satellite imagery. This type of analysis should be undertaken in the existing context, to be sure that any special plant species which occur on this site have been identified.

The DEIR also seems to duck the issue of delineation of jurisdictional waters, and whether a 404 permit will be required. Informal consultation with Mr. Sheridan, referenced at DEIR p. 6.3-27, is not sufficient. A specific delineation should be done to determine if any areas of project impact come under the jurisdiction of the Army Corps of Engineers or the Department of Fish & Game. If a 404 or Streambed Alteration Permit is required, it must be identified as one of the discretionary approvals this DEIR is intended to cover.

More broadly, the DEIR adopts erroneous thresholds of significance for biological impacts. Reliance on areas identified as mitigation areas in the proposed Coachella Valley MSHCP has nothing to do with specific impacts to specific species, on this site, from this specific project. Significantly more field work and correlation of project features to biological resources, either found on the site or likely to use it, are required.

The impacts to Sonora Creosote Bush Scrub communities is also insufficient. Areas of lubricant spills, drippings, and road areas need to be calculated within the 27 acres of disturbance. In addition, the disruption is not to 27 contiguous acres, but over 1500 acres. Interruptions in the continuity of habitat must be assessed, not just a tallied acreage of "checkerboard" disturbances, that ignore the impacts to the spaces in between.

Page 6.3-30 of the DEIR indicates that three-strand barbed wire fencing is "likely." This statement offers no real information. The DEIR must indicate whether security fencing or this type of barbed wire fencing will be used, and where. In order for those using the DEIR to balance security, view, and biological impacts, more information is required.

The DEIR is also devoid of data on the assertion at p. 6.3-34 that there will be no noise impact to wildlife. The claim is particularly suspicious given the 107 decibel rating the manufacturer gives to these turbines. (Tab 2, p. 5.) It is also refuted by personal, first-hand observation by residents. (Tab 13.)

Jay Olivas  
January 29, 2007  
Page 15

6. Geology/Soils.

At p. 5-3, the DEIR shows that the project site is susceptible to subsidence. This is a particular concern with the interaction of proposed turbines and the Southern California Gas high-pressure gas line traversing Area 3. A potential leak or rupture of the gas line can combine with heat, oil, or friction of turbines to create a fire or explosion hazard. There should be some recognition of this risk, and proposed mitigation for it and any potential failure collapse of any of the proposed WECS turbines. The risk is made more acute by the high seismic vulnerability of the site acknowledged in the DEIR. (See, DEIR Appendix F, Executive Summary.)

Mitigation Measure 6 at p. 6.5-7 of the DEIR states "Preventative measures to reduce seasonal flooding and erosion should be incorporated into site grading plans." This is again impermissibly vague. There is no indication of what specific preventative measures are even suggested, nor any statement of a standard to which the project applicant must be held in mitigating what impacts there are.

Page 6.5-9, and its reference to flooding, suffers from the same defect. It states "If significant changes are proposed for the site, appropriate project design, construction and maintenance can minimize the site sheet flooding potential." This statement is meaningless. It describes no project features, assesses no impacts, and identifies no mitigation. Given that at least 27 acres will be converted to impermeable surfaces, increased runoff should be quantified, and a specific drainage plan should be included.

7. Noise.

The DEIR contains no measurement, analysis, or discussion whatsoever for the project's noise impact on biological resources, only for human receptors. (DEIR, p. 6.7-2.) Under CEQA, there must be a finding of significance if a project will "expose persons to **or generate excessive groundborne vibration or groundborne noise levels**. (CEQA Regs., Appendix G.) There are no vibrations studies whatsoever in the DEIR, and no noise measurements, only references to technical specifications from the manufacturer. From this, it is impossible to determine what noise or vibration impacts there may be to biological resources, and both must be analyzed.

The impact of noise to humans is given short shrift as well. Anthony Rogers, Ph.D., presented a study indicating the appropriate rule of thumb for noise setbacks to the nearest residence is three times the blade tip height, which is consistent with existing County setback requirements in Section 18.41(d)(1)(a).<sup>16</sup> The project proposes a variance to bring turbines as close as 544.75 feet. Any reduction from this accepted industry standard on noise impacts should be considered significant.

<sup>16</sup> See, *Wind Turbine Noise, Infrasound and Noise Perception*, January 18, 2006, Tab 19.

Jay Olivas  
January 29, 2007  
Page 16

The safety of even this standard is questionable, however. In "Health Effects of Wind Turbine Noise," by Nina Pierpont, M.D., Ph.D., a minimum setback distance of 1.5 miles is called for because of the effects of all noise, including low frequency sound, from industrial wind turbines. (See Tab 20, p. 2.) Dr. Pierpont's conclusions were based on the "Guidelines for Community Noise" issued by the World Health Organization in 1999. (See Tab 21.)

Finally, given the existing General Plan designations (which include Community Development), the project's noise impacts should not be assessed only with respect to existing residential dwellings, but also any potential residential development consistent with existing zoning on surrounding properties, as a cumulative impact. The project should not be afforded the opportunity to preclude residential development, or reduce its value on surrounding properties, simply because it is first in time.

#### 8. Cumulative Impacts.

The DEIR should undertake an analysis of the impact of prior WECS development in other areas of the San Geronio Pass on surrounding development. It should assess whether the project's expansion of WECS uses will impair or inhibit development of surrounding properties, specifically for the rural and residential uses that are called for under the existing foundation components. It should also assess what value impact the WECS development has on surrounding homes and properties.

In addition, the DEIR should assess impact from potential turbine blade throw, and identify the zone of potential blade throw for all proposed WECS turbines. There must be some evidentiary support for the claim made in the WECS application that "blade throw of 150 feet is highly unlikely." (Tab 2, p. 5.)

The DEIR should also acknowledge and assess the cumulative visual impact of the FAA-required red strobe lights on the towers. The U.S. Fish & Wildlife Service indicates these lights should not be used, since they appear to attract night-migrating birds at a much higher rate than white strobe lights. (Tab 15, p. 4.) The DEIR is silent on this impact, since it undertakes no night time avian use analysis. The cumulative biological impacts of the FAA-required use of red strobe lights should be acknowledged, and assessed.

At p. 6.1-29, the DEIR cites FAA safety concerns as overriding the acknowledged cumulative visual impact of warning lights. This fails to address the potential mitigation measure of reduction in the number of turbines, or relocation of the turbines, to mitigate. In addition, while the FAA requirement was that 17 turbines be lit, nothing in Appendix C indicates the specific location of the turbines which are required to be lit. This is necessary for an assessment of all impacts from the required strobe lighting, including cumulative impacts.

Jay Olivas  
January 29, 2007  
Page 17

9. Alternatives and Project Objectives.

The DEIR includes a project objective of taking advantage of economies of scale on projects sized above 25 MW. (DEIR, pp. 4-6.) There is no financial data supporting this implicit assertion that projects above 25 MW involve economies of scale, or that there is any need to take advantage of them in connection with this project. The DEIR must have this evidence if it is to rely on fulfillment of this project objective as a justification for the proposed project, and the rejection of alternatives, in the face of significant adverse environmental effects.

The DEIR's alternatives analysis is deficient in a number of important respects. First, there is no assessment or discussion of any potential alternative locations. DEIR p. 6.3-33 indicates there are 3500 turbines on 20 square miles in the San Geronio Pass and the Upper Coachella Valley. The October 2, 2003 WECS policy memo says there are 35,000 total acres available. (Tab 1, p. 14.) Twenty square miles is 12,800 acres. The DEIR offers no explanation why, with 22,000 other acres available, additional WECS from this project must be sited immediately adjacent to Indian Avenue, the outer limit of any WECS development, and immediately adjacent to existing residences.

The DEIR should also include an alternative that proposes only repowering existing WECS sites that have fallen into disrepair, on non-use. The DEIR relies on the SB 1078's energy goal of 20% renewable energy by 2017. (DEIR, p. 4-6.) This objective could equally be met by an alternative of repowering existing WECS sites which have become outmoded, or otherwise fallen out of productivity. A repowering option would advance all energy production objectives, without exacerbating the environmental impacts of additional expansion of WECS turbines into areas where none previously existed. Such repowering would also avoid the existing utility transmission facility and easement constraints identified at DEIR, pp. 5-10 to 5-13, as justification for setback variances.

At a minimum, the DEIR should consider an alternative which has no WECS turbines on Area 3. This alternative would minimize impact to existing habitable dwellings, since all those dwellings are immediately adjacent to Area 3. In addition, it would prevent the eastward expansion of the limit of WECS in the area, since the area west of Area 3 represents the easterly limit of the encroachment of turbines in this area. It would also avoid safety and utility conflict issues from the proximity of WECS turbines and electrical facilities in close proximity to the high pressure gas line that traverses Area 3.

The fundamental flaw running throughout the entire alternatives analysis, however, is the selection of the project as the environmentally superior alternative. This is based on alleged air quality and other environmental impacts which are wholly fictional.

Jay Olivas  
January 29, 2007  
Page 18

Page 6.2-3 of the DEIR asserts that wind-generated electricity displaces on average 1.35 lbs. of CO<sub>2</sub>, 0.07 lbs. of SO<sub>2</sub>, and 0.042 lbs. of NO<sub>x</sub> for every kilowatt hour generated. The multiple stages of speculation required to reach this conclusion have already been exposed by the County, and were quoted at the outset of this letter. (See p.2, supra.)

There are other defects in this extrapolated analysis. First, the fossil fuel energy generation figures cited by the DEIR are drastically overstated. Relying on the California Energy Commission's Gross System Electricity Production for 2005, the actual rate for CO<sub>2</sub> is 0.049 lbs., for SO<sub>2</sub> is 0.000000643 lbs., and NO<sub>x</sub> is 0.0000235 lbs. (See, U.S. Electric Power Industry Estimated Emissions by State (EIA-767 and EIA-906) of the U.S. Department of Energy; California Energy Commission's Gross System Electricity Production for 2005; collectively attached under Tab 22.) The DEIR overestimates the impact of fossil fuel electrical generation by anywhere from 28 to 100,000 times.

Second, the DEIR presumes 3,000,000 kw-hrs per year from each 1 megawatt turbine. This presumes a 34% capacity factor.<sup>17</sup> Industry statistics already relied upon by the County contradict this figure. In its October 2, 2003 WECS policy memorandum, the County noted that of 1,832.2 MW of installed capacity in California, the California Energy Commission for 2002 reported that wind energy contributed only 404.8 MW to the State's total supply. (Tab 1, p. 15, n.2.) This translates to a 22% capacity factor, as do the latest available 5-year data for California Wind Energy from UC Davis' Wind Performance Reporting System. (See Tab 23.) By overstating the amount of electricity generated from the WECS turbines, the DEIR also overstates the air quality impacts from avoided fossil fuel generation pollutants.

Third, it is simply false that additional wind energy generation capacity results in replaced or displaced fossil fuel generation. As explained by Glen R. Schleede in "False Wind Industry Claims About the Integration in Electric Grids of the Intermittent, Volatile, and Unreliable Electricity from Wind Turbines," dated August 2, 2006 (Tab 24), wind energy is not reliable because of the variability of the wind source. Electrical grids require the ability for nearly instantaneous increase or decrease of electrical supplies in order to match variable demand. Since there is no way to store electricity on an industrial level, the grid must have the capacity to match demand as it fluctuates, not simply as the wind blows. The grid must therefore have and utilize more traditional fossil fuel or other methods to assure available supplies consistent with variability of demand. Wind energy simply is not that flexible.

<sup>17</sup> The DEIR does not specifically identify this aggressive, unsupported presumption, but it is evident from a few calculations. Assuming 100% generation at a full megawatt for 24 hours over 365 days yields 8,760 MW, or 8,760,000 KW hours. The 3,000,000 presumed is 34% of that 8,760,000 figure.

Jay Olivas  
January 29, 2007  
Page 19

This is particularly true in peak electrical demand times, most notably summer heat waves. In July of 2006, wind energy contributed less than 5% of its total installed capacity, and made a negligible contribution to supplies required by the grid as whole.<sup>18</sup>

Fourth, the DEIR analysis ignores the energy drain the WECS towers will place on existing energy resources, from the need to maintain back-up generators, maintenance activities, and the like. If the DEIR is to rely on an "energy budget" analysis, all energy implications of the towers, both from the cost and the benefit side, must be included if the analysis is to be intellectually honest.<sup>19</sup> The project applicant should be required to provide this information.

Given these realities, it is obvious the numbers the DEIR uses to justify selection of the proposed project as environmentally superior are drastically inflated, and ultimately meaningless unless the project applicant can demonstrate actual avoided fossil fuel generation pollution from the electricity to be generated from this proposed WECS project. Once the fallacies of these presumptions are exposed, the DEIR's conclusions regarding the project's environmental superiority fall like a house of cards. Nothing in the DEIR even comes close to analyzing the energy realities of this supposed pollutant avoidance, let alone proving the vague and unsubstantiated claims of benefit the DEIR relies on as the lynchpin of the supposed environmental superiority of the project.

Title 14, California Code of Regulations § 15126.6(b) states:

Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code § 21002.1), the discussion of alternatives shall focus on alternatives to the project *or its location* which are capable of avoiding or substantially lessening any significant effects of the project, *even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.* (Emphasis added.)

<sup>18</sup> See articles by Mr. Schleede, including "Stretching or Ignoring Facts and Making Unwanted Assumptions When Attempting to Justify Wind Energy" and "The True Cost of Electricity From Wind Power and Windmill 'Availability' Factors," also collectively attached under Tab 24. These articles explain the interrelationship between grid requirements, wind energy capacity factors, and transmission capacity limitations in much more detail. They also explain the tax credit mechanism which drives wind energy facility development.

<sup>19</sup> The project also requires some 47 cement foundations of 7.5 feet of thickness, entailing some 400 tons each. (Tab 2, p.4.) For every ton of cement produced, a metric ton of carbon dioxide is also produced. (See, Tab 25, p. 3.) This additional 18,000 metric tons of CO<sub>2</sub> generated by the project must be assessed against any supposed pollutant savings the project is said to create.

Jay Olivas  
January 29, 2007  
Page 20

Here, the DEIR's narrow range of alternatives, and its "one-note song" of avoided fossil fuel pollutants as the basis for the project's supposed environmental superiority, utterly fail to meet this CEQA mandate.<sup>20</sup>

10. Conclusion.

The DEIR is rife with truncated analyses, ignored significant environmental effects, and fabricated project benefits. Approval of the project as proposed requires a series of General Plan Amendments, variances, and zone changes that amount to land use gymnastics. The County has already recognized the serious, deleterious environmental effects of the installation of WECS facilities generally, and this project is no different. Neither the surrounding landowners nor the City in whose sphere of influence the project is located wants this project, and the County of Riverside does not need it.

The DEIR fails to comply with CEQA in recognizing, analyzing and mitigating the myriad significant environmental effects this project would create. To meet the requirements of CEQA, wholesale revisions are required in its project description, its analysis of aesthetic, biological, noise, and land use impacts, and its consideration of cumulative impacts and alternatives. Such extensive revisions will require recirculation, and another opportunity for surrounding landowners and interested members of the public to comment. I look forward to reviewing a recirculated DEIR if the County opts to continue processing this project, because the current one simply will not sustain approval of the project it purports to justify.

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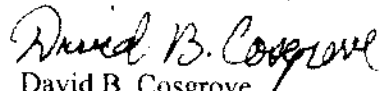
<sup>20</sup> In addition, each of the alternatives dealing with reduction or elimination of turbines is rejected as being not feasible. As indicated above, the DEIR is devoid of any financial or economic data indicating that a reduction in the number of turbines, or an alternative involving repowering of existing outmoded WECS facilities, is somehow infeasible. The infeasibility simply is not shown. In the absence of such evidence, the assertion has no merit, and cannot serve as the basis of rejecting each of the alternatives listed in the DEIR, as the DEIR presently recommends.

Jay Olivas  
January 29, 2007  
Page 21

Thank you for the opportunity to comment on this DEIR. If you have any further comments or questions, or require further information from me, please do not hesitate to contact me.

Very truly yours,

RUTAN & TUCKER, LLP

  
David B. Cosgrove

DBC:tr  
Enclosure

Jay Olivas  
January 29, 2007  
Page 22

| <b>Exhibits to Comments to Draft Environmental Impact Report for the Dillon Wind Project, Riverside County WECS 116 and 117, General Plan Amendment No. 811, Change of Zone Nos. 7346 and 7449, Variance Nos. 1797 and 1798, City of Palm Springs CUP 5.115, and Variance 6.493</b> |                                                                                                                                                                                        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Tab</b>                                                                                                                                                                                                                                                                          | <b>Description</b>                                                                                                                                                                     |
| 1                                                                                                                                                                                                                                                                                   | County of Riverside Planning Department Memorandum dated October 2, 2003                                                                                                               |
| 2                                                                                                                                                                                                                                                                                   | Application for Commercial Wind Energy Conversion Systems (WECS) Permit – Case No. WCS00117, dated May 22, 2006                                                                        |
| 3                                                                                                                                                                                                                                                                                   | Conditions and Approvals for PP21093R1                                                                                                                                                 |
| 4                                                                                                                                                                                                                                                                                   | Skyborne Development Brochure; Development Sign                                                                                                                                        |
| 5                                                                                                                                                                                                                                                                                   | Submittal to Board of Supervisors from Economic Development Agency, dated March 7, 2003                                                                                                |
| 6                                                                                                                                                                                                                                                                                   | Resolution No. 2006-134                                                                                                                                                                |
| 7                                                                                                                                                                                                                                                                                   | Comments to DEIR; WECS 116-117; Estate of Wolf; Site Environs – January 10, 2007 (Disk)                                                                                                |
| 8                                                                                                                                                                                                                                                                                   | Press-Enterprise Article dated July 8, 2006                                                                                                                                            |
| 9                                                                                                                                                                                                                                                                                   | Wind Turbine Syndrome: Noise, Shadow Flicker, and Health – by Nina Pierpont, M.D., Ph.D., dated August 1, 2006                                                                         |
| 10                                                                                                                                                                                                                                                                                  | Direct Testimony of Jon Boone                                                                                                                                                          |
| 11                                                                                                                                                                                                                                                                                  | Shadow Study – Dillon Wind Project                                                                                                                                                     |
| 12                                                                                                                                                                                                                                                                                  | Assessment of Avian Mortality From Collisions and Electrocutions                                                                                                                       |
| 13                                                                                                                                                                                                                                                                                  | E-mail from A. Silverstone dated January 9, 2007                                                                                                                                       |
| 14                                                                                                                                                                                                                                                                                  | Memorandum from California Energy Commission to Commissioners Geesman and Boyd, dated August 31, 2005 re Response to Public Comments                                                   |
| 15                                                                                                                                                                                                                                                                                  | U.S. Dept. of Interior Memorandum to Regional Directors, Regions 1-7, dated May 13, 2003, re Service Interim Guidelines on Avoiding and Minimizing Wildlife Impacts from Wind Turbines |
| 16                                                                                                                                                                                                                                                                                  | Letter dated June 9, 2006, from Los Angeles Audubon Society to California Energy Commission                                                                                            |
| 17                                                                                                                                                                                                                                                                                  | Bird Risk Behaviors and Fatalities at the Altamont Pass Wind Resource Area                                                                                                             |
| 18                                                                                                                                                                                                                                                                                  | Meeting Summary for the National Avian Wind Power Planning Meeting IV dated May 16-17, 2000                                                                                            |
| 19                                                                                                                                                                                                                                                                                  | Wind Turbine Noise, Infrasound and Noise Perception report, dated January 18, 2006                                                                                                     |
| 20                                                                                                                                                                                                                                                                                  | Health Effects of Wind Turbine Noise by Nina Pierpont, M.D., Ph.D., dated March 2, 2006                                                                                                |
| 21                                                                                                                                                                                                                                                                                  | Guidelines for Community Noise                                                                                                                                                         |
| 22                                                                                                                                                                                                                                                                                  | U.S. Dept. of Energy Greenhouse Emissions for California in 2005                                                                                                                       |
| 23                                                                                                                                                                                                                                                                                  | Wind Performance Reporting System                                                                                                                                                      |

Jay Olivas  
January 29, 2007  
Page 23

| <b>Exhibits to Comments to Draft Environmental Impact Report for the Dillon Wind Project, Riverside County WECS 116 and 117, General Plan Amendment No. 811, Change of Zone Nos. 7346 and 7449, Variance Nos. 1797 and 1798, City of Palm Springs CUP 5.115, and Variance 6.493</b> |                                                                                                                                                                       |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Tab</b>                                                                                                                                                                                                                                                                          | <b>Description</b>                                                                                                                                                    |
| 24                                                                                                                                                                                                                                                                                  | False Wind Industry Claims about the Integration in Electric Grids of the Intermittent, Volatile and Unreliable Electricity from Wind Turbines, dated August 29, 2006 |
| 25                                                                                                                                                                                                                                                                                  | Quick-Setting Concrete and a Method for Making Quick-Setting Concrete                                                                                                 |

April 17, 2007

**VIA FACSIMILE & OVERNITE EXPRESS**

Honorable Chairman and Members of the  
Riverside County Planning Commission  
Planning Department  
County of Riverside  
Second Floor, Room 211  
82-675 Highway 111  
Indio, CA 92201

Re: WECS 116 and 117

Honorable Chairman and Members of the Planning Commission:

I represent the Estate of Reba Wolf, which owns approximately 80 acres of property located immediately north of a portion of the area proposed for development of some 45 WECS windmill facilities. My client opposes this project for a number of reasons, many of which were laid out in the January 29, 2007 comment letter submitted to the Draft Environmental Impact Report County Staff now proposes to rely upon, in recommending approval of the project. The responses to comments in the proposed Final EIR now before you fail to address a number of significant adverse environmental impacts from the project. Among these are light and shadow impacts, impacts to avian and bat species using the area (particularly at night), and land use impacts on surrounding properties, my client's being among them.

My client urges the Planning Commission not to approve the project, and instead to undertake additional environmental and land use studies required to assess the full impacts of the WECS development being proposed, and the cumulative land use impacts it will create for the surrounding properties. We believe Staff's recommendation flows from procedural irregularities in project processing, unrecognized environmental impacts, reliance on unexplained supposed project benefits, and a practical elimination of developability of surrounding properties, all created by the Project. Significantly more analysis, and a fairer opportunity for the concerns of surrounding land owners to be weighed, should be required of any applicant proposing a project of this magnitude, and impact.

As such, my client recommends the Planning Commission deny approval of the project, or in the alternative, convene a committee consisting of Planning Staff, the project applicant, and surrounding landowners and stakeholders, to develop a more reasoned and balanced evidentiary record upon which the Planning Commission, and ultimately the Board of Supervisors, can render a decision on the project.

Honorable Chairman and Members of the  
Riverside County Planning Commission  
April 17, 2007  
Page 3

2. **The County Should Study and Evaluate the Impacts of This Project on Surrounding Properties.**

More important than questions whether the County *can* give accelerated processing to this project proposal, is the question whether the County *should*. This project proposes to place a string of 327-foot towers immediately up against the outer boundary of the WECS-exclusion area within the San Geronio Pass, as described in the County's October 2, 2003 WECS memorandum<sup>2</sup>. The Rural Foundation Component applicable to Areas 1 and 3 calls for "remote cabins, residential estates, limited agriculture, equestrian, and animal keeping uses." The Community Development Foundation Component calls for "urban and suburban development." These are hardly consistent with the industrial nature of the proposed WECS turbines, particularly given the acknowledged impact on visual resources they create.

In my client's view, this does violence to any notion of transitioning the more intensive industrial WECS developments to the west, with areas east of Indian Avenue, where all WECS facilities are prohibited. Particularly in Area 3, where no WECS facilities have previously been proposed, sound planning would seem to call for smoother transitional uses, such as those called for under Policy PASS 6.3 from the San Geronio Wind Energy Community Policy Area. That policy calls for limited industrial/commercial uses to be integrated with existing wind parks, consistent with residential uses.

In addition, my client urges the Planning Commission to consider the practical effects of this project on its property. That property is presently zoned for residential development, one unit per every 2 acres. Under present market constraints, this zoning requires larger, estate-type homes, because of the large lot size requirements. It is simply unrealistic to expect this type of high-end residential product to develop immediately adjacent to an intensive, industrial wind farm use. The likely consequence of approval of this project, therefore, is a requirement for my client to pursue some sort of change in zone, with the attendant costs and uncertainties any such request entails.

The same situation is faced by other surrounding landowners. In fairness, my client requests the County to analyze whether the variances, zone changes, and general plan amendments now being considered by the County--tailored specifically for this project--should be expanded to analyze the impacts on surrounding properties as well. It may well be that transition to commercial or more industrial uses for these surrounding properties is appropriate, if the project is to go forward. The onus of analyzing and proposing such zone changes should

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<sup>2</sup> This memorandum was attached under Tab 1 to my client's letter on the DEIR, and is also posted on the County Planning Department's website.

Honorable Chairman and Members of the  
Riverside County Planning Commission  
April 17, 2007  
Page 4

not rest with surrounding property owners as an unfortunate after-effect of the project, but more properly should be studied in connection with the proposed project approval.

Unquestionably, the project has regional impact. The County's consideration of zoning matters in connection with the project should have an equivalent regional scope. Such regionally integrative planning should precede commitment to the project, not be thrust upon nearby property owners as a consequence of it.

**3. The Proposed Statement of Overriding Considerations Is Inadequate.**

The "County of Riverside Planning Department Staff Report," at pages 7-8, proposes a statement of overriding considerations under section 15093 of the CEQA Guidelines. My client believes this statement is inadequate, and in support points to the very recent judicial decision of Woodward Park Homeowners Association, Inc. v. City of Fresno (Feb. 13, 2007, No. F049481) \_\_\_\_ Cal.App.4th \_\_\_\_\_. In that case, the court of appeal reiterated that a statement of overriding considerations must make a good faith effort to inform the public, and must have an evidentiary foundation in the record. (*Id.*, Typed Opn. at p. 36-39.) In Woodward Park, the court struck down a statement of overriding considerations that contained misleading statements regarding the proposed benefits of a project, and failed to fairly balance the decision to approve the project, in the face of its environmental effects. (*Id.*)

The proposed statement of overriding considerations for this project bears many of the same defects. The record is devoid of any evidence of the alleged energy benefits, since there is no analysis of the frequency of utilization of the wind energy it might generate, or correlation of such generation to energy demand. Nor is there any evidentiary basis to conclude that fossil fuel pollutants from the generation of electricity will actually decrease, given the realities of limitations on the facility capacity ratios of wind energy, its reliability, and its role in the overall management of the grid.<sup>3</sup>

The environmental benefits cited in the statement of overriding considerations are likewise unsupported. The statement asserts the project preserves 98% of the land, but this ignores noise, shadow, and upset from the movement of the "checkboard" disturbances of the WECS facilities over the entire 1,500 acres. In any event, if the proper existing environmental baseline is used as the point of reference, the proposed project "preserves" nothing, and actually disturbs at least 27 acres of ground surface, and significantly more with the visual, biological,

<sup>3</sup> These points were all made in the County's WECS memorandum, referenced above, at pp. 4-7. Nowhere does staff explain how the situation with this project remedies the multiple layers of speculation that memorandum refused to accept, when it refused to accept rosy predictions of air quality improvement from WECS facility construction.

Honorable Chairman and Members of the  
Riverside County Planning Commission  
April 17, 2007  
Page 5

and other impacts created by the project. Moreover, the project does not make full utilization of the County's San Geronio Wind Energy Community Policy Area. This is an area of some 35,000 acres, and the absence of any analysis of alternative locations for the project in the EIR, within this broader area, offers no evidentiary support for any allegation of its "full" utilization.

The claimed economic benefits are also unsupported. The statement of overriding considerations cites 80 new full-time jobs to be created during construction. The DEIR directly contradicts the recognition of this as a significant benefit. The DEIR, in attempting to minimize the population and growth inducing impacts of the project, specifically states that it would not serve as a "substantial source of employment." (DEIR, p. 7-4.) Further, there is no mention anywhere in the draft EIR of the basis of the claim for \$12,000,000 of property taxes<sup>4</sup>, nor any quantification of the contribution to the County's Wind Implementation Monitoring Program.

All this falls short of the good-faith balancing required of the County, implicit in CEQA's requirement for a statement of overriding considerations:

"There is a sort of grand design in CEQA: projects which significantly affect the environment *can* go forward, but only after the elected decision makers have their noses rubbed in those environmental effects, and vote to go forward anyway."

(Vedanta Society of So. California v. California Quartet, Ltd. (2000) 84 Cal.App.4th 517, 530.) With all due respect, this statement of overriding considerations serves more as a gloss than any frank disclosure, and in light of the Woodward Park case, is unlikely to be held adequate under CEQA.

4. **Lack of Clarity on Right-of-Way Dedications Raise Questions Regarding Setbacks.**

The staff report seems to betray a level of uncertainty regarding right-of-way dedications on the project, stating: "The applicant has expressed concerns about the public need and justification for additional right-of-way adjacent to the proposed wind farms within this project."

<sup>4</sup> The fallacy of this point is demonstrated by looking at the most recent property tax information for property on which WECS 12 placed some 102 wind turbines, near Indian and Two Bunch Palms (A.P. Nos. 668-120-018, -020, and -021). That property generates \$858 of taxes on land only, with improvements (i.e., the still-existing WECS towers) assessed at *zero*. The WECS are still there, the tax revenue is not. This proves the negative environmental and land use impacts from these rapidly depreciated wind energy facilities long outlive any short-term tax revenue increases.

Honorable Chairman and Members of the  
Riverside County Planning Commission  
April 17, 2007  
Page 6

(Staff Report, p. 2.) The FEIR indicates revisions have been made to the project to eliminate the need for variances from safety setbacks to habitable dwellings. It is unclear whether, if the project is required to provide dedications, all safety setbacks are still met, even from the new right-of-way lines. My client requests this be clarified prior to any project approval going forward.

**5. Conclusion**

My client believes that neither the FEIR nor its response to comments adequately address the deficiencies in both analysis and recognition of impacts inherent in the DEIR, and created by the project. Those objections are already a matter of record, and are not repeated here.

Still, from a land use perspective, this project seeks processing privileges and legislative amendments that will unquestionably impact surrounding properties. My client believes regional land uses would be better served by a study of actual development patterns adjacent to existing WECS facilities, and development of land use strategies to transition the impacts of these proposed WECS uses to surrounding areas. These may include zone changes beyond the project-specific entitlements sought by the project, or direction to the applicant to implement alternative uses that buffer some of the WECS impacts the County has already recognized in its October 2, 2003 WECS memorandum.

For all the above reasons, my client cannot agree with Staff's recommendation for approval of the project. Based on the existing record, my client believes the project should be denied, or at a minimum, forestalled until its regional impact, and regional solutions to such impacts, are fully analyzed, and developed.

Thank you for the opportunity to comment on this important matter.

Very truly yours,

RUTAN & TUCKER, LLP



Michael R. W. Houston

MRWH:mm

cc: David Cosgrove, Esq.

May 15, 2007

**VIA FACSIMILE**

Jay Olivas  
Planning Department  
County of Riverside  
2nd Floor, Room 211  
82-675 Highway 111  
Indio, CA 92201

Re: WECS 116 & 117; Planning Commission Hearing of May 16, 2007

Dear Mr. Olivas:

As you know from prior correspondence in the above-referenced matter, our office represents the Estate of Reba Wolf, the owner of property immediately adjacent to Area 3, which is part of the proposed site for the development of WECS facilities. I am submitting this letter to provide further input on the FEIR analysis of biological impacts in connection with the project proposal, and as a supplement to the April 18, 2007 letter provided by the U.S. Fish & Wildlife Service.<sup>1</sup>

Of particular note, that letter states as follows:

"Typically, bird fatalities cannot be estimated without three years of avian survey efforts to determine the appropriate locations for turbines (Smallwood & Thelander 2004). Given that the County/City has accepted a few days of pre-construction avian survey effort as satisfactory and required no post-construction avian fatality monitoring for this project in the San Geronio Wind Energy Resource Area (SGWERA), the Service strongly disagrees with the statement in the FEIR on p. 6.3-34, Section 6.3.3.4.3, Cumulative Impacts. The FIER states: "The project would also not have a significant impact on birds as described in Section 6.3.3.4.5 and in the Avian Survey Report included as Attachment B." The Service has a concern that this previous statement is *unsupportable due to the minimal pre-construction avian survey effort, the lack of post-construction avian*

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<sup>1</sup> It is my understanding that comments for May 16, 2007, are limited to the biological impacts raised by the USFWS letter, and Highway 62 scenic setbacks. My client has already commented regarding the Highway 62 setbacks (see FEIR, Comment Letter Z, p. 7-8.) This letter addresses only the biological issues raised by the USFWS.

Jay Olivas  
May 15, 2007  
Page 2

*fatality monitoring, the lack of compliance with the Service's Interim Guidelines, and the general lack of knowledge and understanding of the impacts to avian species that migrate through the SGWERA.*

(USFWS letter of 4/18/07, p. 3.)

My client echoes this concern. An EIR must be prepared with a sufficient degree of analysis to provide decision makers with the information needed to make an intelligent decision concerning a project's environmental consequences. When experts disagree regarding appropriate methodologies for assessing impacts, the FEIR must summarize main points of disagreement. (CEQA Regs. § 15151.)

Here, the USFWS is without question expert in issues of impacts to biological resources, including avian species. Indeed, as indicated in my client's comments to the DEIR, this Agency has issued Interim Guidelines for siting of wind turbine facilities, that call for three years of pre-project avian studies, as the appropriate study protocol for providing an adequate existing baseline environmental description, against which to measure project impacts. CEQA Regulations § 15088(c) requires the County to address in detail why the comments and suggestions calling for compliance with the USFWS Interim Guidelines have not been accepted, and must be addressed with a "good faith, reasoned analysis in response." My client believes this remains lacking.

Without question, the project applicant has not undertaken to comply with the USFWS Interim Guidelines. Apart from site specific surveys that are deficient, those guidelines call for ranking various sites against each other, under what the guidelines term the "Potential Impact Index." (See, FEIR, Letter Z Attachments, Attachment 15, p. 5.) This failure ties into my client's critique of the alternatives analysis of the FEIR, which did not look at any alternative sites. The expectation in the USFWS Interim Guidelines is that alternative sites must be analyzed, and ranked for suitability. This sets what my client believes is the minimum analysis incumbent upon this project applicant to provide the County with a responsible basis for assessing the acceptability of acknowledged potential avian impacts. As stated in the Interim Guidelines: "All potential development sites within a geographic area should be evaluated before a site is selected for development." (See, USFWS Interim Guidelines, p. 2.)

In addition, those Interim Guidelines indicate that songbird migration sites may require radar surveillance. (*Id.*, at 7.) This study protocol has been suggested by my client and others, but so far not undertaken.<sup>2</sup>

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<sup>2</sup> When a protocol exists for assessing an impact, such as the radar surveillance for nocturnal bird use here, an EIR cannot refuse to implement it, simply stating the impact is unknown. (See, Berkeley Keep Jets Over the Bay Com. v. Board of Port Commissioners (2001) 91 Cal.App.4th

Jay Olivas  
May 15, 2007  
Page 3

The FEIR admits there has been no analysis of diurnal and nocturnal migration rates or their relationship to avian fatality rates (FEIR, Appendix B, p. 10), and what passerine studies do exist provide little reliable inference to the Dillon Wind project. (*Id.*, at p. 13.) At the same time, the FEIR acknowledges up to 69 million birds migrate through the area annually (FEIR, p. 2-14), and passerines account for most bird fatalities at wind energy sites. (FEIR, Appendix B, p. 13.) Moreover, most migratory birds pass through the area in the fall. (FEIR, p. 2-14.) What little study has been done for the FEIR on avian use in the project area contains no fall surveying whatsoever. (FEIR, Appendix B, Table 1; see Comment Letter Z, attachment 16 [surveys for fall to occur September 1 to October 30].) There simply is no data on nocturnal use of the project area, only extrapolations from other sites. As the USFWS Interim Guidelines state:

“Data on wildlife use and mortality collected at one wind energy facility are not necessarily applicable to others; each site poses its own set of possibilities for negative effects on wildlife.”

(See, USFWS Interim Guidelines, p. 1 [Comment Letter Z, Attachment 15].)

Moreover, the study the FEIR uses to base its conclusions of avian mortality, by Anderson and Neuman, specifically disclaims the very use the FEIR makes of it. As pointed out by the Sierra Club, San Geronio Chapter (see, Appendix K), that study’s “Discussion/Conclusion” section cautions:

“This study is not specifically designed to provide standardized estimates of avian fatalities. The wide interval between searches (90 days) led to a high level of uncertainty in the fatality estimates. The unknown impact of scavenging on the fatality estimates could greatly impact them.”

The search interval is a critical component of accuracy of avian fatality data, because most avian fatalities are rapidly scavenged, usually within 24 hours. (See, California Energy Commission, Avian Collision and Electrocution: An Annotated Bibliography, October 1995, Publication No. P700-95-001, citing reference 102, Crawford, R. L. 1971, incorporated herein by reference.)

In addition, the FEIR, Appendix B, p. 6-7, assumes that displacement will be minimal, asserting that wind turbine facilities typically occupy only a small portion of a project area, and surmising that environmental impacts are proportionately limited. This conclusion is contradicted by the USFWS Interim Guidelines, Appendix 4, which indicates the need for additional study on localized effects of turbines on wildlife, in terms of habitat fragmentation and loss, and the effects of noise. (See, USFWS Interim Guidelines, p. 37.) That study is nowhere in

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1344, 1369-71.)

Jay Olivas  
May 15, 2007  
Page 4

the record of this FEIR. There also needs to be some explanation of the requirements of the project applicant to secure a "take" permit under the Endangered Species Act, particularly since the FEIR includes as a specific mitigation measure a protocol for dealing with eagle collisions, and the possibility of golden eagle fatalities is acknowledged. (FEIR, Appendix B, p. 12-13.) Impacts to endangered species must be assessed and addressed before project implementation, not monitored afterward.

My client believes that given the scope of the project, the establishment of specific interim guidelines by the expert Federal agency overseeing biological impacts provides an expert agency protocol for examining baseline biological conditions that must be followed. Particularly given the substantial public controversy regarding avian impacts (as repeatedly reflected in the comment letters received to the DEIR), a study of twenty-one, thirty-minute visual inspections, outside of seasons of highest avian use, simply does not provide an adequate biological survey base to come to the conclusion that avian impacts are less than significant<sup>3</sup>.

My client urges the County to demand from the project proponent a more responsible and thorough avian assessment, consistent with the USFWS Interim Guidelines. The environmental impacts of this project, on biological and all other resources, will last much longer than the project proponent's apparent impatience with appropriate project processing timelines. More investigation is required, and the proposed project site must be compared with others, to determine the suitability of WECS facilities placement. My client respectfully requests the Planning Commission to deny this project or, at a minimum, withhold any certification of the FEIR until adequate avian studies have been completed.

Very truly yours,

RUTAN & TUCKER, LLP

  
David B. Cosgrove

DBC:tr  
Enclosure

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<sup>3</sup> The FEIR also fails to indicate how the altitude of flying birds was determined in the studies, although it does rely on this factor in concluding that many birds fly above or below the fatal reach of the turbines. (FEIR, Appendix B, P. i; 5-6.)

AGENDA  
TUESDAY, JUNE 5, 2007  
BOARD OF SUPERVISORS – COUNTY OF RIVERSIDE  
1st FLOOR – COUNTY ADMINISTRATIVE CENTER  
4080 Lemon Street, Riverside, Calif.  
(Clerk 951-955-1060)

**9:00 A.M.**

Invocation by Maria Villarreal, Board Assistant, Clerk of the Board Office

Pledge of Allegiance to the Flag

Presentation of Proclamation – Adopt-A-Shelter Cat Month June 2007 to Robert Miller, Director of Animal Adoption Program Chief – Item 2.13

Presentation of Proclamation – Mine's: A Name for Herself to Mary H. Curtin, Theresa Larkin and Cheryl L. McCarthy.

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OPENING COMMENTS:

BOARD MEMBERS

EXECUTIVE OFFICER

STATE BUDGET UPDATE

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**ADMINISTRATIVE ACTION:**

1.1 CLERK OF THE BOARD: Proof of Publications.

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The following items do not require specific Board action unless the matter is appealed.

- 
- 1.2 TRANSPORTATION & LAND MANAGEMENT AGENCY/PLANNING: TENTATIVE TRACT MAP 26372 – Hushmand Taghdiri/Gabel Cook & Becklund, Inc. – Sedco/Wildomar Zoning Area – Elsinore Area Plan – 1<sup>st</sup> District, 28.28 acres, 70 residential lots, R-R zoning, Schedule A, Fifth Extension of Time **DENIED** by the Planning Commission.
- 1.3 TRANSPORTATION & LAND MANAGEMENT AGENCY/PLANNING: TENTATIVE TRACT MAP 29636 – Capital Pacific Homes – Antelope Valley Zoning Area – Sun City/Menifee Valley Area Plan – 3<sup>rd</sup> District, 76.87 gross acres, 72 residential lots, R-A-1 Zoning, Schedule B. Second Extension of Time approved by the Planning Commission.
- 1.4 TRANSPORTATION & LAND MANAGEMENT AGENCY/PLANNING: TENTATIVE TRACT MAP 30399, AMENDED NO. 6 – EA38604 - Monroe Investment Partners, LLC – Lower Coachella Valley Zoning District – Eastern Coachella Valley Area Plan – 4<sup>th</sup> District, 40 gross acres, 40 Single Family Residential Lots, R-1-30,000 Zoning, Schedule A. Second Extension of Time approved by the Planning Commission.
-

The following items do not require specific Board action unless a Board member desires to set the matter for hearing or the matter is appealed.

- 
- 1.5 TRANSPORTATION & LAND MANAGEMENT AGENCY/PLANNING: COMMERCIAL WECS PERMIT 116 – VARIANCE 1797 (FTA 2005-17) – CERTIFY EIR – Dillon Wind, LLC/Stantec, Inc. – Pass & Desert Zoning District – Western Coachella Valley Area Plan – 5<sup>th</sup> District, 620 gross acres, W-E and W-2 (20,000 sq. ft. minimum lot size zoning. Commercial WECS Permit 116 proposes to install up to 20 wind turbines up to 327 feet in height, and Variance 1797 proposes to reduce scenic setbacks to not less than 740 feet along the project's easterly boundary adjacent to State Highway 62, and reduce wind access setbacks to 360 feet along the easterly boundary of WECS 116.
  - 1.6 TRANSPORTATION & LAND MANAGEMENT AGENCY/PLANNING: CONDITIONAL USE PERMIT NO. 3510 – CEQA Exempt – WD Partners, Inc./Hamid Keryahechian – Little Lake Zoning District – San Jacinto Valley Area Plan – 3<sup>rd</sup> District, 1.61 gross acres, C-P-S- zoning. CUP 3510 proposes to construct a 17,272 square foot Rite-Aid Store and to allow the off-site sale of beer and wine and will provide for the existing landscape nursery structures to be demolished approved by the Planning Commission.
  - 1.7 TRANSPORTATION & LAND MANAGEMENT AGENCY/PLANNING: CONDITIONAL USE PERMIT NO. 3542 – CEQA EXEMPT – Beverages & More/Glenn M. Chung – Prado-Mira Loma Zoning District – Eastvale Area Plan – 2<sup>nd</sup> District, 45 gross acres, C-P-S zoning. CUP 3542 for the related sale of beer, wine, and liquor (type 21) in conjunction with a specialty retailer located in the Vernola Market Place – Major 9. The CUP is only for alcohol sales, and does not cover any other uses or permits, approved by the Planning Commission.
  - 1.8 TRANSPORTATION & LAND MANAGEMENT AGENCY/PLANNING: PUBLIC USE PERMIT NO. 880 – NO NEW ENVIRONMENTAL DOCUMENTATION REQUIRED – SMR Ventures/The Keith Companies – University Zoning District – Highgrove Area Plan – 5<sup>th</sup> District, 0.7 gross acres, SP 323 zoning. PUP 880 proposes a domestic water reservoir located within Planning Area No. 3 of Phase 2 for the Spring Mountain Ranch Specific Plan No. 323 A1 Development approved by the Planning Commission.

- e. **HEARING AND NOTICE OF DECISION.** The hearing body shall hear relevant testimony from interested persons and make its decision within a reasonable time after the close of the public hearing. Notice of the decision shall be filed by the Planning Director with the Clerk of the Board of Supervisors, together with a report of the proceedings, not more than 15 days after the decision. A copy of the notice of decision shall be mailed to the applicant and to any person who has made a written request for a copy of the decision. If the hearing body is unable to make a decision, that fact shall be filed with the Clerk of the Board in the same manner for reporting decisions and shall be considered as a notice of denial of the application by the hearing body. The Clerk of the Board shall place the notice of the decision on the next agenda of the Board of Supervisors held five or more days after the Clerk receives the notice from the Planning Director.
- f. **PROCEEDING BEFORE THE BOARD OF SUPERVISORS.** The decision of the hearing body is considered final and no action by the Board of Supervisors is required unless, within ten days after the notice of decision appears on the Board's agenda, the applicant or an interested person files an appeal, accompanied by the fee set forth in County Ordinance No. 671, with the Clerk of the Board or unless the Board assumes jurisdiction by ordering the matter set for public hearing. If a timely appeal is filed or the Board assumes jurisdiction, the Clerk of the Board shall set the matter for public hearing before the Board not less than 13 nor more than 60 days thereafter and shall give notice of the time and place of the hearing in the same manner as notice was given of the hearing before the hearing body.
- g. **HEARING BEFORE THE BOARD OF SUPERVISORS.** The Board of Supervisors shall hear the matter de novo; however, the documents and the minutes of the hearing before the hearing body shall be a part of the Board's record at its hearing on the matter. The Board shall hear relevant testimony from interested persons and within a reasonable time after the close of the hearing, make its decision sustaining, reversing or modifying the decision of the hearing body.
- h. **TRANSCRIPTS.**
  - (1) Whenever any person desires to obtain a transcript of the oral proceedings of a public hearing before the Board of Supervisors, Planning Commission or the East Area Planning Council, or desires to have a record made of such proceedings, he shall, not less than seven days before the hearing, notify in writing the Clerk of the Board, if the hearing is before the Board, or the Secretary of the Planning Commission if the hearing is before the Planning Commission or the East Area Planning Council. The written request shall be accompanied by a deposit of a sum equal to one day's fee for a Court Reporter. The Clerk or Secretary shall thereupon arrange to have a Court Reporter present at the hearing. If the hearing is thereafter continued to another day, a like request, deposit an arrangement for a Court Report shall be made, if the record is desired. Such a person may directly arrange for attendance and payment of a Court Reported instead of making such arrangements through the Clerk of Secretary by the person desiring the same.

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## **APPLICATION FOR APPEAL**

|                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>• Land Division (Tentative Tract Map or Tentative Parcel Map)</li><li>• Revised Tentative Map</li><li>• Minor Change to Tentative Map</li><li>• Extension of Time for Land Division (not vesting map)</li></ul> | Within 10 days after the notice of decision appears on the Board of Supervisor's Agenda.                                                                                                                                        |
| <ul style="list-style-type: none"><li>• Extension of Time for Vesting Tentative Map</li></ul>                                                                                                                                                         | Within 15 days after the notice of decision appears on the Board of Supervisor's agenda.                                                                                                                                        |
| <ul style="list-style-type: none"><li>• General Plan or Specific Plan Consistency Determination</li><li>• Temporary Outdoor Event</li></ul>                                                                                                           | Within 10 days after date of mailing or hand delivery of decision of the Planning Director.                                                                                                                                     |
| <ul style="list-style-type: none"><li>• Environmental Impact Report</li></ul>                                                                                                                                                                         | Within 10 days of receipt of project sponsor or Planning Director determination, or within 7 days after notice of decision by Planning Commission appears on the Board's agenda.                                                |
| <ul style="list-style-type: none"><li>• Plot Plan</li><li>• Second Unit Permit</li><li>• Temporary Use Permits</li><li>• Accessory WECS</li></ul>                                                                                                     | Within 10 calendar days after the date of mailing of the decision.                                                                                                                                                              |
| <ul style="list-style-type: none"><li>• Letter of Substantial Conformance for Specific Plan</li></ul>                                                                                                                                                 | Within 7 days after the notice of decision appears on the Board of Supervisor's agenda.                                                                                                                                         |
| <ul style="list-style-type: none"><li>• Revised Permit</li></ul>                                                                                                                                                                                      | Same appeal deadline as for original permit.                                                                                                                                                                                    |
| <ul style="list-style-type: none"><li>• Certificate of Compliance</li><li>• Tree Removal Permit</li></ul>                                                                                                                                             | Within 10 days after the date of the decision by the Planning Director.                                                                                                                                                         |
| <ul style="list-style-type: none"><li>• Revocation of Variances and Permits</li></ul>                                                                                                                                                                 | Within 10 days following the mailing of the notice of revocation by the Director of Building and Safety, or within 10-days after the notice of decision of the Planning Commission appears on the Board of Supervisor's agenda. |

### **PLEASE STATE THE REASONS FOR APPEAL.**

Please state the basis for the appeal and include any supporting evidence if applicable. If appealing one or more specific conditions of approval, indicate the number of the specific condition(s) being protested. In addition, please include all actions on related cases, which might be affected if the appeal is granted. This will allow all changes to be advertised and modified at the same time. AN APPEAL OF ONE OR MORE CONDITIONS OF APPROVAL SHALL BE DEEMED AS AN APPEAL OF THE ACTION AS A WHOLE, AND THE APPEAL BODY MAY APPROVE OR DENY THE ENTIRE MATTER, AND CHANGE ANY OR ALL OF THE CONDITIONS OF APPROVAL.

Please see Attachment 1 attached hereto.

## APPLICATION FOR APPEAL

Use additional sheets if necessary.  
David B. Cosgrove, Esq. attorney  
for the Estate of Reba Jo Wolf  
PRINTED NAME OF APPELLANT

SIGNATURE OF APPELLANT

June 1, 2007

DATE

### THE APPEAL FILING PACKAGE MUST CONSIST OF THE FOLLOWING

1. One completed and signed application form
2. Public Hearing Notice Label Requirements mailing address labels for notification of the appeal hearing.
3. All appropriate filing fees (the base fee plus other fees specifically for the Department of Building and Safety, Fire Department, Flood Control District and/or Transportation Department conditions, if applicable).

PLEASE NOTE: Obtain surrounding property owners label package/instructions (Form 295-1051) from a County Public Information Services Center or download it from the Planning Department web page.

- \* Fees are enclosed.
- \* Mail labels have been prepared by TLMA and are enclosed.

# COUNTY OF RIVERSIDE

## TRANSPORTATION AND LAND MANAGEMENT AGENCY

### Planning Department

*Ron Goldman · Planning Director*

## APPLICATION FOR APPEAL

DATE SUBMITTED: June 6, 2007

Appeal of application case No(s): Dillon Wind LLC Project (See attachment for complete list)

Name of Advisory Agency: Planning Commission

Date of the decision or action: May 16, 2007 (Posting May 31, 2007)

Appellant's Name: Seven Fortune Partners III

E-Mail: nhermsen@gdqlaw.com

Mailing Address: 35-325 Date Palm Drive, Suite #202

Cathedral City

Street  
CA

92234

City

State

ZIP

Daytime Phone No: ( 760 ) 770-0873

Fax No: ( 760 ) 770-1724

| ADVISORY AGENCY<br>WHOSE ACTION IS<br>BEING APPEALED | HEARING BODY TO WHICH APPEAL IS<br>BEING MADE                                                                                                                                                                                                             | APPEAL TO BE FILED WITH                                                                                                                                                                                        |
|------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Planning Director                                    | <ul style="list-style-type: none"> <li>• <b>Board of Supervisors</b> for: Temporary Outdoor Events, Substantial Conformance Determination for WECS, and Fast Track Plot Plans.</li> <li>• <b>Planning Commission</b> for: all other decisions.</li> </ul> | <ul style="list-style-type: none"> <li>• <b>Clerk of The Board</b> for: Appeals before the Board of Supervisors.</li> <li>• <b>Planning Department</b> for: Appeals before the Planning Commission.</li> </ul> |
| Planning Commission                                  | <b>Board of Supervisors</b>                                                                                                                                                                                                                               | <b>Clerk of the Board of Supervisors</b>                                                                                                                                                                       |

| TYPE OF CASES BEING APPEALED                                                                                                                                                                                                                                                                                                                                                                                                                      | FILING DEADLINE                                                                                                                                                                                                                                                          |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Change of Zone denied by the Planning Commission</li> <li>• Commercial WECS Permit</li> <li>• Conditional Use Permit</li> <li>• Hazardous Waste Facility Siting Permit</li> <li>• Public Use Permit</li> <li>• Variance</li> <li>• Specific Plan denied by the Planning Commission</li> <li>• Substantial Conformance Determination for WECS</li> <li>• Surface Mining and Reclamation Permit</li> </ul> | <p>Within 10 days of the decision appears on the Board of Supervisors</p> <p><b>RIVERSIDE COUNTY</b><br/><b>CLERK OF THE BOARD</b><br/><b>OF SUPERVISORS</b></p> <p><b>PAID</b></p> <p>DATE: <u>6/7/07</u></p> <p>AMOUNT: <u>483.48</u></p> <p>REC'D BY: <u>5/80</u></p> |

## **APPLICATION FOR APPEAL**

|                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
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| <ul style="list-style-type: none"><li>• Letter of Substantial Conformance for Specific Plan</li></ul>                                                                                                                                                 | Within 7 days after the notice of decision appears on the Board of Supervisor's agenda.                                                                                                                                         |
| <ul style="list-style-type: none"><li>• Revised Permit</li></ul>                                                                                                                                                                                      | Same appeal deadline as for original permit.                                                                                                                                                                                    |
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## APPLICATION FOR APPEAL

Matters being appealed: Commercial WECS Permit No. 116; Variance No. 1797; EIR No. 487 (EA40878, EA40879) (including approved CEQA Findings and the Statement of Overriding Consideration).

This appeal is brought on the grounds that the Planning Commission abused its discretion in approving the Project, Environmental Impact Report, and related entitlements. We respectfully request the Board of Supervisors reconsider the matter in light of the entire record, including all documents previously submitted to the County (which are incorporated herein by reference).

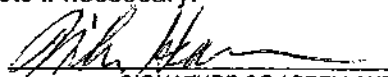
Attached are various letters previously submitted of the County which support this appeal.

This appeal is being filed by Seven Fortune Partners III through its counsel, Green, de Bortnowsky & Quintanilla.

Use additional sheets if necessary.  
Seven Fortune Partners III through its Counsel

Nicholas Hermson

PRINTED NAME OF APPELLANT

  
SIGNATURE OF APPELLANT

6/6/07  
DATE

### THE APPEAL FILING PACKAGE MUST CONSIST OF THE FOLLOWING:

1. One completed and signed application form.
2. Public Hearing Notice Label Requirements mailing address labels for notification of the appeal hearing.
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23801 Calabasas Road  
Suite 1015  
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Fax 818.704.4729



Green, de Bortnowsky & Quintanilla, LLP  
Attorneys at Law  
www.gdqlaw.com

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Suite 202  
Cathedral City, CA 92234  
760.770.0873  
Fax 760.770.1724

Direct E-mail Address:  
squintanilla@gdqlaw.com

Reply to:  
Cathedral City Office

January 30, 2007

**VIA HAND DELIVERY**

Jay T. Olivas, Planner IV  
County of Riverside Planning Department  
82-675 Highway 111  
Second Floor, Room 211  
Indio, California 92201

***Re: Draft Environmental Impact Report for the Dillon Wind Project, Riverside County WECS 116 & 117 Application, City of Palm Springs CUP Application***

Dear Mr. Olivas:

Thank you for the opportunity to review and comment on the Draft Environmental Impact Report ("DEIR") for the Dillon Wind Project (the "Project"). The Project includes the construction and operation of forty five 327 foot tall wind turbines on approximately 1,510 acres in unincorporated Riverside County and the City of Palm Springs. The portion of the Project in unincorporated Riverside County is within the sphere of influence of the City of Desert Hot Springs.

My office represents Seven Fortune Partners III, who own a 320 acre parcel of property which is diagonally adjacent to both Areas 1 and 3 of the Project in unincorporated Riverside County. We have serious concerns about the adequacy of the DEIR due, in large part, to the DEIR's incomplete Project description, its inadequate analysis of land use and zoning consistency, aesthetics, biological resources, geology/soils and geotechnical resources, navigational interference, noise, and radio and television interference. The DEIR makes an improper determination of effects found to be less than significant and inadequately analyzes the alternatives to the Project. We strongly believe the DEIR as currently written does not satisfy the requirements of CEQA for a project-level DEIR and that the inadequacies of the document are substantial enough to warrant its revision and recirculation.

Our principal comments and concerns regarding the DEIR are set forth below.

## **1. INSUFFICIENT AND INADEQUATE PROJECT DESCRIPTION**

1.1 The DEIR concludes that the Project will provide up to 45 MW of installed capacity without an independent scientific verification of this statement. In order to comply fully with CEQA, the DEIR must fully assess the benefits the Project will bestow on the community that may outweigh the harm to the environment. The DEIR concludes that the benefits from the energy production will outweigh the significant visual impact described in section 6.1 of the DEIR. A full analysis must be completed which independently determines the actual energy production from the proposed wind turbines, including how much of the energy that is generated actually makes it to the power grid for use. There is deep concern in the community that the power produced by the turbines is lost if it cannot be utilized immediately by consumers, as there is no adequate method developed for transferring power from the turbines to the grid. This issue is inadequately addressed in the DEIR. Specifically, the DEIR should contain a full analysis of how much energy produced by existing wind turbines is transferred to the power grid. Additionally, the DEIR should analyze the energy production of existing turbines in order to assist in determining the actual benefits in energy production that have been derived from other turbine projects. This will assist the public in making an informed decision as to whether the utility of the turbines outweighs the admittedly significant harm to the environment.

1.2 The DEIR does not specify the depth at which the foundation is constructed, which is a critical prerequisite to a proper seismic vibration analysis (which is entirely missing from the DEIR).

## **2. INADEQUATE AND INCONSISTENT LAND USE AND ZONING ANALYSIS**

2.1 The DEIR concludes that a scenic variance is required in Area 1 to permit the turbines to be set back 490.5 feet rather than the currently required 1,320 feet. Although this variance would clearly harm the visual aesthetics much more than the currently required setbacks (particularly the effect on surrounding residential homes), the report does not examine this effect. Additionally, special circumstances (i.e. size, shape, topography, location, or surroundings) are not present which would permit the issuance of a variance. (See Riverside County Code section 17.196.010). The granting of a setback variance would amount to a special privilege not granted to other landowners in the vicinity.

2.2 The Applicant requests a habitable dwelling variance (safety setback variance) in Area 3 which would allow the Applicant to measure the distance of the turbines from habitable buildings rather than lot lines. This variance would allow turbines as close as

544.75 feet to the property lines, as opposed to the current 981 feet required (three times the height of the turbines). No special circumstances are cited as to why the Project could not have been designed to comply with current requirements. There are no special circumstances applicable to the parcel (i.e. size, shape, topography, location or surroundings) which would justify the granting of this variance. In the future, other residential structures could be built on adjoining property which would come within less than three times the turbines height. These future potential residences should not be prohibited in order to grant what amounts to a special privilege to the Applicant. Additionally, the purpose for the setback requirement is not simply to protect structures but to protect people or other property within the bounds of private landowners' property. The DEIR fails to analyze whether permitting the variance would protect this rationale for the setback requirement.

2.3 A variance is needed for Area 5 (within the City of Palm Springs) in order to build the turbines over 300 feet tall. The analysis does not state whether other wind turbines in the area exceed 300 feet and the particular need for these turbines to exceed 300 feet. There are no special circumstances (i.e., size, shape, topography, location or surroundings) that would justify the granting of this variance. Granting of such a variance would amount to a special privilege.

2.4 Areas 1 and 3 of the Project are located within the sphere of influence of the City of Desert Hot Springs, as acknowledged in section 1.2. However, the Land Use Policy Analysis states that these areas are within the City of Palm Springs' sphere of influence (section 5.3.1). There is no analysis as to the compatibility with the land use policies of the City of Desert Hot Springs. This is especially relevant considering that some of the landowners adjoining Areas 1 and 3 are planning to develop their land in a manner incompatible with an adjoining wind farm, but following the land use policies of the City of Desert Hot Springs. Notably, the City of Desert Hot Springs has passed a resolution opposing the Project.

2.5 The DEIR makes numerous references to variances that the Applicant is requesting for setbacks. For example, the Applicant is requesting wind setback variances and attempts to justify these requests with the argument that neighboring properties are not appropriate for wind turbine development, so the wake of the Project's turbines would not effect other turbine construction. Speculation contained in the DEIR regarding neighboring landowners' ability to cooperate to potentially use their land to construct turbines is prohibited by law when considering variances. See *Orinda Association v. Board of Supervisors* (1986), 182 Cal.App.3d 1145, 1167. The Project essentially renders all surrounding land infeasible for any further development at all, even turbines. The trade off for the installation of forty five turbines is the 1510 acres the Project utilizes will become unusable for any other purpose, and thousands more acres of surrounding land will become

undevelopable for any purpose, even wind turbines.

2.6 The full effect of the Project on land currently zoned for residential use must be explored. An analysis based solely on current conditions is faulty in that it fails to account for future development as envisioned in the General Plan. This is particularly troubling considering the General Plan Amendment and zone change requests made by the Applicant. The DEIR inadequately discusses the impact the proposed General Plan Amendment, zoning changes and variances will have on surrounding land, especially for a Project where the major justification given for allowing the variances is to make the Project "economically viable".

2.7 There are several signs posted on land in the nearby vicinity indicating that residential and commercial development is contemplated very close to the Project. For example, there is a sign on Pierson near State Route 62 and another sign at Pierson and Sierra. The effect on these developments must be discussed. Turbines and residential or commercial uses are utterly incompatible.

2.8 There is no discussion of the cumulative impacts involving the Applicant's request for a General Plan Amendment, zoning change and variances.

2.9 The Applicant is requesting a change of zone for Area 3, a General Plan Amendment for Area 3, scenic setback and wind access variances for Area 1, wind and safety setback variances for Area 3, and a height variance for Area 5. These numerous requests for zone changes, amendments, and variances amount to a request for special treatment. The multitude of accommodations the Applicant wants demonstrates a shocking lack of due consideration for the established rules regarding land use in the vicinity. To grant all the special requests needed to make the Project "economically viable" would constitute an arbitrary and clearly illegal abuse of government authority. Any references in the DEIR or elsewhere referencing economic considerations with respect to variances are impermissible. Similarly inappropriate are references to the potential community benefits created by a project (especially in this case, when the community benefits are highly questionable anyway). See *Orinda Association v. Board of Supervisors*, supra, at 1166. Focusing on such irrelevant considerations when processing a variance obscures the proper formulaic procedure required for variance applications under state law and the Riverside County Municipal Code.

### 3. INADEQUATE AESTHETICS ANALYSIS

3.1 The DEIR describes the landscape surrounding the Project area as "industrial landscape character." However, as is acknowledged, there are scattered large-lot rural-

residential developments, an RV Resort, small town urban uses, freeway convenience and commercial buildings visible from the area as well. This initial description of the area which implies that it is dominated by industrial uses is inaccurate and distorts the remainder of the aesthetics analysis.

3.2 The DEIR states that it elicited viewer concern during scoping, but fails to explain whether it was elicited solely through its review of previous wind projects and public policy documents or whether other methods were utilized. Further review is required to determine the concerns of local landowners, residents, and businesses. Relying solely on previous project reviews and public policy documents is inappropriate because it does not allow for the DEIR to make its own independent determination.

3.3 The wall in the Two Springs RV Resort is described as blocking the view of the turbines, but the wall seen in Figure 6.1-2(c) appears to be only approximately five or six feet tall. This is not nearly tall enough to block the view of the 327 foot tall turbines. The analysis should include a description of this wall and a clear statement of whether the view is blocked from within the Resort.

3.4 Previous permits issued for wind turbines referenced from decades ago are irrelevant to the impact the current Project will have on the environment.

3.5 The photograph of KOP 3 appears to have been taken from a point significantly set back from the road itself, lessening the clearly significant visual impact of the new turbines.

3.6 The Applicant requests a scenic setback variance in Area 1 to build the turbines closer to SR 62 than is currently permitted. This variance may be permitted if "the Planning Commission determines that the characteristics of the surrounding property eliminate or substantially reduce considerations of scenic value." Aside from other turbines being located near KOP 3, there is insufficient explanation regarding whether or why the surrounding property's scenic value has been eliminated or substantially reduced. This is magnified by the statement that KOP 3 was selected because it has "dynamic" views from SR 62 and is within the view of nearby existing residences.

3.7 The DEIR fails to analyze whether the Project complies with the County General Plan visual quality objectives with respect to KOPs 2, 3, and 6.

3.8 The DEIR concludes that the visual impacts at KOP 5 would be less than significant. This is clearly belied by Figures 6.1-6(a) and (b). The DEIR justifies its conclusion by references to other vantage points to the south where other wind turbines can

be seen, but those references are inappropriate when analyzing the impact at KOP 5. In Figures 6.1-6(a) and (b), it is clear that no other turbines are currently visible. Power lines are visible at a great distance, and a fence is visible in the foreground. It is stated that there is trash and other debris in the area. The fact that the owner of the property has apparently failed to properly maintain his land does not give the Applicant license to visually demolish the landscape in a particular area, and any implication otherwise should be eliminated. The determination that there is no significant visual impact from KOP 5 should be reevaluated.

3.9 The DEIR concludes the visual impacts at KOP 6 would be less than significant. Once again, Figure 6.1-7(b) clearly indicates otherwise. The prominence of the new turbines in the middleground where there were none before is a significant visual impact and should be reevaluated.

3.10 The photographs in the KOPs fail to accurately portray proper sight line views. The number of KOPs is entirely inadequate for the number and height of the turbines contemplated by the Project.

3.11 The KOPs fail to sufficiently take into account the impact the Project will have on surrounding residential areas. This is troublesome because much of the adjoining land is zoned for residential development, and will become essentially worthless for that purpose if the turbines are built. The DEIR should take into account the significant impact on potential new residential development the Project will have.

3.12 The analysis of the effect of the FAA-required warning lights is insufficient. Clearly, if the turbines are built the lights will be needed for air safety. However, this should not preclude a more complete analysis of the effect the lights will have on aesthetics. The analysis should include a description of how far away the lights can be seen and how bright they are. Since these lights will significantly intrude on nearby residents with respect to the enjoyment of their property, a thorough study and analysis should be conducted as to the effects the lights will have on local residents and potential future residents on parcels currently zoned for residential use.

3.13 Appendix J of the DEIR contains the Application for Commercial WECS. The Application states that the estimated useful life of the machines is only twenty years. There are many turbines in the area that are over twenty years old, are obsolete, and are producing little if any energy. Very few of these old turbines have been removed despite their low utility and blight to the visual landscape. The Applicant at a minimum should be required to remove the turbines after 20 years as a mitigation measure to avoid allowing the area to become an industrial junkyard.

3.14 The San Geronio Pass already has thousands of wind turbines and the harm to the aesthetics has far exceeded the benefits gained through increased energy production. The DEIR fails to sufficiently explain why this particular location for turbines is beneficial when the vicinity has already lost so much of its scenic beauty.

3.15 The DEIR fails to address the effect of shadows on the landscape. The rotor diameter is over 200 feet and casts long shadows at certain times of the day. These shadows can extend long distances and harm the scenic view as well, especially considering that moving visuals attract the eye more than stationary visuals. There is the possibility that the shadows from the turbines could be cast into residential homes (or areas zoned for residential homes), which could prove very annoying to residents.

3.16 The discussion of the cumulative impact is inadequate in relation to visual aesthetics. The DEIR describes the Project as having a minor relative impact when compared to the existing environmental problems caused by the turbines already existing in the area. However, CEQA does not call for cumulative impacts to be analyzed in this manner. Rather, CEQA has been interpreted as requiring a thorough analysis of whether the additional impact created by the Project is serious when considered in light of the serious nature of existing problems. See *Los Angeles Unified School District v. City of Los Angeles* (1997), 58 Cal.App.4<sup>th</sup> 1019, 1025. In the San Geronio Pass there are already 3,500 wind turbines destroying the visual environment, and the impact needs to be discussed within that framework.

3.17 The parcel containing turbines located between Areas 1 and 3 has been documented to have a great number of industrial parts located within its fences, littering the area. Although the DEIR claims that the Project will eliminate illegal dumping within the Project area, the poor treatment of this adjacent parcel makes this assertion questionable. This needs to be addressed in the DEIR.

#### **4. INADEQUATE AND INCONSISTENT BIOLOGICAL RESOURCES ANALYSIS**

4.1 The DEIR calls for the Project area to be fenced or monitored by security guards. The statement that most wildlife would be able to access the area through any fencing is made without any supporting factual basis. Further analysis is appropriate regarding which animals would not be able to access the area and the effect on those animals.

4.2 The frequent references to the higher number of bird fatalities at Altamont and other wind farms are inappropriate. The DEIR is supposed to determine the impact the Project will have on this environment, not compare the impact to other wind farm projects,

especially projects located outside the Coachella Valley.

4.3 The research cited in the section on bird collisions is confusing and contradictory. The DEIR's reliance on studies funded by Southern California Edison (the McCrary studies), which has a vested interest in the outcome of such a study, is highly questionable. Additionally, the McCrary studies were conducted in 1983 and 1984. The number, location, and height of turbines are not compared to those found in 2007. These studies are quoted as finding that 85% of all birds passing through the area fly at over 305 feet. However, the turbines are 327 feet tall and so information regarding the number of birds flying below 305 feet is of limited use. The McCrary studies' determination that 85% of birds fly at over 305 feet is also contradicted by the avian point count surveys for the proposed Project, which found that 93% of the birds were observed utilizing the vegetation and habitat well below the rotor swept area. The reliance on the Anderson study does not indicate that the study distinguished between fatalities caused by shorter or taller turbines, which is of critical importance since all the turbines in the Project will be 327 feet tall, much taller than earlier generation turbines. The impact of the Project on birds therefore needs to be reevaluated.

4.4 The DEIR requires the Applicant to perform preconstruction surveys for burrowing owls "no later than the beginning of their breeding season". This should be amended to clearly forbid any surveys during any portion of the breeding season.

4.5 The DEIR states that the turbine revolution of 19.8 per minute is slow enough so as to be visible to birds. No study or scientific basis is given for this conclusion. Even if the blades turning are visible to birds, the distance at which a flying bird can see the rotating blades is not given. The DEIR does not discuss whether the distance at which birds can see the blades rotating gives them enough time to avoid being killed by the blades. According to the Application for Commercial WECS in Appendix J to the DEIR, the blades travel at 142 miles per hour, making the assertion that birds can see the blades even more questionable.

4.6 Bird kill is not addressed adequately in the DEIR. Numerous environmental groups, including the Center for Biological Diversity, have expressed concern over the large number of birds killed by wind turbines. The environmental impact is huge and the topic is extremely controversial, yet the DEIR's superficial analysis on this topic is a mere two pages long, relying on only three studies of questionable validity. The examination of the effect on the Desert tortoise, which was not even found in the Project area, is nearly as exhaustive as that of bird kill, which clearly presents a much larger issue. 69 million birds pass annually through the Coachella Valley through migration; a more exhaustive analysis is necessary.

4.7 The DEIR states, "(t)ransformers located at the base of each turbine tower are

very quiet and do not produce any perceptible noise or vibration.” No facts or studies are referenced in support of this statement. The effects of vibrations have been found to be much greater on wildlife than on humans in some instances. For example, the San Francisco-Oakland Bay Bridge’s vibrations has been found to kill fish. Some animals have a much keener awareness of vibrations than humans. The Burrowing Owl can be driven from its burrows by vibrations. Even if the conclusion that the turbines do not produce any vibrations is correct, the vibration created during the construction process is not even mentioned in the DEIR. Another defect is that no where in the DEIR is the depth of the foundation given, which is necessary for a complete analysis of this issue.

4.8 The DEIR fails to analyze the effect of the wake in air currents created by the turbines discussed in section 6.10 on airborne animals.

## **5. INADEQUATE GEOLOGY/SOILS AND GEOTECHNICAL RESOURCES ANALYSIS**

5.1 The DEIR states that since no residential structures are part of the Project, the most serious damage that could result from a seismic event would be structural damage to the turbines themselves. However, this conclusion ignores the ten permanent maintenance workers who will be working at the property. These workers will be working at and around the turbines, and in the event of an earthquake they could be in grave danger. CEQA requires the DEIR to consider danger to all people and structures, including those within the Project area. Additionally, the DEIR concludes that “(e)ngineered design and earthquake resistant construction increase safety and allow development within seismic areas” without adequately explaining the basis for this statement or analyzing the specific effects an earthquake would have on a 327 foot tall wind turbine.

5.2 The Banning Branch of the San Andreas Fault dissects Area 1 and is very close to all three areas, as indicated on Figure 6.5-1. A typical earthquake on the Southern Section of the San Andreas Fault is magnitude 7.7. The entire seismic analysis is inadequate because it does not discuss the stability of the turbines during an earthquake. The San Andreas Fault is notorious and known to have the capacity for earthquakes over 8.0, according to various seismologists and United States Geological Survey reports. No seismic dynamic analysis was prepared. There is no discussion or analysis as to whether the turbines can sustain peak ground acceleration up to 1.0 g. There does not appear to have been any structural analysis or spectral analysis performed on the turbines. The DEIR fails to address resonance/site amplification effects. There is no analysis of the effect of the turbines on soil liquefaction, either.

## **6. INADEQUATE NAVIGATIONAL INTERFERENCE – AIRPORTS**

## **ANALYSIS**

6.1 The DEIR fails to state whether the flight path for aircraft taking off and landing at Palm Springs International Airport extends to the air space at the Project. If the flight path does go through the Project's air space, further analysis would be necessary regarding the possible effects the construction 327 foot tall turbines in an area already subject to high winds would have on aircraft.

### **7. INADEQUATE NOISE ANALYSIS**

7.1 The DEIR acknowledges that the noise impact of the turbines potentially could become significant in the future as the turbines age, but no analysis is made of the potential for this possibility or what the effect would be. The conclusion that the Project would not have any significant unavoidable adverse impacts related to noise is belied by this problem. The mitigation analysis requires no mitigation, but says "care must be taken to maintain turbines" to avoid an increase in noise levels. There is no discussion of the effect of the passage of time on other MWT-1000a Turbines or any other turbines with respect to noise.

7.2 The DEIR states that the effect of noise will be minimal due to the lack of residential housing in the vicinity. However, portions of the land surrounding the area are zoned for further residential housing. The DEIR fails to examine the potential noise effects on a denser residential community which may be developed on all land in the vicinity zoned for such use. Turbines have been known to produce low-frequency humming, which would be especially disturbing to residents at nighttime.

### **8. INADEQUATE RADIO/TELEVISION/ELECTRONIC EQUIPMENT ANALYSIS**

8.1 Comsearch's *TV Broadcast Off-Air Reception Measurement Report* determined that most homes utilize cable systems through visual inspection of homes for television antennas and direct broadcast satellites. Apparently no interviews of residents were conducted, and so the possibility of hidden satellites and antennas were not considered. This is troubling since it leads to the conclusion that since very few people watch off-air television anyway, the impact will not be significant.

8.2 The report concludes that since low power television transmitters are nearby and other transmitters are over 50 miles away, the area is "at the fringe" of available off-air television channels, but no explanation is included as to why this is the case. This is especially questionable considering the lack of tests conducted or residents spoken to

regarding their true television reception.

8.3 The DEIR states that since there are many wind turbines already in Riverside County, problems with off-air television reception have "probably been dealt with effectively in the past". However, there is no discussion as to what mitigation measures were required in the past during other projects. This is a glaring omission since the only mitigation measure required in the DEIR is to document the pre-Project strength of signals and have the Applicant work with residents if there are any complaints later determined to be caused by the turbines. Further analysis on the effect of the Project on off-air television reception is warranted.

8.4 The DEIR utterly fails to discuss the possible effect of radio interference on police, fire, and paramedic communications. This is particularly important because the responsible Sheriff station is located approximately 18 miles away in Palm Desert. The area is relatively remote with respect to emergency police responders, and communication problems could add to that difficulty if there is radio interference. There is no indication that either the Riverside County Sheriff's Department or the California Highway Patrol were consulted on this matter. Further analysis is needed to determine if radio interference on emergency responder frequencies could occur, and if so the effect on emergency responses in the vicinity.

## **9. INADEQUATE ANALYSIS OF EFFECTS FOUND TO BE LESS THAN SIGNIFICANT**

9.1 The DEIR states that modern turbines can withstand earthquakes up to 8.0, wind up to 130 miles per hour, and flooding episodes without explaining the basis for this statement. Supporting documentation must be provided for these claims.

9.2 Regarding the possibility of blade throw, the DEIR states that if a blade were thrown it would travel approximately 410 feet before landing. It is concluded that since this is less than the 981 feet to the nearest residence, blade throw is not a hazard and no further analysis is necessary. However, this fails to account for possible pedestrian or vehicular presence nearer to the turbines. According to the Application for Commercial WECS found in Appendix J to the DEIR, each blade is over five tons, so this is a serious concern. Additionally, the possibility that portions of a blade (rather than an entire blade) could become dislodged and a hazard is not considered. The DEIR does not even discuss this possibility. If a partial blade throw were to occur, the 410 foot estimate would not be accurate, and an analysis must be conducted to determine how far a partial blade throw could extend. Even a small portion of a five ton blade could cause significant injury or damage to persons or property. There are many other turbines in the vicinity that have portions of

blades missing, rather than an entire blade. This is especially significant considering the Applicant has requested a safety setback variance in Area 3. The granting of a variance allowing building of the turbines by measuring the distance to the nearest structure rather than to the nearest property line ignores the possibility of other habitable structures being built in those residentially zoned parcels at a later time. The topic of hazards merits a full review in the Final Environmental Impact Report. Proper maintenance should be clearly required in order to avoid injury to persons or property. Furthermore, if blade throw distances have been substantially reduced due to emerging technology as is asserted in the DEIR, supporting documentation must be provided.

9.3 The high pressure gas pipeline that travels across Area 3 could be significantly impacted by the Project. The DEIR fails to state the depth of the foundation of the turbines, and does not discuss the impact of the construction or operation on the pipeline. The possibility of surface ruptures caused by strong seismic events is not discussed. If a surface rupture were to occur, the nearby residents would be placed in grave danger.

9.4 Considering the myriad of potential dangers associated with the Project, the Applicant should be required to post an irrevocable safety bond for the protection of the public.

## **10. INADEQUATE ANALYSIS OF ALTERNATIVES TO THE PROPOSED PROJECT**

10.1 CEQA requires that the alternatives discussion in an EIR be sufficient to allow the decision making body to consider alternatives, and potentially select an alternative over the proposed Project. The alternatives section of the DEIR consists of a total of seven pages, with each alternative being dismissed because would they would not "maximize the benefits and realization of the goals set forth in the San Gorgonio Wind Energy Community Policy Area in the County of Riverside." The superficial analysis fails to allow the reader to make meaningful comparison of the alternatives. The Project alternatives section is woefully inadequate, and must be supplemented with sufficient data in a revised and re-circulated DEIR in order to allow comparison of the potential impacts of each alternative with the proposed Project.

10.2 The DEIR fails to consider an alternative that would allow for shorter turbines that would have less of a visual impact. Such an alternative should be fully analyzed.

10.3 The DEIR makes light of the fact that the turbines proposed for the Project are more modern and create more energy than older turbines. Turbines have been erected in the vicinity since the late 1970s or early 1980s, and much of the earlier technology is obsolete

and creates little power. Many of these turbines have fallen into disrepair and some have even collapsed. The DEIR states that the proposed Project is the superior alternative because the amount of energy that will be produced by the new turbines overrides all other environmental considerations, particularly the negative visual impact the Project will have. However, the DEIR fails to consider the possibility of demolishing some of the older, dilapidated turbines that are located throughout the area and replacing them with the new, more efficient turbines. This alternative would have the effect of creating the same amount of energy as the proposed Project by replacing non-functional turbines with more efficient turbines, while at the same time avoiding negative aesthetic impact because the turbines would be placed in areas already filled with turbines. This possible alternative should be fully analyzed. This is particularly true since presumably sites that were developed earlier have more favorable wind conditions than sites being developed at this late stage. The Application for Commercial WECS in Appendix J of the DEIR states that the useful life of the turbines is only twenty years. There are many turbines in the San Geronio Pass area that are over twenty years old and have not been removed, despite the fact that they no longer produce any energy.

10.4 The DEIR inappropriately dismisses the possibility of building the Project on a different site in a single meager paragraph. It is claimed that there are no other feasible sites, but no other sites were analyzed. There are many coastal sites in California which are very windy and should be considered. Riverside County has already undertaken a great burden with far more than its proportionate fair share of turbines located within its boundaries. There are approximately 3,500 wind turbines in the San Geronio Pass, as compared with approximately 13,000 in the United States. The San Geronio Pass already has approximately 27% of the wind turbines in the entire country. It makes sense that other parts of the state and country must begin contributing a more proportionate share of the heavy burden turbines place on the landscape. The DEIR makes conclusions regarding why other sites are inadequate, but does not identify what other sites were considered. This renders the reader incapable of making a reasoned judgment regarding whether another site would be environmentally or otherwise superior. The DEIR needs to propose specific alternate sites rather than generically concluding there are no other appropriate sites.

10.5 The identification of the Project as the environmentally superior alternative woefully falls short of its intended function as well. Consideration of the "no project" alternative is dismissed in a mere four sentences, and the rejection of the other alternatives is similarly superficial. The Application for Commercial WECS in Appendix J of the DEIR states that the estimated useful life of the turbines is only twenty years. However, judging by the turbines erected over twenty years ago in the area, owners and operators do not appear eager to remove the old turbines even after they have outlived their usefulness. Removal of the turbines after twenty years is not included in the DEIR as a mitigation measure. After

the turbines after twenty years is not included in the DEIR as a mitigation measure. After twenty years, the machines will no longer produce energy but will still be a blight on the landscape. The energy gain will be temporary, but the loss to the environment will be permanent. A full and complete discussion of this topic is needed.

10.6 The DEIR repeatedly makes claims that the turbines will have beneficial impacts on air quality and reduce pollutants such as CO, PM<sub>10</sub>, PM<sub>2.5</sub>, VOCs, and toxic air contaminants. These statements are made without an appropriate scientific basis. Further documentation is required to establish these beneficial effects, which are essential to the DEIR's ultimate conclusion that the Project is environmentally superior to all the proposed alternatives. Additionally, the DEIR cites the national average in calculating the benefits, which may or may not be applicable in this location. No local data are given.

## **11. INADEQUATE DISCLOSURE OF ECONOMIC INTERESTS**

11.1 Considering the difficult economic realities of operating a wind farm without significant government assistance, the public is entitled to a full disclosure of the extent to which the government is directly or indirectly subsidizing such a project with tax credits. The Applicant should be required to disclose to the public all tax credits it contemplates receiving from any federal, state or local source in relation to the Project. Additionally, any economic benefit the County receives from the Project should be disclosed as well.

Very truly yours,

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April 16, 2007

**VIA HAND DELIVERY**

The Honorable Chair and Members of the Planning Commission  
County of Riverside Administrative Center  
4080 Lemon Street, 9<sup>th</sup> Floor  
Riverside, California 92502

- Re: Entitlement Applications for the Dillon Wind Project:***
- 1) Commercial Wind Energy Conversion System ("WECS") Permits  
WCS00116 and WCS00117***
  - 2) Variance Nos. VAR01797, VAR01798***
  - 3) Change of Zone No. CZ07346 and CZ07449***
  - 4) General Plan Amendment No. GPA00811***

Dear Honorable Chair and Members of the Planning Commission:

Thank you for the opportunity to review and comment on the Commercial Wind Energy System Permit Applications WCS00116 and WCS00117, Variance Applications VAR01797 and VAR01798, Change of Zone Applications CZ07346 and CZ07449, and General Plan Amendment Application GPA00811 (collectively, the "Entitlement Applications") for the Dillon Wind Project (the "Project"). The Project includes the construction and operation of forty five 327 foot tall wind turbines on approximately 1,510 acres in the City of Palm Springs and unincorporated Riverside County. The great majority of the Project is in unincorporated Riverside County within the sphere of influence of the City of Desert Hot Springs.

My office represents Seven Fortune Partners III, who own a 320 acre parcel of property which is diagonally adjacent to both Areas 1 and 3 of the Project in unincorporated Riverside County. We have serious concerns about the adequacy of the Entitlement Applications due, in large part, to the Applicant's failure to meet the requirements found in the County Zoning Code for the issuances of variances, general plan amendments and zone changes. We strongly believe the Applications do not satisfy the requirements of the Code and that the inadequacies of the Applications mandate their denial by the Commission under the law.

My clients are interested in developing their property, which is within the sphere of influence of Desert Hot Springs, for mixed residential-commercial use. We strongly oppose the Project, as do numerous other landowners, homeowners, and residents in the area. The City of Desert Hot Springs has enacted a lengthy resolution calling for a moratorium on wind turbine projects in the area, and condemning this project in particular. Unfortunately, although Areas 1 and 3 of this project are within the sphere of influence of Desert Hot Springs, the City has little recourse to try to stop the project outside the public comment arena. There have been numerous community meetings regarding this project and the overwhelming consensus has been that the project will be detrimental in many respects.

Unfortunately, the reality is that no one will invest in an area towered over by turbines, particularly these which are 327 feet tall. Additionally, there is little evidence that a substantial amount of energy is produced by the turbines. The promise of wind turbines from twenty or thirty years ago has gone unfulfilled. Instead, over three thousand litter the landscape and have utterly destroyed many of the scenic vistas that the Coachella Valley is world famous for.

Our principal comments and concerns regarding the Entitlement Applications are set forth below.

**1. SURROUNDING SCENIC VALUE HAS NOT BEEN ELIMINATED OR SUBSTANTALLY REDUCED (SCENIC SETBACK VARIANCE REQUEST FOR AREA 1)**

Under County Zoning Code §18.41(d)(3)(e), scenic setbacks may be reduced if the Planning Commission determines "the characteristics of the surrounding property eliminate or substantially reduce considerations of scenic value." The panoramic viewsheds in the San Geronio Pass are among the most stunning found anywhere. While the proliferation of turbines over the past thirty years have harmed the scenery, each project has to be looked at individually to determine what impact *that* project will have on scenic resources. Although the scenery has already been harmed, a comprehensive study would be required to determine how it has harmed all the key observation points in Area 1, something the Draft Environmental Impact Report (the "DEIR") issued by the County failed to do adequately.

Dillon implies that the scenic setback should not apply at least in part because the Project is within the boundaries of the Wind Energy Policy Area planned for wind energy development. However, this status is meaningless because all parcels where turbines are located are within the Wind Energy Policy Area. The scenic setback requirement was designed *specifically* to apply to wind turbines that are by their nature within the Wind Energy Policy Area. Additionally, a location within the Wind Energy Policy Area alone does not necessarily lead to a conclusion that the

area is not scenic. If it did, there would be no rationale for even imposing such a setback at all.

Dillon then argues that the State Highway right-of-way protrudes into the leased property by over 500 feet because of a planned highway interchange that was never constructed and no longer has a functional relationship with the land uses in the area. No supporting documentation is provided. Even assuming this is correct, this does not affect the sole issue here—the value of the scenery. The fact that the right-of-way is larger than necessary does not affect the scenery. Therefore, the right-of-way distance is irrelevant. If the right-of-way was intended to be different than it is, it should have been changed previously.

The Applicant has entirely failed to meet his burden of demonstrating that the scenic value has been reduced, and makes numerous irrelevant arguments in its Application which do not address the sole issue the Commission must decide—whether surrounding scenic value has been eliminated or substantially reduced. Therefore, the scenic setback request must be **DENIED**.

**2. DOWNWIND PROPERTIES COULD POTENTIALLY BE DEVELOPED AS COMMERCIAL WIND ENERGY CONVERSION SYSTEMS (WIND ACCESS VARIANCE REQUEST FOR AREA 1)**

Pursuant to County Zoning Code §18.41(d)(2)(b), wind access setback requirements are inapplicable if characteristics of the downwind property eliminate the ability to develop said downwind property with commercial WECS.

As to turbines D1 and D2, Dillon argues that the downwind properties are too narrow (160 to 340 feet wide) to be developed for wind, meaning commercial turbines could not be installed on the property without numerous variances from County safety and wind access setback requirements. Ironically, the Applicant is in a similar situation with five variance requests (one from the City of Palm Springs), a general plan amendment request, a request for change of zone, and a request for a conditional use permit (from Palm Springs). The only way this project will be viable is for the Applicant to obtain numerous entitlements—in other words, to re-write the rules to permit a project that should not otherwise be permitted. Yet Dillon Wind has the audacity to request this Commission grant a wind access variance because other parcels would require “numerous variances.” The Applicant alleges additional variances would be required without specifically laying out its data leading it to this conclusion, forcing the Commission into the awkward position of either trusting the Applicant without verifying its assertions, or expending additional resources for verification. Even assuming variances would be required for the neighboring parcel, the possibility of constructing turbines on downwind parcels is not “eliminated”.

The Applicant also argues that since the downwind properties are owned by several different landowners coordination would be required to open a wind farm and construct turbines.

Dillon fails to specify the number of landowners who own the downwind property, leaving the Commission to speculate as to how difficult coordination would be. There is no explanation as to why individual landowners would not be able to erect turbines alone rather than in coordination with neighbors. Most importantly, speculation about neighboring land does not support variance requests. (*Orinda Association v. Board of Supervisors of Contra Costa County* (1986), 182 Cal.App.3d 1145, 1167).

In this unfortunate situation, the Applicant appears determined to destroy any use of the surrounding property. If this project is constructed, all the surrounding parcels will lose all value. No one wants to live or work in the shadow of 327 foot tall wind turbines. If this variance is granted, not only will neighboring property owners lose the ability to develop their land for residential or commercial use, but they would also lose the opportunity to develop their land as wind turbines, the last remaining potential use!

Accordingly, the request for a wind access setback variance in Area 1 must be **DENIED.**

**3. DOWNWIND PROPERTIES COULD POTENTIALLY BE DEVELOPED AS COMMERCIAL WIND ENERGY CONVERSION SYSTEMS (WIND ACCESS VARIANCE REQUEST FOR AREA 3)**

A similar situation exists in Area 3. The Applicant's argument with respect to turbines E1 through E12 regarding multiple landowners fails for the same reasons as it does for their Area 1 wind setback variance Application.

The Applicant then argues that the downwind property is located outside the County Wind Energy Policy Area, and that County Zoning Code §18.41(d)(3)(a) bans commercial turbines east of Indian Avenue or north of Pierson Boulevard and its extension west of Highway 62. While this may appear to preclude turbines on the downwind parcels, if the downwind parcel owners were to attempt to re-write the rules the way the Applicant has done in this case, the possibility that the area could later permit turbines exists. The Zoning Code states that the Commission consider factors "such as, but not necessarily limited to, topography or use of such property as a transportation corridor" in determining whether downwind property is viable for construction or turbines, or whether such a possibility has been "eliminated". While this language does not propose to limit the scope of the Commission's inquiry, the factors listed do not pertain to zoning or other artificial limits on the development of wind farms. The Commission cannot determine that the all potential for the development of wind turbines has been "eliminated" under the circumstances.

As for turbines B1 through B3, Dillon again argues that the downwind properties are too narrow (approximately 330 feet wide) to be developed for wind, meaning commercial turbines

could not be installed on the parcels without numerous variances from the County safety and wind access setback requirements. As explained above, the hypocrisy of this argument is truly astounding and this argument should be summarily disregarded. Additionally, Dillon argues yet again that multiple landowners make the property unviable for wind turbines. This argument lacks merit as discussed above.

Therefore, Dillon's request for a wind access setback variance in Area 3 must be **DENIED.**

**4. NO SPECIAL CIRCUMSTANCES APPLY TO AREA 3 AND A SAFETY SETBACK VARIANCE WOULD BE A SPECIAL PRIVILEGE**

The potential grounds for granting a safety setback variance under County Zoning Code §18.27(a) are size, shape, topography, location or surroundings. The Applicant's justification for the granting of a variance is inadequate. An applicant for a variance bears the burden of proving special circumstances exist that justify the variance. (*PMI Mortgage Ins. Co. v. City of Pacific Grove* (1982) 128 Cal.App.3d 724). The Commission may not approve a variance unless it can make written findings, supported by substantial evidence in the record, that the variance meets the criteria listed in the Zoning Code.

The Applicant maintains that Area 3 is unusually constrained by existing transmission facilities, safety setbacks, and the need to maintain adequate spacing between turbine strings. No explanation is given precisely where the transmission facilities that "unusually" constrain Area 3 are. Once again, the Applicant leaves it up to the Commission to speculate, something the Commission may not do. There is no explanation as to why these transmission lines affect this parcel more than other parcels in the vicinity. The hearing body is required to make findings that "bridge the analytical gap between the raw evidence and the ultimate decision." (*Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506). The raw evidence given in the application is so minimal that it would be impossible to do so.

Area 3 is diagonally bisected by existing Southern California Edison ("SCE") overhead transmission corridors. We can only guess as to whether these are the transmission lines the Applicant is referring to. If so, it is inappropriate for the Applicant to cite the existence of transmission lines belonging to the owner of the property as supportive of a variance request to allow the turbines to avoid safety setbacks. The Applicant is working in conjunction with SCE on the Project. A variance affecting the health and safety of the public should not be issued because of the existence of a man-made obstacle on the property created by one of the partners in the venture. The existence of transmission lines on the subject property does not affect the size, shape, topography, location or surroundings of the parcel.

The Applicant actually claims safety setbacks as one of the problems that affects the property. The safety setbacks affect all wind energy zoned properties equally. This absurd claim lacks merit.

The Applicant's argument that Area 3 is "unusually constrained" by the need to maintain adequate spacing between turbine strings is similarly bizarre. All turbine strings need to be spaced adequately, and there are no facts presented as to why Area 3 differs from other parcels.

The rationale for the safety setback goes directly to the health and safety of the public. The distances in the Zoning Code were established as minimums to protect the public from the inherent dangers of blade throw and collapsing turbines. "Any variance granted shall be subject to such conditions as are necessary...to protect the health, safety and general welfare of the community." (Riverside County Zoning Ordinance §18.27(d)). By its very nature, a variance to the *safety* setback requirement adversely affects the public's health and safety.

For these reasons, the Applicant's request for a safety setback variance must be **DENIED**.

**5. THE PROJECT WILL DESTROY NEIGHBORING LAND VALUES AND OTHER POTENTIAL DEVELOPMENT**

Once turbines are erected in Areas 1 and 3, the area to the east of Desert Hot Springs (within its sphere of influence) would lose all potential for other development. The possibility of building residences and/or commercial structures would be destroyed. The many landowners and residents in the vicinity, including constituents who have invested time and money and worked hard to see the community prosper will be left out in the cold. These citizens have played by the rules with the hope that their property will increase in value to them and to the community. Members of the community are dead set against the Project. At numerous community forums, the overwhelming consensus has been that these turbines need to be stopped.

Many of the parcels near Areas 1 and 3 are zoned for residential development. There are also many current residences that will be in the shadows of these turbines. The residents' lives will be irreparably damaged. No one wants to live in the shadow of these monstrosities. There is no development whatsoever anywhere near any of the turbines in the San Geronio Pass. Erection of wind turbines is poison to any other form of development. They take up huge amounts of land (1510 acres in this case) with very little to show for it.

The City of Desert Hot Springs will lose valuable future tax revenue if this project is approved, were this area to be annexed. Turbines provide little or no income to the City. On the

other hand, commercial and residential development could create a tax base that would increase interest in the area and assist the City in providing much needed services. The County's tax base will also be adversely affected if the Project is approved.

Area employment will be adversely affected by the Project. The DEIR estimated that this project will create 10 full time jobs over the entire 1510 acres encompassed. The commercial development that will be precluded due to this project could easily provide many times as many jobs over a much smaller area.

#### **6. THE PROJECT'S BENEFITS ARE OUTWEIGHED BY ITS ENVIRONMENTAL COSTS**

Clearly the biggest problem with the turbines is the impact they will have on the scenery. The DEIR has acknowledged that the project will create a significant visual impact that cannot be mitigated. The DEIR comes to the erroneous conclusion that this significant impact is outweighed by the benefits of the project to the community. The DEIR alleges, "(d)evelopment of an alternative site would not meet the Applicant's objectives of producing the lowest cost of energy by utilizing one of the very windiest and least costly sites to develop." (DEIR, p. 9-5). But this site is among the most costly to the community. The conclusion that energy produced outweighs the destruction this will cause to the landscape and surrounding land is a determination for the Commission and the County to make, not the wind company proposing the Project. The wind company has more to gain because it is utilizing its land and obtaining countless tax credits. In fact, considering the failed economics of wind energy it is possible that without tax credits new turbine projects would be economically infeasible. The Applicant should be required to disclose to the public its true economic interests. The Commission should be given enough information to make a reasoned decision as to Dillon's true economic motivations. Dillon should disclose all tax credits it expects to receive, as well as its economic forecasts showing how it intends to make a profit from the Project.

The environmental effects of this project will be devastating when seen in connection with the cumulative effects of the thousands of turbines already here, particularly to the 69 million birds migrating annually through the Coachella Valley. Studies have shown that many of these birds are unnecessarily killed each year by wind turbines. Several environmental organizations that were previously supportive of wind energy have withdrawn their support pending a serious reexamination of their effect on wildlife. Each blade on the turbines weighs approximately five tons and the blades turn at approximately 142 miles per hour, an impact no living thing could withstand. There are many other questions surrounding the effects of turbines on the environment that remain unanswered.

Wind turbines are ugly and noisy. The DEIR indicated that this new model of turbine is much quieter than previous models without giving any basis for this conclusion. No credible

evidence has been presented to the Commission to support this contention.

There are many other unanswered questions about this project. For example, the Banning Branch of the San Andreas Fault directly bisects Area 1. There is a high pressure gas pipeline on Area 3. The effects of these factors have not been adequately discussed by the Applicant. The danger to public safety is astronomical. To argue, as the Applicant has, that there is no more appropriate site for another wind farm than directly over the San Andreas Fault and a high pressure gas pipeline belies common sense.

Another troubling aspect of the project was the DEIR's total failure to address the effect of the project on emergency radio communications. The DEIR essentially skipped any analysis of the effect of the project on radio waves on the theory that there is not much television reception in the area. However, the area is relatively remote to law enforcement (approximately 18 miles away from the corresponding Sheriff's station in Palm Desert) and the effect on radio communications used by the Sheriff and Fire Departments are unknown. This is an issue that must be addressed by the Applicant, especially considering the proximity of the Project to the San Andreas Fault and a high pressure gas pipeline as discussed above.

#### **7. WIND TURBINES CREATE LITTLE ENERGY AND ARE BAD FOR RIVERSIDE COUNTY**

The amount of energy produced by wind turbines is highly questionable. The DEIR and the Applicant make many lofty statements about how many houses could be powered by the turbines, but turbines in the past have not proven to produce as much electricity as is claimed. Additionally, if the energy produced is not immediately available for use upon production by the turbines, it is unable to be stored on the grid, causing some of the so-called "produced" energy to be wasted.

The proportion of wind turbines in the Coachella Valley is staggering. Out of approximately 13,000 turbines nationwide, approximately 3,500 are here in the San Geronio Pass—nearly 27%. Whether wind power is worth pursuing any further at all is very debatable, but even if it is there is undoubtedly a steep cost paid by the loss of some of our stunning views every time a large turbine is erected. Since this cost clearly exists, Riverside County and the San Geronio Pass in particular have clearly already borne their fair share for the state and the country. There are other locations where the wind and other factors converge to make a wind farm appropriate. There is no reason why Riverside County should pay such a high proportion of the cost for producing wind energy.

There are many other sites where wind energy could be potentially developed. There are many windy areas along the California coast, but landowners along the coast have more resources

The Honorable Chair and Members of the Planning Commission  
County of Riverside  
April 16, 2007  
Page 9 of 9

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to lobby for preservation of scenery. It is simply inequitable for Riverside County to have to continue to pay such a high cost for energy enjoyed by the entire state.

The parcel of land between Areas 1 and 3 has been developed with a wind farm. Although the Applicant has maintained that approval of the Project will result in a cleanup of the parcels involved (which have been subjected to illegal dumping), based on maintenance of this current wind farm this does not appear to be the case. The parcel between Areas 1 and 3 is littered with trash. Additionally, many broken turbine blades and other parts have recently been documented in plain view within that parcel. The parcel is being used for industrial parts storage. Wind turbine companies have a history of being bad neighbors.

**8. APPROVAL OF THE PROJECT PLACES THE COUNTY IN LEGAL JEOPARDY**

The County is in danger of being sued on various grounds in connection with this project. Most importantly, there is the possibility that multiple neighboring landowners may decide to sue the County on an inverse condemnation theory, arguing that County decisions with respect to the Entitlement Applications have essentially rendered neighboring land useless for any future purpose. The Commission has an obligation to protect the County from unnecessary litigation in connection with the Project.

For all the reasons stated above, we respectfully request that all Entitlement Applications be **DENIED**.

Very truly yours,

GREEN, DE BORTNOWSKY & QUINTANILLA, LLP



Steven B. Quintanilla  
Counsel for Seven Fortune Partners III

cc: Mr. Danny Chen  
Mr. Julian Chen  
Mr. Wilson Chen



Direct E-mail Address:  
squintanilla@gdqlaw.com

Reply to:  
Cathedral City Office

April 17, 2007

**VIA HAND DELIVERY**

The Honorable Chair and Members of the Planning Commission  
County of Riverside Administrative Center  
4080 Lemon Street, 9<sup>th</sup> Floor  
Riverside, California 92502

***Re: Dillon Wind's Fast Track Status***

Dear Honorable Chair and Members of the Planning Commission:

This letter is intended to supplement my letter of April 16, 2007 objecting to the entitlements connected to the Dillon Wind Project (the "Project"). We object to the Fast Track status this project has been granted for the reasons set forth below.

Riverside County Board of Supervisors Policy A-32 governs in part Fast Track permit processing. Eligibility criteria #2 of Policy A-32 states:

Commercial and/or industrial projects must meet at least one of the following criteria:

- 1) Create 75 new, permanent, full-time jobs; or
- 2) Invest \$10 million in land, building and equipment; or
- 3) Generate at least \$25 million in taxable sales annually.

Since the project is estimated to cost approximately \$60 million (according to the Fast Track Authorization form), it appears to qualify under #2 above. However, throughout the Environmental Impact Report and all the other documentation submitted to the County, there does not appear to be any documentation in support of this figure.

More importantly, the project clearly fails to qualify for Fast Track status under eligibility criteria #4, which states:

Policy applies to commercial and/or industrial plot plans, conditional use permits, change of zone applications, general plan amendments and parcel maps. Changes of zone, general plan amendments and parcel maps must be accompanied by a specific land use application and shall be processed concurrently with the land use application. *No speculative applications or projects requiring an Environmental Impact Report (EIR) shall be eligible.* (Emphasis added).

Obviously this issue has raised concerns regarding whether this project is eligible. The controversial nature of the Project makes it particularly disconcerting to nearby residents, landowners, and others. Since this project required an EIR, it is unclear why Fast Track was approved in May, 2006. Desert Hot Springs submitted a letter on July 19, 2006 (received by the County on July 26, 2006) opposing Fast Track status, but apparently no action was taken in response to the letter.

The Final EIR responded to a comment on the "irregularity" of fast-tracking as follows:

Applicability for Fast-Track permitting eligibility and procedures are governed by the Riverside County Municipal Code Sections 17.192.100 and 17.04.080 and zoning ordinances 18.26(a) and 21.34(d). Municipal Code Section 17.192.100(2) specifically notes that Fast-Track processing is available for projects that have specifically completed the requirements of CEQA. There is no differentiation on the face of the ordinances for projects subject to different levels of CEQA review (initial study, exemption, negative declaration or EIR) – merely that the applicable provisions of CEQA be satisfied. Board Policy A-32, which is cross-referenced in the ordinances, provides a limitation to this policy for EIR's, but *this policy does not apply in every circumstance.*

When the WECS 116 and 117 applications were originally submitted to the County, the project was determined to be subject to a negative declaration under CEQA, and was assigned to Fast-Track accordingly.

When the current applicant further analyzed the project, they concluded that a full EIR would be more appropriate, and so the scope of the environmental assessment was expanded. *It has not been the policy of Riverside County EDA to revoke a Fast-Track assignment after-the-fact.*

The Honorable Chair and Members of the Planning Commission  
County of Riverside  
April 17, 2007  
Page 3 of 3

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*In addition, it has, in fact, been the practice of the County of Riverside to allow fast-track processing for projects of significant value to the County even when they involve an EIR.* Examples of such projects are on file with the County EDA. (Emphasis added).

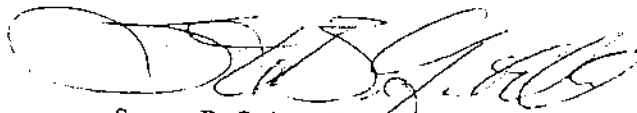
This response appears to indicate a violation of County policies. It does not state in Policy A-32 that Fast Track status should remain despite the reclassification of a project from a negative CEQA declaration to a project requiring an EIR. No other written county policy is cited that supports the statements.

It is dubious whether the Applicant or the County could have reasonably believed that the project would not require an EIR, considering the obvious significant visual impact it would leave. Additionally, allowing a project to change its status in this manner is contrary to the policy's intent. If any project requiring an EIR can avoid exclusion from Fast Track consideration by simply claiming initially (with no evidence) that no EIR is necessary, then the County should dispense with the charade of even promulgating eligibility criteria #4 in Policy A-32. Saying that the County has allowed Fast Track in the past for other projects "of significant value to the County even when they involve an EIR" provides no justifiable support. It simply points out that the County may have broken its own written rules in the past, presuming the current version of Policy A-32 was in effect at the time other such projects were processed.

Accordingly, we respectfully request that Fast Track status for this project be **revoked**, and hearings on all entitlements be **postponed** to comply with ordinary County timelines.

Very truly yours,

GREEN, DE BORTNOWSKY & QUINTANILLA, LLP



Steven B. Quintanilla  
Counsel for Seven Fortune Partners III

cc: Mr. Danny Chen  
Mr. Julian Chen  
Mr. Wilson Chen

# COUNTY OF RIVERSIDE

## TRANSPORTATION AND LAND MANAGEMENT AGENCY

### Planning Department

*Ron Goldman - Planning Director*

## APPLICATION FOR APPEAL

Hrg. set for  
6:19  
7:17:07 e  
1:30 p.m.

DATE SUBMITTED: June 1, 2007

Appeal of application case No(s): Dillon Wind, LLC Project: Commercial WECS Permit No. 116; Variance No. 1797; EIR No. 487 (EA40878, EA40879) (including approved CEQA Findings and the Statement of Overriding Considerations)

Name of Advisory Agency: Planning Commission

(1.5 6.5.07)

Date of the decision or action: May 16, 2007

Appellant's Name: Estate of Reba Jo Wolf, by and through its attorney David Cosgrove, Esq.

E-Mail: dcosgrove@rutan.com

Mailing Address: 611 Anton Blvd., Suite 1400

Costa Mesa

Street  
CA 92626

City

State

ZIP

Daytime Phone No: ( 714 ) 641-5100

Fax No: ( 714 ) 546-9035

| ADVISORY AGENCY<br>WHOSE ACTION IS<br>BEING APPEALED | HEARING BODY TO WHICH APPEAL IS<br>BEING MADE                                                                                                                                                                                                         | APPEAL TO BE FILED WITH                                                                                                                                                                                    |
|------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Planning Director                                    | <ul style="list-style-type: none"> <li><b>Board of Supervisors</b> for: Temporary Outdoor Events, Substantial Conformance Determination for WECS, and Fast Track Plot Plans.</li> <li><b>Planning Commission</b> for: all other decisions.</li> </ul> | <ul style="list-style-type: none"> <li><b>Clerk of The Board</b> for: Appeals before the Board of Supervisors.</li> <li><b>Planning Department</b> for: Appeals before the Planning Commission.</li> </ul> |
| Planning Commission                                  | <b>Board of Supervisors</b>                                                                                                                                                                                                                           | <b>Clerk of the Board of Supervisors</b>                                                                                                                                                                   |

| TYPE OF CASES BEING APPEALED                                                                                                                                                                                                                                                                                                                                                                                                    | FILED DEADLINE                                                                                                                                                                                                                                                                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>Change of Zone denied by the Planning Commission</li> <li>Commercial WECS Permit</li> <li>Conditional Use Permit</li> <li>Hazardous Waste Facility Siting Permit</li> <li>Public Use Permit</li> <li>Variance</li> <li>Specific Plan denied by the Planning Commission</li> <li>Substantial Conformance Determination for WECS</li> <li>Surface Mining and Reclamation Permit</li> </ul> | <p>Within 10 days after the notice of decision appears on the Board of Supervisors</p> <p style="text-align: center;"><b>RIVERSIDE COUNTY</b><br/><b>CLERK OF THE BOARD</b><br/><b>OF SUPERVISORS</b></p> <p style="text-align: center;">PAID</p> <p>DATE <u>6/1/07</u></p> <p>AMOUNT <u>483.28</u></p> <p>RECEIVED <u>FDW</u></p> |

Riverside Office · 4080 Lemon Street, 9th Floor  
P.O. Box 1409, Riverside, California 92502-1409  
(951) 955-3200 · Fax (951) 955-3157  
Form 295-1013 (12/22/06)

Indio Office · 82-675 Hwy 111, 2nd Floor  
Room 209, Indio, California 92201  
(760) 863-8277 · Fax (760) 863-7555

Murrieta Office · 39493 Los Alamos Road.  
Murrieta, California 92563  
· Fax (951) 600-6145

2007-06-054980

## **APPLICATION FOR APPEAL**

|                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                 |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"><li>• Land Division (Tentative Tract Map or Tentative Parcel Map)</li><li>• Revised Tentative Map</li><li>• Minor Change to Tentative Map</li><li>• Extension of Time for Land Division (not vesting map)</li></ul> | Within 10 days after the notice of decision appears on the Board of Supervisor's Agenda.                                                                                                                                        |
| <ul style="list-style-type: none"><li>• Extension of Time for Vesting Tentative Map</li></ul>                                                                                                                                                         | Within 15 days after the notice of decision appears on the Board of Supervisor's agenda.                                                                                                                                        |
| <ul style="list-style-type: none"><li>• General Plan or Specific Plan Consistency Determination</li><li>• Temporary Outdoor Event</li></ul>                                                                                                           | Within 10 days after date of mailing or hand delivery of decision of the Planning Director.                                                                                                                                     |
| <ul style="list-style-type: none"><li>• Environmental Impact Report</li></ul>                                                                                                                                                                         | Within 10 days of receipt of project sponsor or Planning Director determination, or within 7 days after notice of decision by Planning Commission appears on the Board's agenda.                                                |
| <ul style="list-style-type: none"><li>• Plot Plan</li><li>• Second Unit Permit</li><li>• Temporary Use Permits</li><li>• Accessory WECS</li></ul>                                                                                                     | Within 10 calendar days after the date of mailing of the decision.                                                                                                                                                              |
| <ul style="list-style-type: none"><li>• Letter of Substantial Conformance for Specific Plan</li></ul>                                                                                                                                                 | Within 7 days after the notice of decision appears on the Board of Supervisor's agenda.                                                                                                                                         |
| <ul style="list-style-type: none"><li>• Revised Permit</li></ul>                                                                                                                                                                                      | Same appeal deadline as for original permit.                                                                                                                                                                                    |
| <ul style="list-style-type: none"><li>• Certificate of Compliance</li><li>• Tree Removal Permit</li></ul>                                                                                                                                             | Within 10 days after the date of the decision by the Planning Director.                                                                                                                                                         |
| <ul style="list-style-type: none"><li>• Revocation of Variances and Permits</li></ul>                                                                                                                                                                 | Within 10 days following the mailing of the notice of revocation by the Director of Building and Safety, or within 10-days after the notice of decision of the Planning Commission appears on the Board of Supervisor's agenda. |

### **PLEASE STATE THE REASONS FOR APPEAL.**

Please state the basis for the appeal and include any supporting evidence if applicable. If appealing one or more specific conditions of approval, indicate the number of the specific condition(s) being protested. In addition, please include all actions on related cases, which might be affected if the appeal is granted. This will allow all changes to be advertised and modified at the same time. AN APPEAL OF ONE OR MORE CONDITIONS OF APPROVAL SHALL BE DEEMED AS AN APPEAL OF THE ACTION AS A WHOLE, AND THE APPEAL BODY MAY APPROVE OR DENY THE ENTIRE MATTER, AND CHANGE ANY OR ALL OF THE CONDITIONS OF APPROVAL.

Please see Attachment 1 attached hereto.

## APPLICATION FOR APPEAL

Use additional sheets if necessary.  
David B. Cosgrove, Esq. attorney

for the Estate of Reba Jo Wolf  
PRINTED NAME OF APPELLANT

SIGNATURE OF APPELLANT

June 1, 2007

DATE

### THE APPEAL FILING PACKAGE MUST CONSIST OF THE FOLLOWING

1. One completed and signed application form.
2. Public Hearing Notice Label Requirements mailing address labels for notification of the appeal hearing.
3. All appropriate filing fees (the base fee plus other fees specifically for the Department of Building and Safety, Fire Department, Flood Control District and/or Transportation Department conditions if applicable).

PLEASE NOTE: Obtain surrounding property owners label package/instructions (Form 295-1051) from a County Public Information Services Center or download it from the Planning Department web page.

- \* Fees are enclosed.
- \* Mail labels have been prepared by TLMA and are enclosed.

June 1, 2007

**VIA FACSIMILE AND COURIER**

Ms. Nancy Romero  
Clerk of the Board  
Riverside County Board of Supervisors  
4080 Lemon Street, 1st Floor  
Riverside, CA 92501  
Tel: 951-955-1060  
Fax: 951-955-1071

**With Copy Via Fax and Fed Ex To:**

Mr. Jay Olivas  
Planning Department  
County of Riverside  
2nd Floor, Room 211  
82-675 Highway 111  
Indio, CA 92201  
Tel: 760-863-8277  
Fax: 760-863-7555

**Re: Appeal from Planning Commission Decision- Dillon Wind, LLC Project**

Commercial WECS Permit No. 116  
Variance No. 1797  
EIR No. 487 (EA40878, EA40879) (Incl. Findings and Statement of Overriding Considerations)

Dear Madam Clerk:

This office, and the undersigned in particular, represents the Estate of Reba Wolf, the owner of the property located immediately north of the proposed Dillon Wind, LLC project that was approved (some parts of it, relating to WECS No. 117, tentatively subject to further action by the Board of Supervisors) by the Riverside County Planning Commission on May 16, 2007. On May 31, 2007, the Notice of Decision for the above-referenced project appeared on the Board of Supervisor's June 5, 2007 regular meeting.

The purpose of this letter and accompanying documents is to appeal the May 16, 2007 decision of the Planning Commission, pursuant to Riverside County Code section 17.192.070.

Enclosed with this letter are the following items:

1. A completed Application for Appeal;
2. Attachment 1 to the Application for Appeal, providing the basis for the appeal and attaching relevant correspondence supporting such bases (such correspondence was part of the existing record at the Planning Commission);
3. A check made payable to the County of Riverside in the amount of \$983.28 for the appeal fee, pursuant to Riverside County Ordinance Nos. 348 and 671. This

Ms. Nancy Romero  
June 1, 2007  
Page 2

amount is based on a Base Fee of \$964 plus a 2% Land Management System Fee. (Please note that the copy transmitted to Mr. Olivas includes a copy of the check.)

4. Three (3) public hearing notice label packets, prepared and certified by Riverside County's TLMA Geographic Information Staff at our request. (Please note that Mr. Olivas is being provided copies but not the original labels.)

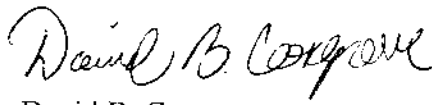
We reserve our right to supplement this appeal information prior to or at the *de novo* hearing that will be scheduled by the Board of Supervisors as required by Riverside County Code section 17.192.080. We hereby request that we be timely provided any notices of hearings and any staff reports, Board packets, and communications or submittals by, to, or from any other interested parties (including, without limitation, the project applicant) prior to any hearing scheduled on this appeal.

The filing fee (item 3) and the notice labels (item 4) are not being faxed. They will be delivered by courier with the original of this appeal document.

If you have any questions please contact me at (714) 641-5100.

Very truly yours,

RUTAN & TUCKER, LLP



David B. Cosgrove

DBC:MRWH  
Attachments

cc: Mr. Charles B. Wolf (via Electronic Mail, w/o items 3 & 4)  
Renee L. Robin, Esq. (via Fed Ex, w/o items 3 & 4)

Ms. Nancy Romero  
June 1, 2007  
Page 3

Attachment 1

Reasons for Appeal

The Estate of Reba Jo Wolf appeals the Riverside County Planning Commission's May 16, 2007 decision to approve the Dillon Wind, LLC project as more particularly specified on page 1 of the Application for Appeal for the following reasons:

1. The decision on the approvals violates, *inter alia*, the California Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*) and its implementing Guidelines (14 Cal. Code Regs. § 15000 *et seq.*), the state Planning and Zoning Law and provisions of the Riverside County Code of Ordinances for those reasons stated in the letters submitted by the Estate of Reba Jo Wolf on:
  - a. January 29, 2007 (due to their length, the attachments to this letter are not included; these attachments are located in full as part of Comment Letter Z to the FEIR),
  - b. April 17, 2007, and
  - c. May 15, 2007.

These letters are attached hereto and they, along with all attachments to these letters, are incorporated into this appeal by this reference.

2. All reasons raised by any person providing written or oral comments on the Dillon Wind, LLC project, which comments are part of the record for this project.
3. Any further reasons as may be raised prior to or during the appeal hearing scheduled for this matter.

If this appeal is granted the following other actions might be affected:

- A. Fast Track Authorization No. 2005-17
- B. General Plan Amendment No. 811
- C. Change of Zones Nos. 7346 & 7449
- D. WECS Permit No. 117
- E. Variance No. 1798



January 29, 2007

VIA FEDERAL EXPRESS

Jay Olivas  
Planning Department  
County of Riverside  
2nd Floor, Room 211  
82-675 Highway 111  
Indio, CA 92201

Re: Comments to Draft Environmental Impact Report for the Dillon Wind Project,  
Riverside County WECS 116 and 117, General Plan Amendment No. 811,  
Change of Zone Nos. 7346 and 7449, Variance Nos. 1797 and 1798, City of Palm  
Springs CUP 5.115, and Variance 6.493

Dear Mr. Olivas:

This office, and the undersigned in particular, represent the Estate of Reba Wolf, the owner of the property located immediately north of the area designated as Area 3 in the Draft Environmental Impact Report ("DEIR") referenced above. My client was given until January 31, 2007, to provide these comments, and appreciates this accommodation.

My client opposes this project for a number of reasons. My client's property, and the property for the proposed project, particularly Area 3, presently serve as a transitional buffer between more intensive, established wind energy uses to the west, and the area east of Indian Avenue, on which wind energy production facilities are prohibited. As such, this area retains a number of characteristics of its open, desert nature, particularly the broad and sweeping view sheds to the San Jacinto and San Geronio mountains. The proposed project runs roughshod over any notion of transitioning the environmentally intrusive wind energy uses to the west, with the more natural and scenic areas to the east. It does so by essentially cramming the maximum possible number of turbines -- 33-story, 400 foot wide megastructures -- up the very limits of where existing law permits them to be, and in many cases beyond those limits.

It does so based on an environmental analysis that turns a blind eye to a host of very real environmental impacts, which it glosses over with insufficient analysis and extrapolated evidence. Moreover, the DEIR attempts to justify the environmental intrusiveness of the proposed project with an assertion of air quality and other environmental benefits from displaced pollution from fossil fuels. These benefits are based on exaggerated production from the project's proposed facilities, a complete disregard for the limitations of the current electrical grid to utilize what power the project can generate, overstated figures on pollutants generated by

Jay Olivas  
January 29, 2007  
Page 2

existing sources, and an entirely theoretical presumption that wind power generated by the project will somehow displace fossil fuel generation. These series of fictions are the sole basis the DEIR uses to dismiss what limited and insufficient project alternatives it does examine. The DEIR therefore offers no reasonable basis for the County to conclude that the project proposed is actually the environmentally superior alternative.

The County of Riverside Planning Department itself has already exposed the fallacy of the DEIR's presumed beneficial impacts. In its WECS policy memorandum, dated October 2, 2003, to the Board of Supervisors, Mr. Robert C. Johnson listed no less than five hurdles of speculation wind energy advocates were relying on to argue the exact type of pollution avoidance benefits this project now claims. These are:

1. How the engineered capacity of WECS projects translate into actual energy output, which varies considerably depending upon weather patterns.
2. Whether a replacement source would indeed be necessary, which depends on future market conditions, weather, and energy efficient technology.
3. The market conditions and technical feasibility of various replacement options.
4. The polluting potential of various replacement options, which varies depending on the energy source chosen by the energy project proponent.
5. The precise location of replacement energy sources and that location's prevailing meteorological conditions, which depends on the decisions of future energy project proponents and weather.<sup>1</sup>

That same memorandum goes on to identify the serious aesthetic impacts attributable to WECS facilities, their threat to regional tourist revenues, and the destruction WECS development creates to specialized desert habitats, vegetation, and wildlife. (*Id.*, at pp. 4, 7.)

The County had it right in 2003, and this DEIR offers no logical or evidentiary basis for reversing itself. This project is poorly conceived, environmentally insensitive, and jarringly inconsistent with prevailing land use designations and regulations. Indeed, one need only look at the string of General Plan Amendments, Variances, and other land use special privileges the applicant needs to request, to see that this is an exercise in pounding a round peg into a square hole.

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<sup>1</sup> See, Memorandum from Robert C. Johnson to Honorable Board of Supervisors, dated October 2, 2003, Tab 1, p. 15-16.

Jay Olivas  
January 29, 2007  
Page 3

The specific areas of deficiencies we have found in the DEIR and its analysis, and the evidence refuting the DEIR's analysis and unsupported conclusions, are included under separate headings below.

1. Project Description and Objectives.

An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) A curtailed or distorted project description can stultify the objectives of the environmental impact report's reporting process. Only through an accurate view of the project may affected outsiders and public decision makers balance the proposal's benefits against its environmental costs, consider mitigation measures, and assess the advantages of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance. (*Id.*, at 192-193.)

The DEIR's project description fails in this important task, both because it contains internally contradictory statements, and because it leaves too many aspects of the project, upon which serious environmental impacts turn, unspecified.

One example is with respect to fencing. At p. 4-8 and 4-16, the DEIR indicates that security fences "may be installed." Such installation would effect both aesthetics and biology, in terms both of creating available places for bird perching and potential barriers to wildlife movement. If security fences are a part of the project, they need to be specified, as to dimension, configuration, and location, in order for impacts to be assessed.

In addition, the project description omits critical components of the proposed wind turbine design and operation. For example, each turbine has 186 tons of weight, 400 tons of concrete foundation, generates 107 decibels of sound, and has up to 142.5 mph blade speed. More important, each turbine extends up to 327 feet in height. These ominous statistics are buried in the WECS project application.<sup>2</sup> They should be included as part of the project description.

The meteorological towers included in the project are another item of uncertainty. Referenced at p. 4-14 of the DEIR, the number and precise location of these meteorological towers is not specified. It is therefore impossible to assess view impacts, impacts from shadow, and potential avian perching tendencies and subsequent impact on species and habitat, from these structures. Nor are these towers merely incidental. In its approval of Plot Plan No. 21093, the County allowed a meteorological tower on the project area to be built to height of 193 feet. The DEIR proposes additional towers some 32 feet higher. This important component of the project must be described and assessed.

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<sup>2</sup> See Tab 2, pp. 4-5.

Jay Olivas  
January 29, 2007  
Page 4

The same uncertainty occurs with the utility interconnection facilities the project will implement. Referenced at pp. 4-8 and 4-16 through 4-17, these facilities are apparently to be some 40-50 feet in height, within 400 feet of right-of-way. The routes on these interconnection facilities need to be specified and depicted, to assess what impacts they will have, and what mitigation is required.

In addition, the DEIR seems to leave open the issue of whether electrical transmission lines created by the project will be above ground or below ground. This "hedge" appears in a number of places in the DEIR. For example, at p. 1-1, the Executive Summary indicates the three areas will be connected electrically by an underground electrical collector cable system connecting to an new substation. At p. 2-3 of the Biological Assessment in the Appendices, however, the DEIR states that the substation electrical collectors will be either by underground or overhead collector cable systems. Page 4-2 references "underground or overhead electrical transmission and communication lines." Page 4-16 references offsite construction of "about 3.2 miles of underground or overhead collector cables." The placement of the electrical transmission and collector lines the project will utilize, whether overhead or underground, has serious environmental consequences. Overhead lines would create view impacts, provide an attraction for migratory birds and raptors, potentially increase avian mortality, have electromagnetic field implications, and impact interference with radio and television transmission signals. The precise plan for the location and nature of all such lines must be included in the project description.

The DEIR's description of turbine color is internally contradictory. At p. 4-13, the turbine color is listed as white, but in assessing aesthetic impact, at p. 6.1-1, the DEIR says that they will be a pale gray or off-white color. The FAA has already required all turbines to be painted a "bright white color." (Appendix C, p. 3.) This inconsistency must be remedied and the aesthetic impacts must be assessed, not with respect to the originally proposed, muted gray or off-white coloring, but the actual bright white coloring that the project apparently now must adopt.

There is also some question whether the project description has appropriately characterized the areas of ground disturbance. Page 4-18 indicates the cleared compacted area around each turbine would be approximately 200 feet, but does not indicate whether this is a rounded foundation, square, rectangular or other configuration. One would presume it is round, because of the reference of a diameter of 48 feet. This should be specified. In addition, the County's approval of Plot Plan No. 21093 included a requirement of vegetation clearing for a 10 foot radius around all transformers and wind turbine towers.<sup>3</sup> The areas of calculated disturbance for each proposed turbine should therefore include this 10 foot additional area already required by the County.

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<sup>3</sup> See Tab 3.

Jay Olivas  
January 29, 2007  
Page 5

There is also some uncertainty with respect to the strobe lighting to be placed on the turbines. The DEIR, at p. 4-15, indicates that "up to" 17 turbines would be lit. Appendix C, p. 3, indicates that the FAA requires all 17 to be lit.

At p. 4-19, the project description references maintenance and a need for cranes. It is my understanding these are not ordinary cranes, but rather super-sized cranes commensurate with the outsized dimensions of the wind turbines themselves. The specification of the type of cranes that will be brought on to the property, their height and weight, and their ability to access the site with existing roadways must be identified and described, for aesthetic, transportation, and safety impacts analysis.

There is also an indication at p. 6.3-27 that one of the collector routes will cross the Garnett Wash, which is habitat for the threatened Coachella Valley Fringe Toed Lizard. The DEIR project description must specify what collector routes are being proposed and will be pursued, including the one impacting Garnett Wash.

## 2. Existing Environment.

The DEIR is somewhat inaccurate in its characterization of the existing environment and project surroundings. At p. 4-6, it indicates that Area 1 previously contained WECS facilities, but this is misleading. There may be certain foundations and concrete block structures, but no WECS turbines or generation facilities were there at the time of the baseline condition. Indeed, p. 6.1-17 indicates that there are no WECS where the project now proposes to place them. This inaccuracy is apparently designed to characterize the project area as already hopelessly overrun with the industrial uses and the detrimental environmental impacts of existing WECS uses, but this simply is not the case.

There are a number of residential uses, proposed and underway, for this area. The Skyborne residential development is being constructed at State Route 62 and Pierson, which is a master-planned residential community.<sup>4</sup> I understand that other residential projects are being proposed for the area by Mayer-Luce and Roger Snellenberger. Alpine Development is also contemplating a residential development on Pierson Avenue's south side. A ten acre combination of retail and residential uses, called Center Point, is also advertised near the project site. (See, Tab 4.)

The DEIR should fairly characterize the surrounding General Plan uses and zoning of the property in the area of the project, and not just Areas 1, 3 and 5 themselves. Moreover, there should be some description of all development proposals, including informal consultations that

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<sup>4</sup> A brochure put out by D.R. Horton, the developer of the project, explaining its character is attached at Tab 4.

Jay Olivas  
January 29, 2007  
Page 6

have occurred with County Planning staff, for development within a 1-2 mile radius of the project site, as part of the cumulative impacts analysis. Such additional information would reflect the transitional buffer this area serves from existing WECS facilities to the areas east of Indian Avenue, where no WECS facilities are permitted.

In addition, the existing environment section should contain some explanation of flight paths and the potential for navigational interference from overflights with the Palm Springs International Airport. The DEIR's assertion that risks to both aircraft safety and national defense capabilities have been eliminated by the move of radar facilities to Edom Hill ( DEIR, p. 6.6-1) is inadequate, since those facilities have apparently now been moved back to the Palm Springs International Airport. In addition, the assertion that the area only constitutes 2% of Palm Springs' delegated air space unrealistically minimizes its significance to air traffic. A better explanation needs to be furnished of flight patterns in and around of the Airport, to provide a more accurate picture of the impact to the location and frequency of air traffic corridors actually used.

### 3. Land Use Impacts.

It appears that the proposed project has improperly invoked Fast Track processing at the County. The Fast Track rules promulgated by the Economic Development Agency on March 7, 2003, Board Policy A-32, indicate that no applications requiring an EIR are eligible for such processing.<sup>5</sup> The very existence of the DEIR, and the Fast Track nature of the application, seem to point up a processing irregularity for this project.

Spearheading the project with review by the Airport Land Use Commission, which occurred on November 9, 2006, also seems inappropriate. It is questionable how the ALUC could assess environmental impacts, including navigational interference and national defense implications, before the environmental disclosure document for the project was released on December 1, 2006.

Moreover, Areas 1 and 3 are located within the Desert Hot Springs sphere of influence. As the County is certainly aware, the City of Desert Hot Springs has passed a resolution stating its opposition to the project, and has called upon the Riverside County Planning Commission and Board of Supervisors to deny further windmill applications within the City of Desert Hot Springs' sphere of influence, based in part on the environmental costs associated with the placement and operation of wind turbines and their destruction of the desert flora and fauna.<sup>6</sup>

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<sup>5</sup> See Tab 5, p. 2.

<sup>6</sup> See Resolution No. 2006-134, at Tab 6.

Jay Olivas  
January 29, 2007  
Page 7

The DEIR makes reference to the San Geronio Wind Energy Community Policy Area, alleging consistency. Policy PASS 6.3 from that document indicates otherwise. It requires other renewable resources, including solar generators, to complement wind energy uses. This project creates a proliferation of wind energy turbines and precludes devotion of the project area to such alternative renewable energy uses. Policy PASS 6.3 also calls for limited industrial/commercial uses to be integrated with existing wind parks, consistent with residential uses. This project accomplishes none of that and, in fact, requires safety and scenic setback variances that are inconsistent with residential uses. Page 5-9 of the DEIR asserts that the project addresses the San Geronio Pass Wind Energy policies, but nowhere recognizes its inconsistency with Policy PASS 6.3.

At p. 5-4, the DEIR reaches the somewhat Orwellian conclusion that the project is consistent with the Rural Foundation Component for Areas 1 and 3. According to the RCIP, the Rural Foundation Component is for "remote cabins, residential estates, limited agriculture, equestrian, and animal keeping uses." The noise, vibration and disturbances of WECS turbines is totally inconsistent with these uses. On Area 3, the Community Development Foundation Component calls for "urban and suburban development." The WECS use is inconsistent with these as well. The W-2 uses listed at pp. 5-11 and 5-12 of the DEIR – for dwellings, light agricultural, grazing of farm animals, and animal husbandry – are similarly inconsistent.

The land use consistency of the project must be assessed against not only existing, but also proposed, uses for the area. The very fact that the project needs to change General Plan designations, safety setbacks, habitable dwelling setbacks, and scenic setbacks says all one needs to know about the project's consistency with existing land use regulations.

Moreover, the land use section of the DEIR points out a fundamental flaw running through the entire document. At p. 5-11, in connection with the wind access setback of 1007 feet, it states "Without a variance allowing greater space between turbine strings, an economically viable project could not be developed."<sup>7</sup> This broad and dubious assertion is completely unsupported by any evidence. Mere increased costs or decreased profits do not *ipso facto* lead to a conclusion of infeasibility. (Citizens of Goleta Valley v. Board of Supervisors (1988) 197 Cal.App.3d 1167, 1181.) If infeasibility is to be asserted, it must be supported with specific financial information. This holds true both for the asserted infeasibility of mitigation measures and for project alternatives. The DEIR is wholly deficient in providing this required evidentiary support.

The project attempts to secure a variance from the scenic highway setback on the basis that Highway 62 has reduced scenic value. (See, DEIR p. 5-11.) The DEIR's own view study

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<sup>7</sup> The same economic viability argument is invoked in rejection of each one of the alternatives listed under Section 9 of the DEIR.

Jay Olivas  
January 29, 2007  
Page 8

contradicts this conclusion. At p. 6.1-19, the "before project" photo of KOP-3 belies any assertion that there is a "reduced scenic value" in the existing condition.<sup>8</sup>

The DEIR similarly fails to indicate any justification for waiver from the setback requirements from habitable structures. It is important to note that all habitable structures here are in the immediate vicinity of Area 3, which supports a need for a project alternative that abandons any WECS turbines in Area 3 whatsoever. There is no asserted justification for this variance, other than existing utility constraints and the alleged economic viability of the project, neither of which is supported by any type of evidence or alternatives analysis. In addition, waiver of setbacks to habitable dwellings creates a serious safety issue. Turbines do catch fire, as demonstrated by an attached Press-Enterprise article dated July 8, 2006.<sup>9</sup> That article records an eye-witness account of a WECS turbine fire with "chunks of burning fiberglass the size of an egg raining down," and noxious fumes. This was a real-world occurrence, not a fear of what might happen. It speaks strongly to preserving the integrity of the habitable dwelling setback requirements.

#### 4. Aesthetics.

The DEIR's sole admission of significant adverse environmental impact is to aesthetics, and even that admission is grudging, and too narrow. The County has already determined "The development of WECS entails significant environmental impacts to air quality, *visual resources*, wildlife, and ambient noise. (Tab 1, p. 4; emphasis added.) In addition, Appendix G to the CEQA regulations specifically references rock outcroppings and State scenic highways as features which are presumptively significant for aesthetic impacts. Both are implicated with this project.

The DEIR's aesthetic view analysis is based on an unduly restrictive study. That study takes only six points of view, none of which includes the view impacts from my client's property, immediately north of Area 3, looking southward. Nor are there any view analyses from Pierson Avenue, which the DEIR acknowledges at p. 6.15 as a designated scenic corridor in the Western Coachella Valley Plan. Any fair analysis of aesthetic impacts must include impacts to these view sheds.

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<sup>8</sup> To remedy this and other deficiencies in the DEIR's aesthetics impacts analysis, we are submitting a DVD of recorded views and vistas in and around the project area, including views taken from a car traveling north on State Route 62, and east on Pierson. It is attached under Tab 7. This video record demonstrates the exact quality of views in the area from a number of different vantage points, not merely the six selected for the limited DEIR view study. This video record refutes any characterization the DEIR attempts to make of "reduced scenic value" for this area.

<sup>9</sup> Attached as Tab 8.

Jay Olivas  
January 29, 2007  
Page 9

In an attempt to remedy this truncated analysis, we are submitting a DVD transcription of a video taken on January 10, 2007, of the project area and its environs. This DVD, attached under Tab 7, shows a number of important aspects of the site and its characteristics, all of which will be impacted aesthetically by the project. There are view angles taken from a standing ground view, from the northwest corner of Area 3 looking southeasterly, and from Indian Avenue looking westerly. The DVD contains extended footage of a view from a passenger car traveling northward on State Route 62, and traveling eastward on Pierson Avenue. It also contains views of Area 5 and Area 1, and indicates surrounding developments, including the Skyborne development, signs announcing additional commercial and residential development, and an example of the type of aesthetic impact we can expect from this project by looking at existing WECS facilities right next to Area 3, with security fencing and loose parts stored on the ground.

Perhaps more to the point, the DVD shows what the DEIR's view analysis conspicuously avoids – the relationship of the existing meteorological tower and background mountain views. This meteorological tower was approved to be built to 193 feet by Plot Plan 21093. The meteorological tower is an incomplete reference for view impacts, because it is at least **134 feet lower** than each of the proposed WECS towers, and has no lateral turbine rotors to blot out views. Still, view depictions including the tower show it extends significantly above scenic mountain skyline views. This paints a troubling picture of the significance of view impacts from the project's proposed arrays of much larger, more intrusive WECS towers, from all viewing angles. The significance of all of these view impacts must be recognized, assessed, and mitigated.

In an attempt to minimize the impacts of these views, the DEIR characterizes the importance of scenic vistas on the valley floor as "less critical." (DEIR, p. 6.1-6.) Again, refutation of this point comes from the County itself:

Areas in the San Geronio Pass that are located on flat terrain on the valley floor, which were described above as "less critical," can still be very important to the visual character of the area. This depends largely on where such areas of flat terrain are located. If flat terrain areas are located in the foreground of important view sheds or in high traffic areas, the blanket designation "less critical" may not be appropriate. Studies of existing WECS development on flat terrain indicate that this development can have a significant impact on visual resources in the area.<sup>10</sup>

<sup>10</sup> See, Tab 1, p. 6.

Jay Olivas  
January 29, 2007  
Page 10

The same is true here. The broad views of the San Jacinto and San Geronio mountains from the project area and the high traffic areas of State Route 62, Indian Avenue, and Pierson refute the "less critical" designation this DEIR relies upon.

In addition, the DEIR is completely silent on impacts of shadows from the large WECS turbines the project proposes. Perhaps not coincidentally, all photos included in the DEIR were taken on a stormy day, when lighting conditions were muted and shadows were indistinct. (DEIR, p. 6.1-15.) This is suspect, and offers an incomplete picture of impacts.

The effects of shadows, particularly those from broad, moving rotors, are important, and cannot be ignored as part of the project's impact analysis. In her article "Wind Turbine Syndrome: Noise, Shadow Flicker, and Health," Nina Pierpont, M.D., Ph.D., talks about the health impacts of "shadow flicker" from the moving shadows cast by rotating turbines. She indicates that such shadows can trigger migraine headaches, vertigo, or epileptic seizures.<sup>11</sup> Such impacts are too important to be ignored.<sup>12</sup>

In an effort to fill the complete evidentiary void the DEIR creates on this issue, my office conducted a field study of shadows in the area on January 24, 2007. In the absence of a 327 foot structure, shadows were measured from an existing telephone pole at various times throughout the day. The results of this shadow study are attached under Tab 11.

Calculated from field measurements, the height of the phone pole was 33 feet. This pole cast a shadow as far as 1980 feet, at 7:46 a.m. By simple arithmetic calculation, a WECS tower of almost 330 feet would therefore cast a shadow of 19,800 feet, *or over three and three quarter miles*. The DEIR should undertake a shadow analysis, at a minimum using these figures, and more properly undertaking a full formal analysis of the shadow range of each one of the 47 WECS turbines proposed, under both winter and summer sun conditions. Only then can the full aesthetic impact, including the strobe effect of shadows from rotating turbines, be realistically assessed.

Further, what mitigation measures are proposed for aesthetic impacts are vague. The contribution to the WIMP, referenced at p. 6.1-28, does not provide any identifiable mitigation standard against which the project proponent's performance can be assessed, or any real mitigation at all. Mere contribution to a funding of a future study may be an appropriate condition of approval, but it is not mitigation. Further, the mitigation measure for onsite lighting

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<sup>11</sup> See, Tab 9, p. 8-9.

<sup>12</sup> Similar conclusions were offered by Jon Boone before the Maryland Public Utilities Commission in testimony given July 25, 2005. Mr. Boone indicated that shadow impacts affect nearby residences, and can cause sickness or nausea. (Tab 10, p. 31.) The shadow impacts are potentially significant, on both existing and potential future housing, and impact wildlife as well.

Jay Olivas  
January 29, 2007  
Page 11

states: "The brightness of this lighting shall be kept relatively low." (DEIR, p.6.1-28.) This is impermissibly vague. What type of lighting will be utilized? How low will the lighting be kept? Relative to what? Again, some type of standard must be set for mitigation performance, and the mitigation monitoring program must set up an effective, discernible way to assess whether the identified measure has been met.

##### 5. Biological Impacts.

The DEIR concludes that there will be no significant impacts to any biological resources. With all due respect, the Biological Assessment relied upon to reach this conclusion is inadequate. Appendix E, p. 3-4, says all field work for the Biological Assessment occurred from March 23, 2006 to July 24, 2006. Page 3-5 says wildlife surveys began in March 2006, but fails to identify what specific surveys were done when.

A survey of literature and resource agency guidelines indicates this falls far short of the type of biological data collection required to properly assess biological impacts from a proposed wind farm development. The California Energy Commission has issued its "Assessment of Avian Mortality From Collisions and Electrocutions," dated June 2005, attached under Tab 12. It is a comprehensive study pointing up the dangers of wind turbines to birds, including threatened and endangered species. That report recites a number of dangers that the DEIR does not address, and deficiencies the DEIR does not remedy. For example, it indicates that information collected by utilities to date may be grossly underestimating impacts to avian resources in California. (Tab 12, p. 2.) Up to 85% of collisions and electrocutions may be undetected. (Tab 12, p. 4.) It also indicates that wind turbines kill disproportionately large numbers of golden eagles, red-tailed hawks, burrowing owls, and other raptors. (Tab 12, p. 14.) Virtually every bird killed by wind turbines results in a violation of Federal or State law and regulations. (Tab 12, p. 25.) Further, the expansion of rotor-swept areas of turbine blades puts even more birds at risk of collision. (Tab 12, p. 3.)

The DEIR apparently attempts to cover the paucity of its field data, by reference to an earlier study of avian use of the San Geronio Pass area conducted by Dick Anderson, and an August 31, 2006 letter attached to the Biological Assessment as Appendix E. Unfortunately, neither of these provide any evidence of the nature, range, or expected species distribution of likely avian fatalities from the project. As the CEC has pointed out, the Anderson study did not estimate bird fatality due to the high uncertainty of long search intervals, and the unknown impact of scavenging rates. (Tab 12, pp. 20-21.) Moreover, Mr. Anderson's vague, conclusory statements that he believes "bird fatalities will be low" offers no quantitative analysis, point of reference, or other evidentiary support for what Mr. Anderson might consider to be low, and what kind of birds are involved.<sup>13</sup> Indeed, Anderson himself acknowledges that there will be

<sup>13</sup> For example, the Bald and Golden Eagle Protection Act has no provision for any take, such

Jay Olivas  
January 29, 2007  
Page 12

red-tailed hawk and burrowing owl fatalities from the project. (Biological Assessment, Appendix E.) More broadly, he admits the failure of his 2004 study to serve as a basis for predicting bird fatalities:

It would be difficult to extrapolate the number of bird fatalities in San Geronio per year from our data due to long intervals between carcass searches at each carcass search site. If I were starting the research today, I would search fewer sites more often. (Id.)

This admittedly flawed study therefore cannot serve as substantial evidence supporting the extrapolated conclusion of 1.3 bird strikes per year, per turbine, appearing in the Biological Assessment at p. 5-8.

More fundamentally, the assignment of a ratio of bird kills per turbine is flawed analytical methodology. This was demonstrated in the California Energy Commission's "Response to Public Comment on the Staff Report Titled 'Assessment of Avian Mortality From Collisions and Electrocutions' (CEC-700-2005-015) (Avian White Paper) written in support of the 2005 Environmental Performance Report and the 2005 Integrated Energy Policy Report."<sup>14</sup> There, the CEC found that for avian studies of the duration that have been done for San Geronio, and taking into consideration statistical confidence intervals, estimates of fatalities per turbine dipped below zero. (Tab 14, pp. 10-13; 28-29.) As the CEC staff noted, this is absurd. WECS turbines kill birds; they do not create them. The CEC critique points up the fundamental inaccuracy of the primary artifice the DEIR uses to estimate avian impacts from the project.

The CEC recommends a significantly more detailed protocol for siting wind turbines and reducing impacts to avian species. It references the U.S. Fish & Wildlife Service Interim Guidance, which calls for a three-year baseline survey and avoidance measures (such as seasonal shutdown) when there are concentrations of bird use at the sites. (Tab 12, p. 8.) The "Service Interim Guidance On Avoiding And Minimizing Wildlife Impacts From Wind Turbines" are attached under Tab 15. Those guidelines call for an average of three years of monitoring data, including acoustic, radar, infrared, or observational monitoring to be collected. (Tab 15, p. 4.) The five months of data collected here falls far short of that three-year standard.

In addition, the DEIR finds that there is bat foraging habitat onsite. (DEIR, p. 6.3-23.) According to the CEC, bat surveys should be done from April through October. (Tab 12, p. 16.)

that any golden eagle fatality would be considered significant. (Tab 12, p. 7.) At least one local homeowner in the area indicates personal observation of golden eagles in the area, and the negative impact WECS facilities have had in driving them away. (See e-mail from Abby Silverstone dated January 9, 2007, attached as Tab 13.)

<sup>14</sup> Attached as Tab 14.

Jay Olivas  
January 29, 2007  
Page 13

Here, no bat surveys of any type were done, and no surveys of any type were done during the fall, for either bird or bat species.

The DEIR's flawed studies, leading to conclusions of low bird use of the project area, are refuted by the Los Angeles Audubon Society. Its letter of June 9, 2006, to the California Energy Commission, cites studies indicating that an estimated 70,000,000 songbirds pass through the San Geronio Pass annually. (Tab 16, p. 2.) It also indicates such songbirds are most vulnerable to collision in the two or three hours after sunset, as they begin night migratory activity. The DEIR contains no study, discussion, or assessment of nighttime avian activity in the project area, since its field observations were limited to daytime, personal observations.<sup>15</sup> The Audubon Society recommends use of existing radar data to assess night bird use of proposed wind turbine sites, which should be required of the project applicant here.

The significance of the likely avian mortality cannot simply be willed away. The DEIR indicates there are likely to be no collisions from burrowing owls because they forage low to the ground. (DEIR, p. 6.3-39.) Mr. Anderson himself indicates there will be burrowing owl fatalities in his "Comments Regarding the Dillon Wind Project." (See, Biological Assessment, Appendix E. See also, Tab 12, p. 14.)

The DEIR also makes the totally unsupportable assertion that bird deaths will be lowered by a larger rotor with slower revolutions per minute (RPMs). (See, DEIR p. 1-8.) According to respected experts on bird mortality, the true determinants are tip speed, rotor invisibility due to tip speed, and rotor swept area. Tip speed is determined from RPM plus blade length, not RPM alone. (See, C.G. Thelander, Smallwood, K.S., and L. Rugge; Bird Risk Behaviors and Fatalities at the Altamont Pass Wind Resource Area; Period of Performance: March 1998-December 2000, December 2003; NREL/SR-500-33829 [Tab 17, pp. 27-28]; National Avian Wind Power Planning Meeting IV; Meeting Summary; May 16-17, 2000; Carmel, California [Tab 18, p.3].) The 19.8 RPM cited as relatively harmless in the DEIR (DEIR, p. 1-8 ) is therefore meaningless. The real statistic, and the real threat, is three rotor blades of some fifteen total tons, moving at 142.5 miles per hour. Evolution has yet to produce a bird, or any living creature, that can withstand a blow of this force.

The biological deficiencies in the DEIR are not limited to bird analyses, however. For example, the DEIR, p. 6.3-20 indicates no impact to the Coachella Valley Fringe-Toed Lizard because of a lack of preferred habitat. Nevertheless, at p. 6.3-6, the figure shows the Fringe-Toed Lizard area as a big part of Area 1, and a portion of Area 3. In addition, p. 3-6 of the Biological Assessment states blowsand transport to the White Water Flood Plain Reserve could

<sup>15</sup> The Biological Assessment, at p. 3-6, indicates that the avian surveys were limited to four dates, of approximately 30 minutes each. It also references an illustration of the areas observed as being depicted in Fig. 2, which is not attached to the Appendix.

Jay Olivas  
January 29, 2007  
Page 14

be impacted by the project, which contains Coachella Valley Fringe-Toed Lizard habitat. These inconsistencies must be reconciled.

In addition, the DEIR states that no special plant species occur on the site based upon a pedestrian field investigation. (DEIR, p. 6.3-16.) It is questionable whether the field investigation referenced is sufficient to determine the existence of these species. The U.S. Fish & Wildlife Service is currently undergoing a spectral analysis from satellite imagery in connection with habitat characterization for the San Bernardino Wash Plan Habitat Conservation Plan. This technique takes enhanced satellite imagery and characterizes habitat based on a spectral analysis of superior satellite imagery. This type of analysis should be undertaken in the existing context, to be sure that any special plant species which occur on this site have been identified.

The DEIR also seems to duck the issue of delineation of jurisdictional waters, and whether a 404 permit will be required. Informal consultation with Mr. Sheridan, referenced at DEIR p. 6.3-27, is not sufficient. A specific delineation should be done to determine if any areas of project impact come under the jurisdiction of the Army Corps of Engineers or the Department of Fish & Game. If a 404 or Streambed Alteration Permit is required, it must be identified as one of the discretionary approvals this DEIR is intended to cover.

More broadly, the DEIR adopts erroneous thresholds of significance for biological impacts. Reliance on areas identified as mitigation areas in the proposed Coachella Valley MSHCP has nothing to do with specific impacts to specific species, on this site, from this specific project. Significantly more field work and correlation of project features to biological resources, either found on the site or likely to use it, are required.

The impacts to Sonora Creosote Bush Scrub communities is also insufficient. Areas of lubricant spills, drippings, and road areas need to be calculated within the 27 acres of disturbance. In addition, the disruption is not to 27 contiguous acres, but over 1500 acres. Interruptions in the continuity of habitat must be assessed, not just a tallied acreage of "checkerboard" disturbances, that ignore the impacts to the spaces in between.

Page 6.3-30 of the DEIR indicates that three-strand barbed wire fencing is "likely." This statement offers no real information. The DEIR must indicate whether security fencing or this type of barbed wire fencing will be used, and where. In order for those using the DEIR to balance security, view, and biological impacts, more information is required.

The DEIR is also devoid of data on the assertion at p. 6.3-34 that there will be no noise impact to wildlife. The claim is particularly suspicious given the 107 decibel rating the manufacturer gives to these turbines. (Tab 2, p. 5.) It is also refuted by personal, first-hand observation by residents. (Tab 13.)

Jay Olivas  
January 29, 2007  
Page 15

6. Geology/Soils.

At p. 5-3, the DEIR shows that the project site is susceptible to subsidence. This is a particular concern with the interaction of proposed turbines and the Southern California Gas high-pressure gas line traversing Area 3. A potential leak or rupture of the gas line can combine with heat, oil, or friction of turbines to create a fire or explosion hazard. There should be some recognition of this risk, and proposed mitigation for it and any potential failure collapse of any of the proposed WECS turbines. The risk is made more acute by the high seismic vulnerability of the site acknowledged in the DEIR. (See, DEIR Appendix F, Executive Summary.)

Mitigation Measure 6 at p. 6.5-7 of the DEIR states "Preventative measures to reduce seasonal flooding and erosion should be incorporated into site grading plans." This is again impermissibly vague. There is no indication of what specific preventative measures are even suggested, nor any statement of a standard to which the project applicant must be held in mitigating what impacts there are.

Page 6.5-9, and its reference to flooding, suffers from the same defect. It states "If significant changes are proposed for the site, appropriate project design, construction and maintenance can minimize the site sheet flooding potential." This statement is meaningless. It describes no project features, assesses no impacts, and identifies no mitigation. Given that at least 27 acres will be converted to impermeable surfaces, increased runoff should be quantified, and a specific drainage plan should be included.

7. Noise.

The DEIR contains no measurement, analysis, or discussion whatsoever for the project's noise impact on biological resources, only for human receptors. (DEIR, p. 6.7-2.) Under CEQA, there must be a finding of significance if a project will "expose persons to **or generate excessive groundborne vibration or groundborne noise levels**. (CEQA Regs., Appendix G.) There are no vibrations studies whatsoever in the DEIR, and no noise measurements, only references to technical specifications from the manufacturer. From this, it is impossible to determine what noise or vibration impacts there may be to biological resources, and both must be analyzed.

The impact of noise to humans is given short shrift as well. Anthony Rogers, Ph.D., presented a study indicating the appropriate rule of thumb for noise setbacks to the nearest residence is three times the blade tip height, which is consistent with existing County setback requirements in Section 18.41(d)(1)(a).<sup>16</sup> The project proposes a variance to bring turbines as close as 544.75 feet. Any reduction from this accepted industry standard on noise impacts should be considered significant.

<sup>16</sup> See, *Wind Turbine Noise, Infrasound and Noise Perception*, January 18, 2006, Tab 19.

Jay Olivas  
January 29, 2007  
Page 16

The safety of even this standard is questionable, however. In "Health Effects of Wind Turbine Noise," by Nina Pierpont, M.D., Ph.D., a minimum setback distance of 1.5 miles is called for because of the effects of all noise, including low frequency sound, from industrial wind turbines. (See Tab 20, p. 2.) Dr. Pierpont's conclusions were based on the "Guidelines for Community Noise" issued by the World Health Organization in 1999. (See Tab 21.)

Finally, given the existing General Plan designations (which include Community Development), the project's noise impacts should not be assessed only with respect to existing residential dwellings, but also any potential residential development consistent with existing zoning on surrounding properties, as a cumulative impact. The project should not be afforded the opportunity to preclude residential development, or reduce its value on surrounding properties, simply because it is first in time.

8. Cumulative Impacts.

The DEIR should undertake an analysis of the impact of prior WECS development in other areas of the San Geronio Pass on surrounding development. It should assess whether the project's expansion of WECS uses will impair or inhibit development of surrounding properties, specifically for the rural and residential uses that are called for under the existing foundation components. It should also assess what value impact the WECS development has on surrounding homes and properties.

In addition, the DEIR should assess impact from potential turbine blade throw, and identify the zone of potential blade throw for all proposed WECS turbines. There must be some evidentiary support for the claim made in the WECS application that "blade throw of 150 feet is highly unlikely." (Tab 2, p. 5.)

The DEIR should also acknowledge and assess the cumulative visual impact of the FAA-required red strobe lights on the towers. The U.S. Fish & Wildlife Service indicates these lights should not be used, since they appear to attract night-migrating birds at a much higher rate than white strobe lights. (Tab 15, p. 4.) The DEIR is silent on this impact, since it undertakes no night time avian use analysis. The cumulative biological impacts of the FAA-required use of red strobe lights should be acknowledged, and assessed.

At p. 6.1-29, the DEIR cites FAA safety concerns as overriding the acknowledged cumulative visual impact of warning lights. This fails to address the potential mitigation measure of reduction in the number of turbines, or relocation of the turbines, to mitigate. In addition, while the FAA requirement was that 17 turbines be lit, nothing in Appendix C indicates the specific location of the turbines which are required to be lit. This is necessary for an assessment of all impacts from the required strobe lighting, including cumulative impacts.

Jay Olivas  
January 29, 2007  
Page 17

9. Alternatives and Project Objectives.

The DEIR includes a project objective of taking advantage of economies of scale on projects sized above 25 MW. (DEIR, pp. 4-6.) There is no financial data supporting this implicit assertion that projects above 25 MW involve economies of scale, or that there is any need to take advantage of them in connection with this project. The DEIR must have this evidence if it is to rely on fulfillment of this project objective as a justification for the proposed project, and the rejection of alternatives, in the face of significant adverse environmental effects.

The DEIR's alternatives analysis is deficient in a number of important respects. First, there is no assessment or discussion of any potential alternative locations. DEIR p. 6.3-33 indicates there are 3500 turbines on 20 square miles in the San Geronio Pass and the Upper Coachella Valley. The October 2, 2003 WECS policy memo says there are 35,000 total acres available. (Tab 1, p. 14.) Twenty square miles is 12,800 acres. The DEIR offers no explanation why, with 22,000 other acres available, additional WECS from this project must be sited immediately adjacent to Indian Avenue, the outer limit of any WECS development, and immediately adjacent to existing residences.

The DEIR should also include an alternative that proposes only repowering existing WECS sites that have fallen into disrepair, on non-use. The DEIR relies on the SB 1078's energy goal of 20% renewable energy by 2017. (DEIR, p. 4-6.) This objective could equally be met by an alternative of repowering existing WECS sites which have become outmoded, or otherwise fallen out of productivity. A repowering option would advance all energy production objectives, without exacerbating the environmental impacts of additional expansion of WECS turbines into areas where none previously existed. Such repowering would also avoid the existing utility transmission facility and easement constraints identified at DEIR, pp. 5-10 to 5-13, as justification for setback variances.

At a minimum, the DEIR should consider an alternative which has no WECS turbines on Area 3. This alternative would minimize impact to existing habitable dwellings, since all those dwellings are immediately adjacent to Area 3. In addition, it would prevent the eastward expansion of the limit of WECS in the area, since the area west of Area 3 represents the easterly limit of the encroachment of turbines in this area. It would also avoid safety and utility conflict issues from the proximity of WECS turbines and electrical facilities in close proximity to the high pressure gas line that traverses Area 3.

The fundamental flaw running throughout the entire alternatives analysis, however, is the selection of the project as the environmentally superior alternative. This is based on alleged air quality and other environmental impacts which are wholly fictional.

Jay Olivas  
January 29, 2007  
Page 18

Page 6.2-3 of the DEIR asserts that wind-generated electricity displaces on average 1.35 lbs. of CO<sub>2</sub>, 0.07 lbs. of SO<sub>2</sub>, and 0.042 lbs. of NO<sub>x</sub> for every kilowatt hour generated. The multiple stages of speculation required to reach this conclusion have already been exposed by the County, and were quoted at the outset of this letter. (See p.2, supra.)

There are other defects in this extrapolated analysis. First, the fossil fuel energy generation figures cited by the DEIR are drastically overstated. Relying on the California Energy Commission's Gross System Electricity Production for 2005, the actual rate for CO<sub>2</sub> is 0.049 lbs., for SO<sub>2</sub> is 0.000000643 lbs., and NO<sub>x</sub> is 0.0000235 lbs. (See, U.S. Electric Power Industry Estimated Emissions by State (EIA-767 and EIA-906) of the U.S. Department of Energy; California Energy Commission's Gross System Electricity Production for 2005; collectively attached under Tab 22.) The DEIR overestimates the impact of fossil fuel electrical generation by anywhere from 28 to 100,000 times.

Second, the DEIR presumes 3,000,000 kw-hrs per year from each 1 megawatt turbine. This presumes a 34% capacity factor.<sup>17</sup> Industry statistics already relied upon by the County contradict this figure. In its October 2, 2003 WECS policy memorandum, the County noted that of 1,832.2 MW of installed capacity in California, the California Energy Commission for 2002 reported that wind energy contributed only 404.8 MW to the State's total supply. (Tab 1, p. 15, n.2.) This translates to a 22% capacity factor, as do the latest available 5-year data for California Wind Energy from UC Davis' Wind Performance Reporting System. (See Tab 23.) By overstating the amount of electricity generated from the WECS turbines, the DEIR also overstates the air quality impacts from avoided fossil fuel generation pollutants.

Third, it is simply false that additional wind energy generation capacity results in replaced or displaced fossil fuel generation. As explained by Glen R. Schleede in "False Wind Industry Claims About the Integration in Electric Grids of the Intermittent, Volatile, and Unreliable Electricity from Wind Turbines," dated August 2, 2006 (Tab 24), wind energy is not reliable because of the variability of the wind source. Electrical grids require the ability for nearly instantaneous increase or decrease of electrical supplies in order to match variable demand. Since there is no way to store electricity on an industrial level, the grid must have the capacity to match demand as it fluctuates, not simply as the wind blows. The grid must therefore have and utilize more traditional fossil fuel or other methods to assure available supplies consistent with variability of demand. Wind energy simply is not that flexible.

<sup>17</sup> The DEIR does not specifically identify this aggressive, unsupported presumption, but it is evident from a few calculations. Assuming 100% generation at a full megawatt for 24 hours over 365 days yields 8,760 MW, or 8,760,000 KW hours. The 3,000,000 presumed is 34% of that 8,760,000 figure.

Jay Olivas  
January 29, 2007  
Page 19

This is particularly true in peak electrical demand times, most notably summer heat waves. In July of 2006, wind energy contributed less than 5% of its total installed capacity, and made a negligible contribution to supplies required by the grid as whole.<sup>18</sup>

Fourth, the DEIR analysis ignores the energy drain the WECS towers will place on existing energy resources, from the need to maintain back-up generators, maintenance activities, and the like. If the DEIR is to rely on an "energy budget" analysis, all energy implications of the towers, both from the cost and the benefit side, must be included if the analysis is to be intellectually honest.<sup>19</sup> The project applicant should be required to provide this information.

Given these realities, it is obvious the numbers the DEIR uses to justify selection of the proposed project as environmentally superior are drastically inflated, and ultimately meaningless unless the project applicant can demonstrate actual avoided fossil fuel generation pollution from the electricity to be generated from this proposed WECS project. Once the fallacies of these presumptions are exposed, the DEIR's conclusions regarding the project's environmental superiority fall like a house of cards. Nothing in the DEIR even comes close to analyzing the energy realities of this supposed pollutant avoidance, let alone proving the vague and unsubstantiated claims of benefit the DEIR relies on as the lynchpin of the supposed environmental superiority of the project.

Title 14, California Code of Regulations § 15126.6(b) states:

Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code § 21002.1), the discussion of alternatives shall focus on alternatives to the project *or its location* which are capable of avoiding or substantially lessening any significant effects of the project, *even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.* (Emphasis added.)

<sup>18</sup> See articles by Mr. Schleede, including "Stretching or Ignoring Facts and Making Unwanted Assumptions When Attempting to Justify Wind Energy" and "The True Cost of Electricity From Wind Power and Windmill 'Availability' Factors," also collectively attached under Tab 24. These articles explain the interrelationship between grid requirements, wind energy capacity factors, and transmission capacity limitations in much more detail. They also explain the tax credit mechanism which drives wind energy facility development.

<sup>19</sup> The project also requires some 47 cement foundations of 7.5 feet of thickness, entailing some 400 tons each. (Tab 2, p.4.) For every ton of cement produced, a metric ton of carbon dioxide is also produced. (See, Tab 25, p. 3.) This additional 18,000 metric tons of CO<sub>2</sub> generated by the project must be assessed against any supposed pollutant savings the project is said to create.

Jay Olivas  
January 29, 2007  
Page 20

Here, the DEIR's narrow range of alternatives, and its "one-note song" of avoided fossil fuel pollutants as the basis for the project's supposed environmental superiority, utterly fail to meet this CEQA mandate.<sup>20</sup>

10. Conclusion.

The DEIR is rife with truncated analyses, ignored significant environmental effects, and fabricated project benefits. Approval of the project as proposed requires a series of General Plan Amendments, variances, and zone changes that amount to land use gymnastics. The County has already recognized the serious, deleterious environmental effects of the installation of WECS facilities generally, and this project is no different. Neither the surrounding landowners nor the City in whose sphere of influence the project is located wants this project, and the County of Riverside does not need it.

The DEIR fails to comply with CEQA in recognizing, analyzing and mitigating the myriad significant environmental effects this project would create. To meet the requirements of CEQA, wholesale revisions are required in its project description, its analysis of aesthetic, biological, noise, and land use impacts, and its consideration of cumulative impacts and alternatives. Such extensive revisions will require recirculation, and another opportunity for surrounding landowners and interested members of the public to comment. I look forward to reviewing a recirculated DEIR if the County opts to continue processing this project, because the current one simply will not sustain approval of the project it purports to justify.

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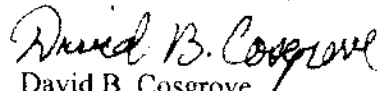
<sup>20</sup> In addition, each of the alternatives dealing with reduction or elimination of turbines is rejected as being not feasible. As indicated above, the DEIR is devoid of any financial or economic data indicating that a reduction in the number of turbines, or an alternative involving repowering of existing outmoded WECS facilities, is somehow infeasible. The infeasibility simply is not shown. In the absence of such evidence, the assertion has no merit, and cannot serve as the basis of rejecting each of the alternatives listed in the DEIR, as the DEIR presently recommends.

Jay Olivas  
January 29, 2007  
Page 21

Thank you for the opportunity to comment on this DEIR. If you have any further comments or questions, or require further information from me, please do not hesitate to contact me.

Very truly yours,

RUTAN & TUCKER, LLP

  
David B. Cosgrove

DBC:tr  
Enclosure

Jay Olivas  
January 29, 2007  
Page 22

| <b>Exhibits to Comments to Draft Environmental Impact Report for the Dillon Wind Project, Riverside County WECS 116 and 117, General Plan Amendment No. 811, Change of Zone Nos. 7346 and 7449, Variance Nos. 1797 and 1798, City of Palm Springs CUP 5.115, and Variance 6.493</b> |                                                                                                                                                                                        |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Tab</b>                                                                                                                                                                                                                                                                          | <b>Description</b>                                                                                                                                                                     |
| 1                                                                                                                                                                                                                                                                                   | County of Riverside Planning Department Memorandum dated October 2, 2003                                                                                                               |
| 2                                                                                                                                                                                                                                                                                   | Application for Commercial Wind Energy Conversion Systems (WECS) Permit – Case No. WCS00117, dated May 22, 2006                                                                        |
| 3                                                                                                                                                                                                                                                                                   | Conditions and Approvals for PP21093R1                                                                                                                                                 |
| 4                                                                                                                                                                                                                                                                                   | Skyborne Development Brochure; Development Sign                                                                                                                                        |
| 5                                                                                                                                                                                                                                                                                   | Submittal to Board of Supervisors from Economic Development Agency, dated March 7, 2003                                                                                                |
| 6                                                                                                                                                                                                                                                                                   | Resolution No. 2006-134                                                                                                                                                                |
| 7                                                                                                                                                                                                                                                                                   | Comments to DEIR; WECS 116-117; Estate of Wolf; Site Environs – January 10, 2007 (Disk)                                                                                                |
| 8                                                                                                                                                                                                                                                                                   | Press-Enterprise Article dated July 8, 2006                                                                                                                                            |
| 9                                                                                                                                                                                                                                                                                   | Wind Turbine Syndrome: Noise, Shadow Flicker, and Health – by Nina Pierpont, M.D., Ph.D., dated August 1, 2006                                                                         |
| 10                                                                                                                                                                                                                                                                                  | Direct Testimony of Jon Boone                                                                                                                                                          |
| 11                                                                                                                                                                                                                                                                                  | Shadow Study – Dillon Wind Project                                                                                                                                                     |
| 12                                                                                                                                                                                                                                                                                  | Assessment of Avian Mortality From Collisions and Electrocutions                                                                                                                       |
| 13                                                                                                                                                                                                                                                                                  | E-mail from A. Silverstone dated January 9, 2007                                                                                                                                       |
| 14                                                                                                                                                                                                                                                                                  | Memorandum from California Energy Commission to Commissioners Geesman and Boyd, dated August 31, 2005 re Response to Public Comments                                                   |
| 15                                                                                                                                                                                                                                                                                  | U.S. Dept. of Interior Memorandum to Regional Directors, Regions 1-7, dated May 13, 2003, re Service Interim Guidelines on Avoiding and Minimizing Wildlife Impacts from Wind Turbines |
| 16                                                                                                                                                                                                                                                                                  | Letter dated June 9, 2006, from Los Angeles Audubon Society to California Energy Commission                                                                                            |
| 17                                                                                                                                                                                                                                                                                  | Bird Risk Behaviors and Fatalities at the Altamont Pass Wind Resource Area                                                                                                             |
| 18                                                                                                                                                                                                                                                                                  | Meeting Summary for the National Avian Wind Power Planning Meeting IV dated May 16-17, 2000                                                                                            |
| 19                                                                                                                                                                                                                                                                                  | Wind Turbine Noise, Infrasound and Noise Perception report, dated January 18, 2006                                                                                                     |
| 20                                                                                                                                                                                                                                                                                  | Health Effects of Wind Turbine Noise by Nina Pierpont, M.D., Ph.D., dated March 2, 2006                                                                                                |
| 21                                                                                                                                                                                                                                                                                  | Guidelines for Community Noise                                                                                                                                                         |
| 22                                                                                                                                                                                                                                                                                  | U.S. Dept. of Energy Greenhouse Emissions for California in 2005                                                                                                                       |
| 23                                                                                                                                                                                                                                                                                  | Wind Performance Reporting System                                                                                                                                                      |

Jay Olivas  
January 29, 2007  
Page 23

| <b>Exhibits to Comments to Draft Environmental Impact Report for the Dillon Wind Project,<br/>Riverside County WECS 116 and 117, General Plan Amendment No. 811, Change of Zone<br/>Nos. 7346 and 7449, Variance Nos. 1797 and 1798, City of Palm Springs CUP 5.115, and<br/>Variance 6.493</b> |                                                                                                                                                                          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Tab</b>                                                                                                                                                                                                                                                                                      | <b>Description</b>                                                                                                                                                       |
| 24                                                                                                                                                                                                                                                                                              | False Wind Industry Claims about the Integration in Electric Grids of the Intermittent,<br>Volatile and Unreliable Electricity from Wind Turbines, dated August 29, 2006 |
| 25                                                                                                                                                                                                                                                                                              | Quick-Setting Concrete and a Method for Making Quick-Setting Concrete                                                                                                    |

April 17, 2007

**VIA FACSIMILE & OVERNITE EXPRESS**

Honorable Chairman and Members of the  
Riverside County Planning Commission  
Planning Department  
County of Riverside  
Second Floor, Room 211  
82-675 Highway 111  
Indio, CA 92201

Re: WECS 116 and 117

Honorable Chairman and Members of the Planning Commission:

I represent the Estate of Reba Wolf, which owns approximately 80 acres of property located immediately north of a portion of the area proposed for development of some 45 WECS windmill facilities. My client opposes this project for a number of reasons, many of which were laid out in the January 29, 2007 comment letter submitted to the Draft Environmental Impact Report County Staff now proposes to rely upon, in recommending approval of the project. The responses to comments in the proposed Final EIR now before you fail to address a number of significant adverse environmental impacts from the project. Among these are light and shadow impacts, impacts to avian and bat species using the area (particularly at night), and land use impacts on surrounding properties, my client's being among them.

My client urges the Planning Commission not to approve the project, and instead to undertake additional environmental and land use studies required to assess the full impacts of the WECS development being proposed, and the cumulative land use impacts it will create for the surrounding properties. We believe Staff's recommendation flows from procedural irregularities in project processing, unrecognized environmental impacts, reliance on unexplained supposed project benefits, and a practical elimination of developability of surrounding properties, all created by the Project. Significantly more analysis, and a fairer opportunity for the concerns of surrounding land owners to be weighed, should be required of any applicant proposing a project of this magnitude, and impact.

As such, my client recommends the Planning Commission deny approval of the project, or in the alternative, convene a committee consisting of Planning Staff, the project applicant, and surrounding landowners and stakeholders, to develop a more reasoned and balanced evidentiary record upon which the Planning Commission, and ultimately the Board of Supervisors, can render a decision on the project.

Honorable Chairman and Members of the  
Riverside County Planning Commission  
April 17, 2007  
Page 3

2. **The County Should Study and Evaluate the Impacts of This Project on Surrounding Properties.**

More important than questions whether the County *can* give accelerated processing to this project proposal, is the question whether the County *should*. This project proposes to place a string of 327-foot towers immediately up against the outer boundary of the WECS-exclusion area within the San Geronio Pass, as described in the County's October 2, 2003 WECS memorandum<sup>2</sup>. The Rural Foundation Component applicable to Areas 1 and 3 calls for "remote cabins, residential estates, limited agriculture, equestrian, and animal keeping uses." The Community Development Foundation Component calls for "urban and suburban development." These are hardly consistent with the industrial nature of the proposed WECS turbines, particularly given the acknowledged impact on visual resources they create.

In my client's view, this does violence to any notion of transitioning the more intensive industrial WECS developments to the west, with areas east of Indian Avenue, where all WECS facilities are prohibited. Particularly in Area 3, where no WECS facilities have previously been proposed, sound planning would seem to call for smoother transitional uses, such as those called for under Policy PASS 6.3 from the San Geronio Wind Energy Community Policy Area. That policy calls for limited industrial/commercial uses to be integrated with existing wind parks, consistent with residential uses.

In addition, my client urges the Planning Commission to consider the practical effects of this project on its property. That property is presently zoned for residential development, one unit per every 2 acres. Under present market constraints, this zoning requires larger, estate-type homes, because of the large lot size requirements. It is simply unrealistic to expect this type of high-end residential product to develop immediately adjacent to an intensive, industrial wind farm use. The likely consequence of approval of this project, therefore, is a requirement for my client to pursue some sort of change in zone, with the attendant costs and uncertainties any such request entails.

The same situation is faced by other surrounding landowners. In fairness, my client requests the County to analyze whether the variances, zone changes, and general plan amendments now being considered by the County--tailored specifically for this project--should be expanded to analyze the impacts on surrounding properties as well. It may well be that transition to commercial or more industrial uses for these surrounding properties is appropriate, if the project is to go forward. The onus of analyzing and proposing such zone changes should

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<sup>2</sup> This memorandum was attached under Tab 1 to my client's letter on the DEIR, and is also posted on the County Planning Department's website.

Honorable Chairman and Members of the  
Riverside County Planning Commission  
April 17, 2007  
Page 4

not rest with surrounding property owners as an unfortunate after-effect of the project, but more properly should be studied in connection with the proposed project approval.

Unquestionably, the project has regional impact. The County's consideration of zoning matters in connection with the project should have an equivalent regional scope. Such regionally integrative planning should precede commitment to the project, not be thrust upon nearby property owners as a consequence of it.

**3. The Proposed Statement of Overriding Considerations Is Inadequate.**

The "County of Riverside Planning Department Staff Report," at pages 7-8, proposes a statement of overriding considerations under section 15093 of the CEQA Guidelines. My client believes this statement is inadequate, and in support points to the very recent judicial decision of Woodward Park Homeowners Association, Inc. v. City of Fresno (Feb. 13, 2007, No. F049481) \_\_\_\_ Cal.App.4th \_\_\_\_\_. In that case, the court of appeal reiterated that a statement of overriding considerations must make a good faith effort to inform the public, and must have an evidentiary foundation in the record. (*Id.*, Typed Opn. at p. 36-39.) In Woodward Park, the court struck down a statement of overriding considerations that contained misleading statements regarding the proposed benefits of a project, and failed to fairly balance the decision to approve the project, in the face of its environmental effects. (*Id.*)

The proposed statement of overriding considerations for this project bears many of the same defects. The record is devoid of any evidence of the alleged energy benefits, since there is no analysis of the frequency of utilization of the wind energy it might generate, or correlation of such generation to energy demand. Nor is there any evidentiary basis to conclude that fossil fuel pollutants from the generation of electricity will actually decrease, given the realities of limitations on the facility capacity ratios of wind energy, its reliability, and its role in the overall management of the grid.<sup>3</sup>

The environmental benefits cited in the statement of overriding considerations are likewise unsupported. The statement asserts the project preserves 98% of the land, but this ignores noise, shadow, and upset from the movement of the "checkboard" disturbances of the WECS facilities over the entire 1,500 acres. In any event, if the proper existing environmental baseline is used as the point of reference, the proposed project "preserves" nothing, and actually disturbs at least 27 acres of ground surface, and significantly more with the visual, biological,

<sup>3</sup> These points were all made in the County's WECS memorandum, referenced above, at pp. 4-7. Nowhere does staff explain how the situation with this project remedies the multiple layers of speculation that memorandum refused to accept, when it refused to accept rosy predictions of air quality improvement from WECS facility construction.

Honorable Chairman and Members of the  
Riverside County Planning Commission  
April 17, 2007  
Page 5

and other impacts created by the project. Moreover, the project does not make full utilization of the County's San Geronio Wind Energy Community Policy Area. This is an area of some 35,000 acres, and the absence of any analysis of alternative locations for the project in the EIR, within this broader area, offers no evidentiary support for any allegation of its "full" utilization.

The claimed economic benefits are also unsupported. The statement of overriding considerations cites 80 new full-time jobs to be created during construction. The DEIR directly contradicts the recognition of this as a significant benefit. The DEIR, in attempting to minimize the population and growth inducing impacts of the project, specifically states that it would not serve as a "substantial source of employment." (DEIR, p. 7-4.) Further, there is no mention anywhere in the draft EIR of the basis of the claim for \$12,000,000 of property taxes<sup>4</sup>, nor any quantification of the contribution to the County's Wind Implementation Monitoring Program.

All this falls short of the good-faith balancing required of the County, implicit in CEQA's requirement for a statement of overriding considerations:

"There is a sort of grand design in CEQA: projects which significantly affect the environment *can* go forward, but only after the elected decision makers have their noses rubbed in those environmental effects, and vote to go forward anyway."

(Vedanta Society of So. California v. California Quartet, Ltd. (2000) 84 Cal.App.4th 517, 530.) With all due respect, this statement of overriding considerations serves more as a gloss than any frank disclosure, and in light of the Woodward Park case, is unlikely to be held adequate under CEQA.

4. **Lack of Clarity on Right-of-Way Dedications Raise Questions Regarding Setbacks.**

The staff report seems to betray a level of uncertainty regarding right-of-way dedications on the project, stating: "The applicant has expressed concerns about the public need and justification for additional right-of-way adjacent to the proposed wind farms within this project."

<sup>4</sup> The fallacy of this point is demonstrated by looking at the most recent property tax information for property on which WECS 12 placed some 102 wind turbines, near Indian and Two Bunch Palms (A.P. Nos. 668-120-018, -020, and -021). That property generates \$858 of taxes on land only, with improvements (i.e., the still-existing WECS towers) assessed at *zero*. The WECS are still there, the tax revenue is not. This proves the negative environmental and land use impacts from these rapidly depreciated wind energy facilities long outlive any short-term tax revenue increases.

Honorable Chairman and Members of the  
Riverside County Planning Commission  
April 17, 2007  
Page 6

(Staff Report, p. 2.) The FEIR indicates revisions have been made to the project to eliminate the need for variances from safety setbacks to habitable dwellings. It is unclear whether, if the project is required to provide dedications, all safety setbacks are still met, even from the new right-of-way lines. My client requests this be clarified prior to any project approval going forward.

**5. Conclusion**

My client believes that neither the FEIR nor its response to comments adequately address the deficiencies in both analysis and recognition of impacts inherent in the DEIR, and created by the project. Those objections are already a matter of record, and are not repeated here.

Still, from a land use perspective, this project seeks processing privileges and legislative amendments that will unquestionably impact surrounding properties. My client believes regional land uses would be better served by a study of actual development patterns adjacent to existing WECS facilities, and development of land use strategies to transition the impacts of these proposed WECS uses to surrounding areas. These may include zone changes beyond the project-specific entitlements sought by the project, or direction to the applicant to implement alternative uses that buffer some of the WECS impacts the County has already recognized in its October 2, 2003 WECS memorandum.

For all the above reasons, my client cannot agree with Staff's recommendation for approval of the project. Based on the existing record, my client believes the project should be denied, or at a minimum, forestalled until its regional impact, and regional solutions to such impacts, are fully analyzed, and developed.

Thank you for the opportunity to comment on this important matter.

Very truly yours,

RUTAN & TUCKER, LLP



Michael R. W. Houston

MRWH:mm

cc: David Cosgrove, Esq.

May 15, 2007

**VIA FACSIMILE**

Jay Olivas  
Planning Department  
County of Riverside  
2nd Floor, Room 211  
82-675 Highway 111  
Indio, CA 92201

Re: WECS 116 & 117; Planning Commission Hearing of May 16, 2007

Dear Mr. Olivas:

As you know from prior correspondence in the above-referenced matter, our office represents the Estate of Reba Wolf, the owner of property immediately adjacent to Area 3, which is part of the proposed site for the development of WECS facilities. I am submitting this letter to provide further input on the FEIR analysis of biological impacts in connection with the project proposal, and as a supplement to the April 18, 2007 letter provided by the U.S. Fish & Wildlife Service.<sup>1</sup>

Of particular note, that letter states as follows:

“Typically, bird fatalities cannot be estimated without three years of avian survey efforts to determine the appropriate locations for turbines (Smallwood & Thelander 2004). Given that the County/City has accepted a few days of pre-construction avian survey effort as satisfactory and required no post-construction avian fatality monitoring for this project in the San Geronio Wind Energy Resource Area (SGWERA), the Service strongly disagrees with the statement in the FEIR on p. 6.3-34, Section 6.3.3.4.3, Cumulative Impacts. The FIER states: “The project would also not have a significant impact on birds as described in Section 6.3.3.4.5 and in the Avian Survey Report included as Attachment B.” The Service has a concern that this previous statement is *unsupportable due to the minimal pre-construction avian survey effort, the lack of post-construction avian*

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<sup>1</sup> It is my understanding that comments for May 16, 2007, are limited to the biological impacts raised by the USFWS letter, and Highway 62 scenic setbacks. My client has already commented regarding the Highway 62 setbacks (see FEIR, Comment Letter Z, p. 7-8.) This letter addresses only the biological issues raised by the USFWS.

Jay Olivas  
May 15, 2007  
Page 2

*fatality monitoring, the lack of compliance with the Service's Interim Guidelines, and the general lack of knowledge and understanding of the impacts to avian species that migrate through the SGWERA.*

(USFWS letter of 4/18/07, p. 3.)

My client echoes this concern. An EIR must be prepared with a sufficient degree of analysis to provide decision makers with the information needed to make an intelligent decision concerning a project's environmental consequences. When experts disagree regarding appropriate methodologies for assessing impacts, the FEIR must summarize main points of disagreement. (CEQA Regs. § 15151.)

Here, the USFWS is without question expert in issues of impacts to biological resources, including avian species. Indeed, as indicated in my client's comments to the DEIR, this Agency has issued Interim Guidelines for siting of wind turbine facilities, that call for three years of pre-project avian studies, as the appropriate study protocol for providing an adequate existing baseline environmental description, against which to measure project impacts. CEQA Regulations § 15088(c) requires the County to address in detail why the comments and suggestions calling for compliance with the USFWS Interim Guidelines have not been accepted, and must be addressed with a "good faith, reasoned analysis in response." My client believes this remains lacking.

Without question, the project applicant has not undertaken to comply with the USFWS Interim Guidelines. Apart from site specific surveys that are deficient, those guidelines call for ranking various sites against each other, under what the guidelines term the "Potential Impact Index." (See, FEIR, Letter Z Attachments, Attachment 15, p. 5.) This failure ties into my client's critique of the alternatives analysis of the FEIR, which did not look at any alternative sites. The expectation in the USFWS Interim Guidelines is that alternative sites must be analyzed, and ranked for suitability. This sets what my client believes is the minimum analysis incumbent upon this project applicant to provide the County with a responsible basis for assessing the acceptability of acknowledged potential avian impacts. As stated in the Interim Guidelines: "All potential development sites within a geographic area should be evaluated before a site is selected for development." (See, USFWS Interim Guidelines, p. 2.)

In addition, those Interim Guidelines indicate that songbird migration sites may require radar surveillance. (*Id.*, at 7.) This study protocol has been suggested by my client and others, but so far not undertaken.<sup>2</sup>

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<sup>2</sup> When a protocol exists for assessing an impact, such as the radar surveillance for nocturnal bird use here, an EIR cannot refuse to implement it, simply stating the impact is unknown. (See, Berkeley Keep Jets Over the Bay Com. v. Board of Port Commissioners (2001) 91 Cal.App.4th

Jay Olivas  
May 15, 2007  
Page 3

The FEIR admits there has been no analysis of diurnal and nocturnal migration rates or their relationship to avian fatality rates (FEIR, Appendix B, p. 10), and what passerine studies do exist provide little reliable inference to the Dillon Wind project. (*Id.*, at p. 13.) At the same time, the FEIR acknowledges up to 69 million birds migrate through the area annually (FEIR, p. 2-14), and passerines account for most bird fatalities at wind energy sites. (FEIR, Appendix B, p. 13.) Moreover, most migratory birds pass through the area in the fall. (FEIR, p. 2-14.) What little study has been done for the FEIR on avian use in the project area contains no fall surveying whatsoever. (FEIR, Appendix B, Table 1; see Comment Letter Z, attachment 16 [surveys for fall to occur September 1 to October 30].) There simply is no data on nocturnal use of the project area, only extrapolations from other sites. As the USFWS Interim Guidelines state:

“Data on wildlife use and mortality collected at one wind energy facility are not necessarily applicable to others; each site poses its own set of possibilities for negative effects on wildlife.”

(See, USFWS Interim Guidelines, p. 1 [Comment Letter Z, Attachment 15].)

Moreover, the study the FEIR uses to base its conclusions of avian mortality, by Anderson and Neuman, specifically disclaims the very use the FEIR makes of it. As pointed out by the Sierra Club, San Geronimo Chapter (see, Appendix K), that study’s “Discussion/Conclusion” section cautions:

“This study is not specifically designed to provide standardized estimates of avian fatalities. The wide interval between searches (90 days) led to a high level of uncertainty in the fatality estimates. The unknown impact of scavenging on the fatality estimates could greatly impact them.”

The search interval is a critical component of accuracy of avian fatality data, because most avian fatalities are rapidly scavenged, usually within 24 hours. (See, California Energy Commission, Avian Collision and Electrocution: An Annotated Bibliography, October 1995, Publication No. P700-95-001, citing reference 102, Crawford, R. L. 1971, incorporated herein by reference.)

In addition, the FEIR, Appendix B, p. 6-7, assumes that displacement will be minimal, asserting that wind turbine facilities typically occupy only a small portion of a project area, and surmising that environmental impacts are proportionately limited. This conclusion is contradicted by the USFWS Interim Guidelines, Appendix 4, which indicates the need for additional study on localized effects of turbines on wildlife, in terms of habitat fragmentation and loss, and the effects of noise. (See, USFWS Interim Guidelines, p. 37.) That study is nowhere in

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1344, 1369-71.)

Jay Olivas  
May 15, 2007  
Page 4

the record of this FEIR. There also needs to be some explanation of the requirements of the project applicant to secure a "take" permit under the Endangered Species Act, particularly since the FEIR includes as a specific mitigation measure a protocol for dealing with eagle collisions, and the possibility of golden eagle fatalities is acknowledged. (FEIR, Appendix B, p. 12-13.) Impacts to endangered species must be assessed and addressed before project implementation, not monitored afterward.

My client believes that given the scope of the project, the establishment of specific interim guidelines by the expert Federal agency overseeing biological impacts provides an expert agency protocol for examining baseline biological conditions that must be followed. Particularly given the substantial public controversy regarding avian impacts (as repeatedly reflected in the comment letters received to the DEIR), a study of twenty-one, thirty-minute visual inspections, outside of seasons of highest avian use, simply does not provide an adequate biological survey base to come to the conclusion that avian impacts are less than significant<sup>3</sup>.

My client urges the County to demand from the project proponent a more responsible and thorough avian assessment, consistent with the USFWS Interim Guidelines. The environmental impacts of this project, on biological and all other resources, will last much longer than the project proponent's apparent impatience with appropriate project processing timelines. More investigation is required, and the proposed project site must be compared with others, to determine the suitability of WECS facilities placement. My client respectfully requests the Planning Commission to deny this project or, at a minimum, withhold any certification of the FEIR until adequate avian studies have been completed.

Very truly yours,

RUTAN & TUCKER, LLP

  
David B. Cosgrove

DBC:tr  
Enclosure

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<sup>3</sup> The FEIR also fails to indicate how the altitude of flying birds was determined in the studies, although it does rely on this factor in concluding that many birds fly above or below the fatal reach of the turbines. (FEIR, Appendix B, P. i; 5-6.)

AGENDA  
TUESDAY, JUNE 5, 2007  
BOARD OF SUPERVISORS – COUNTY OF RIVERSIDE  
1st FLOOR – COUNTY ADMINISTRATIVE CENTER  
4080 Lemon Street, Riverside, Calif.  
(Clerk 951-955-1060)

**9:00 A.M.**

Invocation by Maria Villarreal, Board Assistant, Clerk of the Board Office

Pledge of Allegiance to the Flag

Presentation of Proclamation – Adopt-A-Shelter Cat Month June 2007 to Robert Miller, Director of Animal Adoption Program Chief – Item 2.13

Presentation of Proclamation – Mine's: A Name for Herself to Mary H. Curtin, Theresa Larkin and Cheryl L. McCarthy.

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**OPENING COMMENTS:**

BOARD MEMBERS

EXECUTIVE OFFICER

STATE BUDGET UPDATE

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**ADMINISTRATIVE ACTION:**

1.1 CLERK OF THE BOARD: Proof of Publications.

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The following items do not require specific Board action unless the matter is appealed.

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- 1.2 TRANSPORTATION & LAND MANAGEMENT AGENCY/PLANNING: TENTATIVE TRACT MAP 26372 – Hushmand Taghdiri/Gabel Cook & Becklund, Inc. – Sedco/Wildomar Zoning Area – Elsinore Area Plan – 1<sup>st</sup> District, 28.28 acres, 70 residential lots, R-R zoning, Schedule A, Fifth Extension of Time **DENIED** by the Planning Commission.
- 1.3 TRANSPORTATION & LAND MANAGEMENT AGENCY/PLANNING: TENTATIVE TRACT MAP 29636 – Capital Pacific Homes – Antelope Valley Zoning Area – Sun City/Menifee Valley Area Plan – 3<sup>rd</sup> District, 76.87 gross acres, 72 residential lots, R-A-1 Zoning, Schedule B. Second Extension of Time approved by the Planning Commission.
- 1.4 TRANSPORTATION & LAND MANAGEMENT AGENCY/PLANNING: TENTATIVE TRACT MAP 30399, AMENDED NO. 6 – EA38604 - Monroe Investment Partners, LLC – Lower Coachella Valley Zoning District – Eastern Coachella Valley Area Plan – 4<sup>th</sup> District, 40 gross acres, 40 Single Family Residential Lots, R-1-30,000 Zoning, Schedule A. Second Extension of Time approved by the Planning Commission.
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The following items do not require specific Board action unless a Board member desires to set the matter for hearing or the matter is appealed.

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- 1.5 TRANSPORTATION & LAND MANAGEMENT AGENCY/PLANNING: COMMERCIAL WECS PERMIT 116 – VARIANCE 1797 (FTA 2005-17) – CERTIFY EIR – Dillon Wind, LLC/Stantec, Inc. – Pass & Desert Zoning District – Western Coachella Valley Area Plan – 5<sup>th</sup> District, 620 gross acres, W-E and W-2 (20,000 sq. ft. minimum lot size zoning. Commercial WECS Permit 116 proposes to install up to 20 wind turbines up to 327 feet in height, and Variance 1797 proposes to reduce scenic setbacks to not less than 740 feet along the project's easterly boundary adjacent to State Highway 62, and reduce wind access setbacks to 360 feet along the easterly boundary of WECS 116.
  - 1.6 TRANSPORTATION & LAND MANAGEMENT AGENCY/PLANNING: CONDITIONAL USE PERMIT NO. 3510 – CEQA Exempt – WD Partners, Inc./Hamid Keryahechian – Little Lake Zoning District – San Jacinto Valley Area Plan – 3<sup>rd</sup> District, 1.61 gross acres, C-P-S- zoning. CUP 3510 proposes to construct a 17,272 square foot Rite-Aid Store and to allow the off-site sale of beer and wine and will provide for the existing landscape nursery structures to be demolished approved by the Planning Commission.
  - 1.7 TRANSPORTATION & LAND MANAGEMENT AGENCY/PLANNING: CONDITIONAL USE PERMIT NO. 3542 – CEQA EXEMPT – Beverages & More/Glenn M. Chung – Prado-Mira Loma Zoning District – Eastvale Area Plan – 2<sup>nd</sup> District, 45 gross acres, C-P-S zoning. CUP 3542 for the related sale of beer, wine, and liquor (type 21) in conjunction with a specialty retailer located in the Vernola Market Place – Major 9. The CUP is only for alcohol sales, and does not cover any other uses or permits, approved by the Planning Commission.
  - 1.8 TRANSPORTATION & LAND MANAGEMENT AGENCY/PLANNING: PUBLIC USE PERMIT NO. 880 – NO NEW ENVIRONMENTAL DOCUMENTATION REQUIRED – SMR Ventures/The Keith Companies – University Zoning District – Highgrove Area Plan – 5<sup>th</sup> District, 0.7 gross acres, SP 323 zoning. PUP 880 proposes a domestic water reservoir located within Planning Area No. 3 of Phase 2 for the Spring Mountain Ranch Specific Plan No. 323 A1 Development approved by the Planning Commission.

- e. **HEARING AND NOTICE OF DECISION.** The hearing body shall hear relevant testimony from interested persons and make its decision within a reasonable time after the close of the public hearing. Notice of the decision shall be filed by the Planning Director with the Clerk of the Board of Supervisors, together with a report of the proceedings, not more than 15 days after the decision. A copy of the notice of decision shall be mailed to the applicant and to any person who has made a written request for a copy of the decision. If the hearing body is unable to make a decision, that fact shall be filed with the Clerk of the Board in the same manner for reporting decisions and shall be considered as a notice of denial of the application by the hearing body. The Clerk of the Board shall place the notice of the decision on the next agenda of the Board of Supervisors held five or more days after the Clerk receives the notice from the Planning Director.
- f. **PROCEEDING BEFORE THE BOARD OF SUPERVISORS.** The decision of the hearing body is considered final and no action by the Board of Supervisors is required unless, within ten days after the notice of decision appears on the Board's agenda, the applicant or an interested person files an appeal, accompanied by the fee set forth in County Ordinance No. 671, with the Clerk of the Board or unless the Board assumes jurisdiction by ordering the matter set for public hearing. If a timely appeal is filed or the Board assumes jurisdiction, the Clerk of the Board shall set the matter for public hearing before the Board not less than 13 nor more than 60 days thereafter and shall give notice of the time and place of the hearing in the same manner as notice was given of the hearing before the hearing body.
- g. **HEARING BEFORE THE BOARD OF SUPERVISORS.** The Board of Supervisors shall hear the matter de novo; however, the documents and the minutes of the hearing before the hearing body shall be a part of the Board's record at its hearing on the matter. The Board shall hear relevant testimony from interested persons and within a reasonable time after the close of the hearing, make its decision sustaining, reversing or modifying the decision of the hearing body.
- h. **TRANSCRIPTS.**
  - (1) Whenever any person desires to obtain a transcript of the oral proceedings of a public hearing before the Board of Supervisors, Planning Commission or the East Area Planning Council, or desires to have a record made of such proceedings, he shall, not less than seven days before the hearing, notify in writing the Clerk of the Board, if the hearing is before the Board, or the Secretary of the Planning Commission if the hearing is before the Planning Commission or the East Area Planning Council. The written request shall be accompanied by a deposit of a sum equal to one day's fee for a Court Reporter. The Clerk or Secretary shall thereupon arrange to have a Court Reporter present at the hearing. If the hearing is thereafter continued to another day, a like request, deposit an arrangement for a Court Report shall be made, if the record is desired. Such a person may directly arrange for attendance and payment of a Court Reported instead of making such arrangements through the Clerk of Secretary by the person desiring the same.

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