



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

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Agenda Item: 5a March 10, 2015

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March 2, 2015

Honorable Board of Supervisors
County of Alameda
1221 Oak Street, Suite 536
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Dear Board Members:

SUBJECT: Appeal by Altamont Winds Inc. from the decision of the East County Board of Zoning Adjustments (EBZA) to deny Conditional Use Permit, PLN2014-00028, application of Altamont Winds Inc. for modifications to existing conditional use permits (extension to October 31, 2018, of permits currently set to expire on October 31, 2015), for 828 turbines owned and operated by Altamont Winds Inc. located throughout the approximately 14,436-acre Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), with a rated capacity of approximately 85.8 megawatts (MW), bearing numerous Assessor's Parcel Numbers and different owners as shown in the attachments.

RECOMMENDATION:

East County Board of Zoning Adjustments (EBZA): On February 2, 2015 the EBZA denied the application by a vote of three in favor and none opposed.

Planning Department Recommendation: Staff recommends that the Board of Supervisors uphold the decision of the EBZA to deny the application, unless circumstances warrant a short-term extension for 12 to 18 months, or less, while the Appellant obtains entitlements and funding to initiate repowering/replacement of their wind turbines and facilities.

SUMMARY:

Proposal: To extend 16 conditional use permits (CUPs) for three (3) years, through October 31, 2018, under specified conditions, beyond their current expiration date of October 31, 2015, for operation of an estimated 828 existing utility-scale wind turbines with a combined existing (current) generation capacity of 85.8 megawatts (MW).

General Plan and Zoning: The APWRA is subject to the East County Area Plan (ECAP), within which it is designated Large Parcel Agriculture (LPA), permitting, among other uses, "windfarms and related facilities" The zoning designation of the APWRA is a combination of A-BE 160 and A-BE-320 (Agriculture, Minimum Building Site Area 160 and 320 acres, respectively), which allows windfarms (privately-owned wind electric generators) as conditional uses.

CEQA Status: A Draft Supplemental Environmental Impact Report (DSEIR) was prepared and circulated for public comment between November 17, 2014 and January 12, 2015, as a supplement to the EIR certified by the East County Board of Zoning Adjustments in July of 2013 that addressed a previous request for permit modifications. The 2013 EIR evaluated the currently

proposed CUP extensions as one of three alternatives, but in limited detail. The SEIR was determined to be necessary in order to provide a more detailed level of analysis, incorporate new information, add options for mitigation, provide for appropriate public review, and provide the basis for new CEQA findings regarding operations through October of 2018.

Other Background: The history of the subject CUPs, from the approvals by the Board of Supervisors in 2005, to the amendments in 2007 based on the Settlement Agreement (to which the Appellant was not a Settling Party), and the modifications approved for AWI in 2013, is described in the attached staff reports to the EBZA for their hearings and in the SEIR. However, to summarize some key points:

- The CUPs as they were approved in 2005 (with no changes for AWI's turbines under the Settlement Agreement in 2007) were modified in July of 2013 based on AWI's request to eliminate the original requirements for phased decommissioning and for the CUPs to expire on and all operations to cease after October 31, 2015. The approval relied substantially on the 2013 EIR.
- Without the 2013 approval, 25 percent of AWI's original 920 turbines (230 turbines) would have been required to have been permanently shut down after October 31, 2013, and another 460 turbines shut down after October 31, 2015, leaving only 15 percent (about 126 turbines) to operate through September 30, 2018.
- Two CUPs (C-8216 and C-8243) applied to AWI turbines on properties owned by the Alameda County Waste Management Authority (ACWMA); at the hearing on February 2, 2015, AWI withdrew those CUPs in anticipation of a planned asset exchange of AWI's turbine and infrastructure assets held under these and other CUPs (approximately 300 turbines) with the turbine assets held by Green Ridge Power, LLC (GRP) under two other CUPs (C-8231 and C-8239). On February 23, 2015, the asset exchange was executed between AWI and GRP, such that AWI now owns the wind energy turbines held under C-8231 and C-8239 under the same conditions of approval as applicable to its other CUPs. The asset exchange served to end all AWI operations south of I-580 while allowing AWI to maintain its MWs of installed capacity, and served to 'disentangle' operations on numerous parcels, in which both AWI and GRP operated turbines on the same parcel subject to an individual common CUP.

East County Board of Zoning Adjustments Hearing: On February 2, 2015 the EBZA considered certification of the SEIR, and subsequently the proposal, and after certifying the SEIR, voted to deny the proposed extension. The two CUPs for AWI wind turbines operating on ACWMA properties (C-8216 and C-8243) were withdrawn prior to the hearing and confirmed at the hearing.

Appeal: AWI appealed the decision by the EBZA in a letter dated February 12, 2015, to request the Board of Supervisors extend the CUPs through October 31, 2018 for the following reasons, briefly stated:

1. Climate and environmental benefits to Alameda County and the environment as a whole;
2. Substantial economic benefits to the County;
3. The extensions would serve the CEQA goals of reducing environmental damage;
4. The mitigation measures proposed in the SEIR - which AWI is committed to implementing - would provide a level of mitigation in excess of the impacts directly attributable to AWI's turbines; and
5. There is overwhelming evidence in the record to support the adoption of a Statement of Overriding Considerations in support of the proposed extensions, which the EBZA failed to recognize.

The broad argument of the appeal, summarized in its introduction to the 13-page appeal letter is that AWI is a small, Alameda County-based company, that provides clean renewable energy to California and helps meet state and county renewable energy portfolio and greenhouse gas reduction goals. AWI's letter asserts that the denial by the EBZA was due only to its failure to adequately consider the social, economic and environmental benefits of AWI's wind farms. The letter was accompanied by several exhibits, including proposed changes to the draft Resolution and exhibits submitted to the EBZA for their consideration on February 2, 2015 (proposed Findings, Mitigation Monitoring and Reporting Program and Statement of Overriding Considerations), documentation of past power pole retrofits and costs, an amended version of the Planning Department's staff report to the EBZA, and a biography regarding the effects of rodenticide on raptor species. The appeal letter also requests various identified changes to the draft Resolution, Exhibits and proposed conditions of approval that Planning staff submitted to the EBZA.

Discussion. The appeal letter follows the outline as shown above, and is largely consistent with previous comments submitted by AWI and included in the SEIR and materials provided to the EBZA for its hearing. Some key points in the letter are summarized as follows, each of which is followed by a brief response by Planning staff in *italics*.

- AWI's operations reduce or offset greenhouse gases (GHGs), particulates and toxic air pollutants that would otherwise occur, with a resulting benefit to human and wildlife health including birds, and contribute to the County's adopted Community Climate Action Plan (CCAP). Various studies are cited that indicate specific quantitative health benefits related to respiratory, cardiovascular and cancer diseases, asthma and overall health costs from the operation of wind turbines in the APWRA, and a specific, extrapolated estimate of 31 premature bird deaths avoided per month of operation, and 950 bird deaths avoided during the three-year CUP extension period.

The operation of AWI's turbines through the end of 2018 were noted in the comparison in the 2013 EIR among the alternatives, as having the lowest possible GHG impacts and greatest offsets of GHGs and other air pollutants, and was cited by the EBZA in 2013 when it adopted the Statement of Overriding Considerations in support of the 2013 modifications. The County considered the concept of recognizing offset or reduced air pollution and toxins from AWI's operations as a form of avian mortality mitigation for the preparation of the 2013 EIR, but determined that, firstly, the studies promoting such a concept had not been peer-reviewed by appropriate and recognized scientific journals at the time, and secondly, it is not accepted or advisable CEQA practice to attribute to the wind farm operator a measurable mitigating effect of enhanced local avian habitat or safety from reductions in air pollutants measurable only at a regional basis.

The 2013 EIR acknowledges the specific benefits of renewable energy and the project itself in broad terms, and these and related benefits, including those cited in the McCubbin and Sovacool research noted in the appeal letter, are incorporated into the currently proposed Statement of Overriding Considerations. The air quality analysis of the project recognizes that wind turbine operations generally offset GHG emissions by replacing electricity that would otherwise be produced by conventional nonrenewable sources, such as coal or natural gas power plants. (p. 3.1-16, 2013 DEIR), and that operations through 2018 would have the greatest level of GHG offsets (p. 4-20, Table 4-3). However, such offsets are abstractly-defined for the purpose of defining air quality impacts on a region, so the benefit of GHGs and reduced air pollution and toxins on avian wildlife can in effect only be recognized on an abstract level, which is the purpose of the Statement of Overriding Considerations. CEQA does not enable the project's global and regional benefits to air quality and greenhouse gas emissions to "offset" Project-specific impacts on avian mortality, especially if it were to suggest that the impact on avian mortality was thereby avoided or substantially reduced or mitigated.

The EBZA considered the evidence before it when it determined that the Statement of Overriding Considerations, and other evidence presented by the Applicant at or before the hearing or otherwise in the record, did not provide substantial, compelling evidence that its various benefits would outweigh the unavoidable adverse impacts on avian wildlife. For comparison with the extrapolated estimates of 950 bird deaths over three years, the SEIR projected the CUP extensions would result in between 221.6 and 344.8 deaths of just the four focal species over those three years (which represent less 20 percent of all birds in the APWRA), and the 2013 EIR projected a range of 2,820 to 3,078 total avian fatalities from operations over about five years, or about 1,692 to 1,847 in three years.

- AWI's wind farm operations have economic benefits in the form of property taxes paid to the state and County, land owner income (some of which is passed on as charitable contributions), payroll for wind farm employees, and other businesses that support operations and maintenance.

The economic benefits were noted in the proposed Statement of Overriding Considerations; however, the EBZA judged that those economic benefits were too narrow to outweigh the environmental risks of the proposed CUP extensions, based on the record before it and the testimony received.

- Citing the opening sections of the CEQA Statutes that its purpose and goal is to avoid environmental harm and promote environmental health, the Appellant contends that the CUP extensions would serve that goal, because AWI's wind farm operations will reduce GHG emissions, consistent with the state's policies to take all appropriate actions to reduce GHGs.

Planning staff acknowledges that GHG emissions are among the most critical environmental factors in the state. The 2013 EIR recognized that the extension to 2018 would provide substantially more GHG offsets – an estimated 257,633 metric tons of CO₂ equivalents over the roughly five year period of 2014 to 2018, compared to 104,783 metric tons under the current permits for only the years 2014 to 2015. However, the EBZA did not find that substantial evidence had been presented that denial of the CUP extensions would necessarily result in replacement of the wind energy with a non-renewable energy plant, or preclude in any way repowering of the subject wind farm facilities as anticipated under the existing CUPs, and the CUP conditions prior to 2013.

- The analysis in the SEIR of the impacts of AWI's turbines on avian mortality does not recognize other factors that, together with the proposed mitigation measures (power pole retrofits and winter season shutdowns), should be acknowledged. These include the benefit of reduced GHG and air pollutant emissions and background mortality of birds (especially the four focal species) not caused by turbine operations but from the use of rodenticides by the state Department of Water Resources (DWR) for its two aqueducts, that, while uncalculated, are most likely a substantial cause of raptor mortality. Other unidentified background mortality of some species, and the removal of 21 High Risk Turbines operated by AWI, are also unrecognized in the SEIR or in the staff analysis. Although the Appellant does not challenge the adequacy of the SEIR, it asserts that the decision on the CUP extensions should recognize that the mitigation measures AWI will implement under the SEIR will overcompensate for AWI's actual or "net" impact.

The Altamont Pass Scientific Review Committee (SRC) commissioned a background mortality study to investigate the causes of avian mortality during the seasonal shutdown and during other times of the year for the 2014-2015 bird year, with a focus on smaller birds such as burrowing owls and American kestrels as 'indicator' species. The results of the study will be available in May or June of 2015. The use of rodenticides by DWR is outside the County's jurisdiction to regulate; however, the SRC has discussed their use, with the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) participating. A subsequent study of the specific effects of rodenticides on avian mortality in the APWRA was considered, but would require additional funding.

- There is sufficient, “overwhelming” evidence in the record to support the Statement of Overriding Considerations (SOC), showing the economic, social or other benefits of the project, that would enable the CUP extensions to be approved, although the EBZA chose not to adopt it.

Planning staff agree that the County has the discretion to weigh other considerations outside the identification of impacts in the SEIR in acting to approve or deny a proposed project. The EBZA determined that the SOC and the record did not provide compelling evidence of the project’s benefits that outweighed the unavoidable adverse impacts on the environment. The rationale provided by the Applicant to the EBZA that the CUPs were necessary and that repowering the assets in 2015 was not at all possible, appeared to show that AWI was unable to prepare effectively for repowering when it had known for nearly ten years that the CUPs required repowering (with reduction to only 15 percent of its operations in the years 2015 to 2018 in the case of the CUPs prior to 2013, or after the modifications in 2013, expiration of the CUPs at the end of 2015).

Furthermore, the EBZA considered the numerous arguments made against approval of the CUPs by California Audubon and others who spoke at the public hearings, as well as comments submitted on the Draft SEIR and subsequently by the U.S. Fish and Wildlife Service, the state Attorney General and others that are attached, including comments reflected in the expanded version of the hearing minutes.

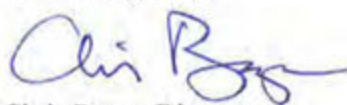
The appeal letter also discusses conditions of approval and mitigation measures that Planning staff proposed to require had the EBZA approved the extensions, including a reduction in operating capacity by 50 percent, options to select a specific golden eagle fatality rate based on different sets of monitoring years, a minor correction regarding the date of turbine startup after each annual winter season shutdown, power pole retrofit strategy and cost options, and the timing of requirements under Mitigation Measure BIO-17a. **Attachment A** to this letter discusses these concerns.

CONCLUSION:

Staff recommends that the Board of Supervisors uphold the decision of the EBZA to deny the application, unless it determines that circumstances, including the Statement of Overriding Considerations, warrant a short-term extension for 12 to 18 months, or less, while the Appellant obtains entitlements and funding to initiate repowering/replacement of their wind turbines and facilities. A Draft Resolution is included in the Board package for consideration.

The complete record is attached.

Very truly yours,



Chris Bazar, Director
Community Development Agency

Attachments

cc: Altamont Winds, Inc.
Audubon California
East County Board of Zoning Adjustments

ATTACHMENT A

To the Letter to the Board of Supervisors from the Community Development Agency Director Appeal by Altamont Winds Inc. from the decision of the East County Board of Zoning Adjustments to deny Conditional Use Permit, PLN2014-00028 (Extension of existing CUPs to October 31, 2018)

DISCUSSION OF APPELLANT'S REQUESTED CHANGES TO DRAFT RESOLUTION AND CONDITIONS

Should the Board determine that circumstances warrant a short-term extension of the CUPs, the following issues should be addressed, as referenced in the Appellant's appeal letter:

- 6.1 *Request to include environmental, societal, economic, and climate benefits of wind power when adopting the Statement of Overriding Considerations.* The Appellant states in the appeal letter that the requested project extension would offset or avoid 609 million pounds of CO₂ equivalents (i.e., greenhouse gases or GHGs), including toxic and other forms of air pollution that adversely impact both human and avian health. An amount of \$103 million in direct and indirect economic benefits of the project was also reiterated in the appeal letter. The Appellant did not propose any specific changes to the Statement of Overriding Considerations, although some specific statements or information provided in the appeal letter could be considered for inclusion, such as the specific number of GHG offsets or dollar amount of economic activity associated with the project.
- 6.2 *Request to extend to October 31, 2018 for 100 % of capacity, not 50% as proposed.* The same basic points raised by the Appellant regarding the denial of the project are applied to Planning staff's recommendation to the EBZA that it allow 50 percent capacity of operation through 2018. Planning staff consider the partial operation of the wind turbine facilities, either at full capacity for 18 months or another iteration extended over a longer period, as a means of providing a substantial period of opportunity for the Applicant to focus on repowering its turbine assets as quickly as possible and provide a guarantee to the public that the additional and continuing adverse impacts on protected avian species will be reduced in the near future, while retaining in the near-term the provision of renewable energy and maintenance of the jobs and other economic benefits attributable to the Applicant's wind turbine operations. As provided for in the Board letter recommendation, the Board may choose to allow for a shorter time period for the CUP extensions of simply 12 to 18 months while the Appellant obtains entitlements and funding to initiate repowering/replacement of their wind turbines and facilities.
- 6.3 *Request to correct the startup date for each winter season shutdown.* The Appellant asserts that Mitigation Measure BIO-16 appears to establish a date of February 16 as the end of the winter season shutdown, when it has normally been considered to end on February 14, allowing turbines to resume operation at 12:01 a.m. on February 15. Some other minor edits of the Mitigation Monitoring and Reporting Program (Exhibit B of the Draft Resolution) were also shown. Planning staff agree with these changes, or as discussed below (see item 6.5).
- 6.4 *Request to use a golden eagle fatality rate of 0.061 per year per MW per year to calculate the number of power poles retrofits that may be required under Mitigation Measure BIO-17, as indicated in the SEIR, not 0.075 as proposed by County staff in its report to the EBZA.* The Appellant does not address Staff's reasoning for suggesting to the EBZA that it may consider using the higher rate of 0.075, which was because it represents the most number of monitoring years, 2008 to 2012, in which the winter season shutdown was fully implemented under its current scheduling. Instead, the Appellant considers all of the rates to be inaccurate in that they do not account for background avian mortality, adjustments for removal of High Risk Turbines, or for the climate and other air quality

benefits of wind energy. The appeal letter simply states that it will recognize the rate used in the SEIR as the basis for its calculation that, based on an estimate of 11.1 statistically projected golden eagle fatalities, and the USFWS-based program under which 29 power pole retrofits should be required per projected golden eagle fatality, 322 power pole retrofits would be required under Mitigation Measure BIO-17. To comply with CEQA, however, mitigation measures and determinations of impact must be based on substantial evidence, and adjustments to the fatality rates as suggested in the appeal letter would require extensive, additional research to determine their effect on golden eagle fatality rates. The Board may wish to consider the same choices as presented to the EBZA for a lower, mid-range, or higher rate; all are supported by substantial evidence, but it is typical CEQA practice to utilize the worst-case, most conservative interpretations of impacts on the environment and natural resources.

- 6.5 *Request to use actual PG&E power pole retrofit costs for implementation of Mitigation Measure BIO-17.* The Appellant asks that the use of the USFWS estimate of retrofit costs of \$7,500 be adjusted to the latest PG&E costs for each power pole. Planning staff has no objection to the proposed language added to Mitigation Measure BIO-17 regarding costs; however, it appears that the Applicant misconstrued the requirements of the measure, which are focused on completing the power pole retrofits. One of two *options* is for contributions to be made to a third party mitigation account based on the USFWS estimate of retrofits, but direct contracting with the utility (PG&E) is also acceptable. It should be emphasized that Mitigation Measure BIO-17 was “carried over” *verbatim* from the 2013 EIR, and includes the 2013 estimation that, combined with the winter season shutdown, the project would result in approximately one golden eagle fatality and therefore require 29 power pole retrofits, which *does not apply to the current project*. The current CUP extension request is projected to result in, statistically, at least 11.1 golden eagle fatalities over three years. As a result, Mitigation Measure BIO-17 should actually be revised more substantially than proposed by the Appellant, and should reflect the golden eagle fatality rate chosen by the Board. However, as with the original Mitigation Measure BIO-17, the Applicant may continue to contract directly with the utility provider if it chooses or if the power pole retrofit costs are in fact lower. The measure’s most specific requirement is that the completion of the retrofits be documented and reported to the Planning Director.
- 6.6 *Request to allow the Applicant to manage power pole retrofit funds.* The appeal letter expresses concern with the Staff recommendation that “the applicant should make a deposit of adequate trust funds prior to the start of each operational year (February 15th of each year, starting in 2016) that are dedicated to implementing Mitigation Measure BIO-17 and/or BIO-17a” (Staff Report to EBZA February 2, 2015, page 12), and the implication that the County would serve as an intermediary to pay for mitigation or otherwise administrate the funds for power pole retrofits. The Appellant also is under the mistaken impression that the County would require a deposit of approximately \$2.5 million to the County based on the USFWS estimate of \$7,500 per power pole to be retrofitted. As indicated above, the Applicant would be allowed to directly contract with PG&E as a utility provider for the power pole retrofits, and has no requirement that the power pole retrofit mitigation be calculated on any specific cost basis. Planning staff also agree with the Appellant’s proposal for quarterly progress reports on the implementation of power pole retrofits; however, the intent of the Staff recommendation for a trust account was for the Applicant to demonstrate that it has set aside specific funds for implementation of Mitigation Measure BIO-17 and/or BIO-17a, not to deposit any funds with the County itself. The Appellant has proposed deleting a proposed requirement of the amended Avian Wildlife Protection Program and Schedule (AWPPS, Years Eleven Through Thirteen, No. 4) for “a deposit to a trust account of adequate funds prior to the start of each operational year (February 15th of each year, starting in 2016)...” Planning staff disagree that the

paragraph should be wholly deleted, although as discussed below (see 6.7), the timing of the requirements for Mitigation Measure 17a could be considered for changes. The purpose of paragraph No. 4 of the AWPPS is to provide for appropriate accountability of the project to demonstrate to the County the applicant's ability to fund the required mitigation measures. The funding of the trust account may be based on the actual costs incurred by PG&E for the previously completed power pole retrofits. Lastly, paragraph No. 4 of the AWPPS has been modified in the attached Draft Resolution to clarify that the number of power pole retrofits will be based on the number of MWs of operating capacity active in each calendar year, as adjusted by paragraph No. 2 of the proposed AWPPS (limiting the total output over three years to no more than 91.2 MWs, or 50 percent of its existing installed capacity).

- 6.7 *Request for additional time to analyze and implement the optional Mitigation Measure BIO-17a.* The Appellant indicates they object to the timing proposed by Planning Staff as shown in the Mitigation Monitoring and Reporting Program for Mitigation Measure BIO-17a, which specifies that "Compensation measures, as detailed in an approved Special-Status Species Mitigation Plan must be implemented within 60 days of the permit approval." Instead, the Appellant proposes that such a Mitigation Plan be required within 60 days of the permit extension's "effective date" of February 15, 2016, due to the expectation that a Resource Equivalency Analysis (REA), the first step towards developing a Special-Status Species Mitigation Plan (SSSMP) will itself require some number of months to prepare. Planning staff, in recognition that no REA has been completed to date by any wind operator, acknowledge the likelihood that preparing an REA and subsequently an SSSMP may require a longer lead time. However, given that there are an estimated 11 months until the "effective date" of operations to commence under the CUP extensions in 2016, it is proposed that the "effective date" be recognized as November 1, 2015, the day after which the current CUPs expire, and the CUP extensions would be in effect, even though the winter season shutdown would commence on the same day. This would require the applicant – *if* it is proposing to supplement Mitigation Measure BIO-17 with BIO-17a – to complete its REA and obtain approval of its SSSMP by December 31, 2015, or approximately 9-½ months from the current hearing.

Summary. Based on the above discussion, the Board of Supervisors has the following options, and may consider Planning staff's recommendations in parentheses and *italics*:

- Approve extension of the CUPs as requested for three years without any percentage limit on total MWs of production in that period (favored by the Appellant), limit the MWs of production to 50 percent over three years, or extend the CUPs only for 18 months, 12 months, or a shorter period of time (*staff: either deny the CUP extensions consistent with the EBZA action, or extend for 12 months or less, with required progress reports on repowering activities*).
- Include specific quantities of GHG offsets and/or direct and indirect economic benefits of the project in the Statement of Overriding Considerations, or leave the Statement as it is (*staff: no opinion*).
- Agree or disagree with interpretation that the winter season shutdown ceases at 12:01 a.m. on February 15 of each year (*staff: agree*).
- Accept as the golden eagle fatality rate the rate based on the three Avian Monitoring Report years of 2008 to 2010, of 0.061 eagles per year per MW of installed and operating capacity (as favored by the Appellant), or the rate based on the Monitoring Report years 2008 to 2012 (0.075 per MW per year), or the worst-case rate used in the 2013 EIR, based on Monitoring Report years 2005 to 2010 (0.085 per MW per year) (*staff: Monitoring Report years 2008 to 2012, or 0.075 per MW per year*).

ATTACHMENT A – Changes to Draft Resolution and Conditions
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- Agree to amend Mitigation Measure BIO-17 to clarify that the costs of power pole retrofits will be based on the latest PG&E cost estimates or actual costs as documented by PG&E or the contracted utility provider, and to clarify that the CUP extensions would require the number of required power pole retrofits to be determined based on the golden eagle fatality rate adopted by the Board of Supervisors, or reject any such amendment (*staff: agree*).
- Agree also to amend Mitigation Measure BIO-17 to provide quarterly or semi-annually (twice yearly) progress reports on completion of power pole retrofits, and that the number of power pole retrofits to be required be based on the number of MWs of installed capacity otherwise approved by the Board, or reject such amendment (*staff: agree*).
- Delete paragraph number 4 of the amended Avian Wildlife Protection Program and Schedule, Years Eleven Through Thirteen (as requested by the Appellant) that requires deposits of adequate funds to a trust account for funding of the upcoming year's power pole retrofits or other compensatory mitigation that may be proposed under Mitigation Measure BIO-17a, or reject such amendment (*staff: reject such deletion*).
- Adopt the Resolution with a determination that the effective date of the CUP extensions would be November 1, 2015, or reject such amendment (*staff: adopt such resolution, unless the EBZA's action is upheld*).