



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road, Suite 101
Carlsbad, California 92011



In Reply Refer To:
FWS-SDG-12B0055-12TA0084

DEC 20 2011

Mr. Matthew Schneider
County of San Diego
Department of Planning and Land Use
5201 Ruffin Road, Suite B
San Diego, California 92123

Subject: Draft Environmental Impact Report and General Plan Amendment for Wind Energy
Zoning Ordinance (POD10-007, LOG NO. 09-00-003; SCH NO. 2010091030),
San Diego County, California

Dear Mr. Schneider:

We have reviewed the draft environmental impact report (DEIR) for the subject project, dated November 8, 2011. The comments provided herein are based on the information provided in the DEIR, our knowledge of sensitive and declining vegetative communities, and our participation in regional conservation planning efforts.

The primary concern and mandate of the U.S. Fish and Wildlife Service (Service) is the protection of public fish and wildlife resources and their habitats. The Service has legal responsibility for the welfare of migratory birds, anadromous fish, and endangered animals and plants occurring in the United States and is responsible for administering the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.), Migratory Bird Treaty Act, and the Bald and Golden Eagle Protection Act.

The proposed project is an amendment to the County of San Diego (County) Zoning Ordinance and General Plan to modify text of the Borrego Springs Community Plan and the Boulevard Chapter of the Mountain Empire Subregional Plan. The proposed amendments to the zoning ordinance consist of clarifications, deletions, and revisions to provide an updated set of definitions, procedures, and standards for review and permitting of wind turbines and meteorological testing (MET) facilities. The zoning ordinance amendments would apply to the unincorporated area of the County. The proposed amendments to the general plan would allow more flexibility for large wind turbine projects in the community of Boulevard and for small turbine projects in the community of Borrego Springs.

Although the DEIR incorporates many of the suggestions provided by the California Department of Fish and Game (CDFG) in their letter dated October 13, 2010, on the Notice of Preparation for a



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DEIR for the project, we remain concerned about potential impacts to migratory birds and bats from the operation of wind turbines and MET facilities. The DEIR correctly concludes that the proposed project may result in potentially significant impacts to biological resources; however, it does not include adequate mitigation measures to avoid and minimize those impacts. The document defers development of project-specific mitigation measures for biological resources to a future environmental review process for large wind turbines. With regards to the small wind turbines and MET facilities, several provisions are proposed to be added to section 9651 of the zoning ordinance (e.g., small wind turbines are prohibited on ridgelines) that may minimize impacts to biological resources; however, additional measures are necessary to fully mitigate potential impacts to biological resources.

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I-4  
I-5

In areas that support native habitat and species, the County should require the project proponent to submit a Bird and Bat Study that has been prepared by a qualified consultant using the "California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development" (CEC and CDFG 2007). The Bird and Bat Study should identify any sensitive habitats, listed State or Federal threatened or endangered species, migratory birds, and bats in the vicinity of the proposed turbine. If these resources are present, the applicant should be directed to coordinate directly with the Service and CDFG to determine if additional State or Federal permits are needed. The Bird and Bat Study would provide the baseline data needed to determine if a project-specific Avian and Bat Protection Plan (ABPP) and/or Eagle Conservation Plan (Eagle Plan) is needed to minimize potential impacts to migratory birds, golden eagles, and bats during project construction and operation.

I-6

A project-specific ABPP would outline actions to minimize impacts associated with the proposed project and identify steps to further the conservation of bird and bat species if the project is implemented. These measures would also help provide the foundation for any conditions required for a future Bald and Golden Eagle Protection Act permit, if one is warranted. To develop a project-specific ABPP and/or Eagle Plan based on the best available information, we recommend using qualified experts to conduct golden eagle surveys and rigorous monitoring of any historical or known/discovered golden eagle territories. Any ABPP or Eagle Plan should be developed in coordination with our office and follow the Avian Protection Plan Guidelines (APLIC and Service 2005) or more current guidance from us as it becomes available.

I-7

Although the proposed amendments include setbacks from the property line, they do not include setbacks from biological resources (e.g riparian and other native habitats, conservation lands). The amendments to the zoning ordinance should include a minimum set of standards for setbacks from biological resources to minimize impacts to avian and bat species that could be included in the ABPP. An example of these standards is the Marin County Development Code. Their code includes general standards that state that no small, medium, or large wind turbine shall be located within five times the total height or 300 feet, whichever is greater, of a known nest or roost of sensitive bird or bat species. In addition, they prohibit turbines within 1.5 times the total height or 100 feet, whichever is greater, of a streams, wetlands, or sensitive species habitat areas. We

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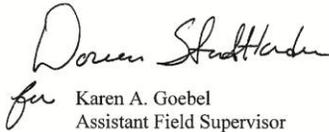
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recommend the County incorporate similar standards for small wind turbines and METs in order to further minimize impacts to biological resources.

Section 2.3.3.5 (*Local Policies, Ordinances, Adopted Plans*) of the DEIR concludes that there is no conflict with any local policies [i.e., Multiple Species Conservation Program (MSCP)] because small wind turbines and MET facilities will only require a ministerial permit. Ministerial permits are covered by the MSCP and exempt from local ordinances such as the Biological Mitigation Ordinance and Resource Protection Ordinance; therefore, the DEIR concludes “no conflict” and impacts are “less than significant”. However, the use of wind turbines and the potential effects on covered species and habitats was not specifically examined as part of the MSCP permitting process. While the direct impacts to habitat from construction of the wind turbine or MET facility may be small, the potential indirect and cumulative impacts to the adjacent sensitive habitat and species may be significantly larger due to bird and/or bat strikes. Within the County’s approved MSCP subarea plan, we recommend that the County include a special designator that flags specific parcels within or adjacent to the Pre-Approved Mitigation Area (PAMA). The land owner should be required to demonstrate that erecting a wind turbine or MET facility will not conflict with the goals and objectives of the MSCP before a ministerial permit may be issued. In addition, these same considerations should apply to the North and East County MSCP planning areas.

We appreciate the opportunity to comment on the subject DEIR. We are available to meet with the County to develop specific siting criteria to avoid and minimize impacts to biological resources. If you have any questions, please contact Susan Wynn of this office at 760- 431-9440, extension 216.

Sincerely,

  
for Karen A. Goebel  
Assistant Field Supervisor

cc:  
Steve Juarez, California Department of Fish and Game, San Diego, CA

**Literature Cited**

(APLIC) Avian Power Line Interaction Committee and U.S. Fish and Wildlife Service. 2005. Avian Protection Plan Guidelines. 84 pp

California Energy Commission and Department of Fish and Game. 2007. California guidelines for reducing impacts to birds and bats from wind energy development. Commission Final Report. California Energy Commission, Renewables Committee, and Energy Siting Division, and California Department of Fish and Game, Resources Management and Policy Division. CEC-700-2007-008-CMF.

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I-11

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## **Response to Comment Letter I**

### **Fish and Wildlife Services**

**Karen A. Goebel**

**December 20, 2011**

- I-1** This comment is introductory in nature and does not raise a significant environmental issue for which a response is required.
- I-2** The County agrees with this comment, which describes the proposed project.
- I-3** The County agrees that the project may result in significant impacts. The County is proposing to include all feasible mitigation to reduce impacts, though impacts to biological resources are still expected to be significant and unavoidable. Refer to responses to comments I4 through I11 below for additional detail on this topic.
- I-4** The County does not agree that the DEIR defers mitigation to a future environmental review process for large turbine projects. The project does not propose development of any specific wind energy projects, but establishes standards for obtaining permits. The County acknowledges that the permitting standards in the zoning ordinance will allow wind energy projects that may ultimately cause environmental impacts. The appropriate mitigation at this stage is to include standards that reduce environmental impacts; standards with which future large turbine projects will have to comply. These standards are proposed in measures M BIO 1 and M BIO 2 in DEIR Section 2.4.6.1. Therefore, the mitigation proposed in the DEIR, the formalization of standards, will not be deferred. It will be implemented immediately if the project is adopted. Any mitigation specific to a given large wind turbine project will be implemented when such projects are approved.
- I-5** The County does not agree that potential impacts to biological resources have to be fully mitigated. Rather, when a significant impact is identified, all feasible mitigation should be incorporated to reduce impacts to below a level of significant. For this project, all feasible mitigation measures have been incorporated, yet impacts may still remain significant and unavoidable. Should the decision makers wish to adopt the project, a Statement of Overriding Considerations will have to be included in the record.
- I-6** This comment recommends that a Bird and Bat Study be required for wind turbine projects, and that further mitigation may be needed based on the results of the study. While the County agrees that this is appropriate for large wind turbine projects that require a discretionary Major Use Permit, the County does not agree that this is feasible for a ministerial process for small wind turbines. The suggested requirement

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for a study and potential mitigation would, by definition, make the permitting process discretionary.

One of the project objectives of the County Wind Energy Ordinance is to allow the development of small wind turbines without a discretionary permit. Therefore, the process for permitting wind turbines would be ministerial pursuant to Section 15369 of the CEQA Guidelines. The requirement for a Bird and Bat Study would result in discretionary review. As such, it would not meet the definition under CEQA Guidelines Section 15369 and would conflict with project objectives.

To minimize impacts to birds and bats, the County included design criteria, as recommended by the California Department of Fish and Game, for small wind turbines within the proposed ordinance. For example, the draft ordinance prohibits guy wires or trellis style towers, requires avoidance of ridgelines, requires undergrounding of power lines, and requires that the turbines be certified by the California Energy Commission (CEC). This last requirement narrows the types of turbines that may be permitted (see Appendix B of these responses for a table of the small wind turbines currently certified by the CEC).

In responses to comments, the County has further revised the draft ordinance to include the following additional criteria for small wind turbines under Section 6951.a:

1.iv.a: No part of the wind turbine shall be closer than 300 feet or 5 times the turbine height, whichever is greater from the following: Power transmission towers and lines

1.iv.a: No part of the wind turbine shall be closer than 300 feet or 5 times the turbine height, whichever is greater from the following: Blue line watercourse(s) as identified on the United States Geological Survey Topographic Map

1.iv.c: No part of the wind turbine shall be closer than 300 feet or 5 times the turbine height, whichever is greater from the following: Significant roost sites for sensitive bat species as mapped on the California Natural Diversity Database

1.v: No part of a wind turbine shall be closer than 4,000 feet from a known golden eagle site.

12: Pre-Approved Mitigation Area. No more than one small turbine is allowed on a legal lot designated as Pre-Approved Mitigation Area within the Multiple Species Conservation Program Subarea Plan. An Administrative Permit may be approved for more than one turbine if all the requirements of subsection "a" of this section are met and the cumulative rated capacity does not exceed 50 kilowatts.

Despite the effort to minimize environmental impacts with the design features in the ordinance, potential impacts to special status species would still be potentially significant. No feasible mitigation measures were identified to reduce the impacts from small turbines to below a level of significant.

**I-7** The County agrees that the measures proposed in this comment would be feasible for future large wind turbine projects. The County is proposing to apply the latest bird and bat guidelines during its discretionary review process for large wind turbines. The recommended measures would not be feasible for small residential-scale wind turbine permits. The County's project objectives for the Wind Energy Ordinance are to allow development of small wind turbines without a discretionary permit (objective 6) and to streamline and clarify the approval process for the development and operation of small wind turbines (objective 4). The recommended requirements for expert study, rigorous monitoring, and conservation efforts would conflict with these project objectives. However, in response to public comments, the County has found additional feasible criteria for small wind turbines that would potentially reduce impacts to golden eagle and other sensitive species. These criteria are described in response to comment I7 above.

**I-8** This comment recommends that the Wind Energy Ordinance require minimum setbacks from biological resources. For large wind turbines, the County agrees that proximity to sensitive biological resources should be evaluated, though not necessarily prohibited. The County will be applying Guidelines for Determining Significance for Biological Resources to future large wind turbine projects to determine the best way to avoid, minimize and/or mitigate significant impacts to biological resources. Depending on existing conditions, it is sometimes better to permit development with direct impacts and allow for off-site mitigation that contributes to an open space network. The County's Resource Protection Ordinance allows for mitigation over avoidance when mitigation provides an equal or greater benefit to the affected species.

For small wind turbines and MET facilities, the County is proposing a ministerial process. Ministerial describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements. Based on countless reviews of biological studies in the County unincorporated area, determinations such as where riparian or native habitat begins or ends, particularly on a private residential site, is a determination that requires discretionary review. For example, many rural residential properties have native vegetation and/or riparian

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habitat combined with residential uses and landscaping. The County's project objectives for the Wind Energy Ordinance are to allow development of small wind turbines without a discretionary permit (objective 6) and to streamline and clarify the approval process for the development and operation of small wind turbines (objective 4). The County does not agree that it can achieve those objectives if it requires site-specific biological studies and siting considerations relative to various biological resource locations.

In response to public comments, the County has included some additional standards for small wind turbines that can be measured objectively without necessitating site-specific biological studies. The following criteria have been added to the ordinance in response to public comments:

1.iv.a: No part of the wind turbine shall be closer than 300 feet or 5 times the turbine height, whichever is greater from the following: Power transmission towers and lines

1.iv.a: No part of the wind turbine shall be closer than 300 feet or 5 times the turbine height, whichever is greater from the following: Blue line watercourse(s) as identified on the United States Geological Survey Topographic Map

1.iv.c: No part of the wind turbine shall be closer than 300 feet or 5 times the turbine height, whichever is greater from the following: Significant roost sites for sensitive bat species as mapped on the California Natural Diversity Database

1.v: No part of a wind turbine shall be closer than 4,000 feet from a known golden eagle site.

12: Pre-Approved Mitigation Area. No more than one small turbine is allowed on a legal lot designated as Pre-Approved Mitigation Area within the Multiple Species Conservation Program Subarea Plan. An Administrative Permit may be approved for more than one turbine if all the requirements of subsection "a" of this section are met and the cumulative rated capacity does not exceed 50 kilowatts.

**I-9** Despite the effort to minimize environmental impacts with these small wind turbine standards in the ordinance, potential impacts to biological resources would still be potentially significant.

The County reviewed the Marin County Development Code for Wind Energy Conversion Systems, including Section 22.32.180(D), Site and Design Requirements, which establishes setbacks from biological resources. These site and design requirements apply to discretionary permits for small Wind Energy Conversion

Systems. As noted in the responses above and in DEIR Section 1.1, the County's objective is to allow small wind turbines with a ministerial building permit. This objective would not be attainable if the Marin County site and design requirements, a discretionary process, were applied to small turbine projects and MET facilities in the County of San Diego Zoning Ordinance. However, the County has included all feasible design and siting standards under the ministerial permitting process for small wind turbines in an effort to reduce impacts to biological resources (see response to comment I8 above).

**I-10** This comment refers to DEIR Section 2.4.3.5 rather than 2.3.3.5. The County disagrees with the comment. The comment correctly states that ministerial permits are covered by the MSCP and are exempt from local ordinances, such as the Biological Mitigation Ordinance and Resource Protection Ordinance. However, the potential direct and cumulative impacts to biological resources of the Zoning Ordinance amendments for small wind projects are analyzed, at least at a plan level, in section 2.4 of the DEIR.

Under the existing Zoning Ordinance, one small wind turbine per legal lot is allowed ministerially. This has been the case since before the MSCP was adopted. Given the programmatic nature of the MSCP conservation analysis, it was understood that most development considered to be secondary or accessory to existing uses would be covered under Section 17.1.A(2) of the MSCP Implementing Agreement. The County is proposing to allow additional small wind turbines per legal lot with a ministerial permit. However, this expansion is not expected to conflict with the conservation efforts of the MSCP. No development of small wind turbines or MET facilities is allowed in areas that have already been preserved. And ministerial permitting of small wind turbines will be limited in Pre-Approved Mitigation Areas as discussed in response to comment I11 below.

**I-11** The County does not agree with the specific recommendations in this comment since they have the potential to conflict with the objectives of the project. However, the County agrees that development of small wind turbines in the Pre-Approved Mitigation Area (PAMA) of the MSCP should be limited. Currently, one small wind turbine per legal lot is allowed as an accessory use without a discretionary permit even if it is located in PAMA. The County proposes to still allow for this but with the additional standards proposed in Section 6951. If more than one small wind turbine is proposed as an accessory use within the PAMA, then a discretionary permit will be required. This provision has been added to the draft ordinance as Section 6951.a.12. Discretionary permits must comply with the requirements of the Biological Mitigation Ordinance. As such, County staff believes this provision will ensure that

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the Wind Energy Ordinance does not conflict with the goals of the MSCP but will still meet the objectives of the Wind Energy Ordinance project.