

**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

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Development of Statewide Guidelines for)	Docket No. 06-OII-1
Reducing Wildlife Impacts from Wind)	Developing Statewide Avian
Energy Development)	Guidelines

**COMMENTS OF THE
CALIFORNIA WIND ENERGY ASSOCIATION
ON THE SCOPE AND CONTENT
OF STATEWIDE AVIAN GUIDELINES**

The California Wind Energy Association (“CalWEA”) appreciates this opportunity to comment on the direction and scope of the voluntary “Siting Guidelines” being promulgated by this commission. We believe the first order of business in this effort should be to ensure that all parties understand the process through which wind projects are presently sited and permitted in California, and the legal structure that provides the framework for that process. A good understanding of the process is essential if the Commission’s efforts are going to complement, rather than duplicate or conflict with, laws that are already functioning well to protect the environment and to allow the development of wind energy projects in California.

The attached white paper fills a gap in the Commission’s discussion on this topic to date by describing the legal and jurisdictional context for siting wind projects in California. We suggest that the first workshop be devoted to an understanding of these issues so that the staff can focus its efforts appropriately. For example, existing law already establishes what constitutes a “significant” environmental impact and imposes feasible mitigation measures to reduce or minimize significant environmental impacts. Sections 3 and 5 of the draft outline of the guidelines, therefore, stray inappropriately into these areas. In addition, the guidelines should avoid making prescriptions that may be at odds with what is warranted by site-specific circumstances.

Thank you for your consideration of this information. We look forward to participating in this process.

Respectfully submitted,

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Overview of Siting and Permitting Wind Projects in California and Role of Voluntary Siting Guidelines For Wind Projects

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for the
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The siting and permitting of wind projects in California is governed by state and local land use laws, including the Planning and Zoning Law, the California Environmental Quality Act (CEQA) and local ordinance. These laws are already functioning well to protect the environment and to allow the development of wind energy projects in California. The role of voluntary “Siting Guidelines” promulgated by the California Energy Commission should not attempt to duplicate these provisions but should be limited to addressing technical issues in permitting wind projects that are not addressed by existing laws.

The California Constitution vests in cities and counties the right to make land use decisions. (California Constitution Article 11, Section 7.) Thus, local agencies are the “gate-keepers” in California for the siting and permitting of wind projects. Because wind energy projects require wide, undeveloped open spaces, counties permit most major wind projects in California. Over the past 25 years, California counties have been successfully approving wind energy projects throughout the state. Today, there are approximately 2,150 megawatts (MW) of installed capacity from wind projects in California. Outside of the Altamont Wind Resource Area, there is no indication that wind energy projects are having a significant impact on biological resources.¹ With respect to the Altamont, moreover, CalWEA believes that studies showing high bird mortality in the Altamont significantly overestimate bird mortality due to wind turbines.²

Most California counties with significant wind resource areas have adopted wind resource elements as part of their general plans and/or wind energy zoning ordinances that govern where and how wind projects may be developed. (See Exhibit A.) These siting elements and zoning ordinances govern the areas where wind projects may and may not be located, contain set back requirements, height restrictions, noise and safety requirements, visual impact restrictions, and other requirements. For example, Alameda County has adopted zoning ordinances requiring conditional use permits for wind energy projects, allowing wind energy projects to be developed only in certain zoning districts. Solano County has adopted a Wind Siting Element as part of its General Plan, and also has a zoning ordinance that addresses wind energy development and

¹ See, e.g., “Avian Monitoring and Risk Assessment at the Tehachapi Pass Wind Resource Area,” National Renewable Energy Laboratory, September 2004 (NREL/SR-500-36416) (available at <http://www.nrel.gov/docs/fy04osti/36416.pdf>); and “Avian Monitoring and Risk Assessment at the San Geronio Wind Resource Area,” August 2005 (NREL/SR-500-38054) (available at <http://www.nrel.gov/docs/fy05osti/38054.pdf>). In Solano County, environmental assessments show non-significant impacts for all species except perhaps the golden eagle (for which there is one reported fatality); out of an abundance of caution, mitigation measures are therefore being implemented.

² See, e.g., Comments of the California Wind Energy Association on Chapter 6 of the 2005 Draft Energy Report, Docket No. 04-IEP-1K, October 10, 2005 (available at www.calwea.org/recent_filings.htm).

restricts wind projects to certain zoning districts. Kern County has adopted a “Wind Energy Combining District” zoning designation that may only be used with a limited number of base zoning districts. Riverside County also has a wind energy conversion system (WECS) ordinance limiting where wind projects may be developed within that County.

Siting decisions are also guided by the requirements of the CEQA. Whenever local agencies make land use decisions that may have a significant impact on the environment, CEQA requires them to evaluate and disclose the significance of the environmental impact, and to impose feasible mitigation measures to reduce or minimize significant environmental impacts. Environmental review of projects is conducted through the preparation and circulation of Environmental Impact Reports (EIRs) and Negative Declarations.

An EIR or Negative Declaration must identify and address “all significant effects on the environment” of a proposed project. Pub. Res. Code § 21100(b)(1). A “significant effect on the environment” is “a substantial, or potentially substantial, adverse change to the environment.” *Id.* § 21068.

Further, the CEQA Guidelines contain standards of significance for evaluating impacts to biological resources. For example, the Guidelines provide that “A project has a significant effect on the environment if, among other things, it substantially reduces the habitat of a fish or wildlife species, causes a fish or wildlife population to drop below self-sustaining levels, threatens to eliminate a plant or animal community, substantially reduces the number or restricts the range of an endangered, rare, or threatened species.” CEQA Guidelines § 15065(a)(1); *see also Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal. App. 4th 777, 792.

The Environmental Checklist Form in the CEQA Guidelines, Appendix G, provides further guidance on the threshold of significance for impacts to biological resources. Based on this Checklist, an EIR must analyze and discuss each of the following standards of significance:

Would the project:

- a. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?
- b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?
- c. . . .
- d. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?
- e. . . .

- f. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?

CEQA Guidelines, Appendix G.

The CEQA Guidelines also define “mitigation” as

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

CEQA Guidelines Section 15370.

Thus existing law already establishes what constitutes a “significant” environmental impact and requires mitigation if feasible to address that impact. Feasibility is defined as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.” Pub. Res. Code § 21061.1.

On the other hand, existing law does not provide guidance for local entities in determining biological significance. CalWEA believes that statewide guidelines could usefully support site-specific biological evaluations that employ good science. Good science always draws from what is already known and employs scientifically sound protocols in any additional pre-construction and post-construction surveys that may be undertaken.³

Voluntary siting guidelines could also provide a “menu” of specific types of mitigation measures that a local agency could, in its discretion, choose from if it finds that a wind project would have a significant impact on biological resources. These could include micro-siting measures, payment of impact fees, preservation of land, or enhancement of habitat that is already restricted from development.

³ Detailed guidance on study protocols exists in a 1999 National Wind Coordinating Committee document which was subject to substantial review and comment by a wide array of parties. See http://www.nationalwind.org/publications/wildlife/avian99/Avian_booklet.pdf.

CONCLUSION

Under existing law, local agencies are already subject to regulation about where and how to site wind projects in California. In particular, CEQA already determines *how* local agencies should analyze the significance of environmental impacts of wind projects, and mitigate impacts. There is no authority for state agencies to usurp this role. Siting guidelines developed by the California Energy Commission should not conflict with, or duplicate, existing law but should be limited to the following issues:

- Developing guidelines for pre-construction and post-construction biological assessments (i.e., guidelines that support site-specific biological evaluations that employ good science; good science draws from what is already known and employs scientifically sound protocols in any additional surveys that may be undertaken).
- Suggesting an array of potential mitigation measures to address environmental impacts to biological resources deemed “significant” by the local decision makers based on local conditions.

**California Wind Energy Association
Exhibit A**

**LOCAL WIND SITING/PERMITTING
ELEMENTS AND ORDINANCES**

Alameda County -- In Alameda County, “[p]rivately owned wind-electric generators” are allowed only in the Agricultural District (“A”) and only upon issuance of a conditional use permit by the Board of zoning adjustments. (Alameda County Code section 17.06.040.)

Solano County -- Solano County contains a detailed Wind Turbine Siting Plan that designates two wind resource areas within the County and contains regulations for the siting of wind farms. Commercial wind turbines are allowed only with a conditional use permit, and only in the following zones: Exclusive Agricultural (A), Limited Agricultural (A-L), Rural Residential (R-R), Park (P), Highway Commercial (C-H), Neighborhood Commercial (C-N), General Commercial (C-G), Commercial Service (C-S), Business and Professional Office (C-O), Limited Manufacturing (M-L), General Manufacturing, (M-G), Water Dependent Industrial (I-WD), and Watershed and Conservation (W). (Solano County Code section 28-50(b)(4).)

Kern County -- In Kern County, commercial turbines are allowed without a conditional use permit on any land designated Wind Energy (WE) Combining District. (Kern County Zoning Ordinance section 19.64.) The WE zoning designation can not be adopted as a single land use designation and can only be combined with the following underlying zoning designations: Exclusive Agriculture (A), Industrial (M-1, M-2, and M-3), Natural Resource (NR) with a minimum lot size of 20 acres, Limited Agriculture (L-1) with a minimum lot size of 20 acres, and Estate (E) with a minimum lot size of 20 acres. (Kern County Zoning Ordinance section 19.64.010(B).)

Riverside County -- Riverside County requires a Commercial Wind Energy Conversion Systems (WECS) Permit for commercial wind farms. (Riverside County Code section 18.41.) WECS having a total rated power of 100 kw or less are permitted in all County zoning classifications with a WECS permit. WECS having a total rated power output of more than 100 kw are only allowed in the Wind Energy Resource Zone (W-E) (Riverside County Code section 17.1) and the Watercourse Zone (W-1) (Riverside County Code section 16.1). (Riverside County Code section 18.41.)

City of Palm Springs -- Commercial Wind Energy Conversion Systems (WECS) are permitted in specific zone classifications (Watercourse zone (W), Open Land Zone (o-5), Energy industrial zone (E-I), Manufacturing zone (M-2)) as long as the general plan designates the property within the wind energy overlay and a conditional use permit is obtained. (Palm Springs Municipal Code section 94.02.00(H)(8).)

Merced County (Pacheco Pass) -- In Merced County, wind farms are only allowed in Agricultural Zones (A-1, A-1-40, A-2), and only with a conditional use permit. (Merced County Code section 18.02.020.)