

Appendix A

Notice of Preparation and Agency and Public Comments



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY

PLANNING DEPARTMENT

April 6, 2020

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TO: Interested Parties and Agencies

FROM: Andrew Young, Senior Planner
Alameda County Planning Department/Community Development Agency
224 W. Winton Avenue, Suite 110
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SUBJECT: Notice of Preparation (Notice) of a Subsequent Environmental Impact Report (SEIR) for the Mulqueenee Ranch Wind Repowering Project, tiered under the Altamont Pass Wind Resource Area Repowering Final Program Environmental Impact Report (PEIR, State Clearinghouse #2010082063), certified November 12, 2014. County Planning Application PLN2019-00226.

SUMMARY:

Notice is hereby given that the County of Alameda (County) will be the Lead Agency and will prepare a Subsequent Environmental Impact Report (SEIR) for the Mulqueenee Ranch Wind Repowering Project (Project) pursuant to the California Environmental Quality Act (CEQA, 1970, as amended). The Project is an application for a Conditional Use Permit (CUP) to repower (i.e., redevelop) an estimated 518 previously existing wind energy turbine sites with up to 36 new turbines with nameplate production capacity rated between 2.2 and 4.2 megawatts (MW) each, that together will have a maximum production capacity of approximately 80 MW. Although the Project objective of 80 MWs of capacity could be nearly met with as few as 19 turbines with a rating of 4.2 MW each, or met with fewer turbines of different combinations of capacity ratings, the SEIR will evaluate up to 36 turbine sites in order to assess a worst-case condition of ground disturbance, visual effects, avian mortality, total rotor swept area and other potential impacts of 36 turbine sites, and a maximum Project capacity of 80 MW. Due to commercial considerations (e.g., turbine availability, financial decisions, etc.), final siting, wind resource conditions and other site constraints, the applicant may reduce the number of turbine sites; however, the Project goal remains 80 MW of production, which will be the basis for the SEIR analysis. Micro-siting studies will also be conducted in parallel with preparation of the SEIR to assist in final siting decisions.

The Project is proposed on 29 nearly contiguous parcels extending over approximately 4,589 acres within the southeastern quadrant of the Alameda County portion of the Altamont Pass Wind Resource Area (APWRA) in northern California. The purpose of the SEIR will be to evaluate the specific environmental effects of the Project as proposed by Mulqueenee Wind, LLC, a subsidiary of Brookfield Renewable (aka Brookfield).

The purpose of this notice is to request that you or your organization or agency, including Native American Tribes, provide comment on the proposed scope and content of the SEIR as described herein. The County is providing public notice of the Project proposal, in the form of this formal Notice of Preparation consistent with Sections 15082 and 15375 of the CEQA Guidelines, as is considered appropriate for an SEIR. The County is particularly interested in hearing from public agencies regarding their objectives for environmental information to be included in the SEIR that is germane to those public agencies' statutory responsibilities pertaining to the Project, and how such information in the SEIR will inform such agencies when considering issuing permits or other approvals for Project-related activities.

Although three other wind repowering projects were approved by the County as tiered under the PEIR in 2015 and 2016, using an environmental analysis and CEQA Implementation Checklist (equivalent to an initial study) as provided for by Section 15168 of the CEQA Guidelines, the County has determined that pursuant to Section 15162 of the CEQA Guidelines a subsequent EIR is required based on substantial evidence in light of the whole record that:

- a) The Project is proposing turbines which are larger in nameplate capacity compared to those turbines originally considered in the PEIR, and thus may individually have more adverse effects on avian and bat wildlife than estimated in the PEIR.
- b) Substantial changes have occurred in the circumstances under which the Project is proposed that require changes in the PEIR, including but not limited to recognizing more severe impacts of current generation wind turbine types and operations on protected species of birds and bats; and
- c) New information of substantial importance which was not known and could not have been known with the exercise of due diligence shows that significant effects that were previously examined may be substantially more severe than shown in the PEIR, including studies of wind turbine facilities approved and in operation since the PEIR was certified and other studies of avian and bat interactions with wind turbines.

Although avian and bat mortality resulting from interaction with wind turbines was estimated in the PEIR on the basis of project MW and total APWRA buildout of its MW capacity for either the 417 or 450 MW alternatives, past and on-going avian mortality studies of other wind turbine projects in the APWRA will continue to inform the County on the relationship between MWs and avian mortality on a whole project and individual turbine basis. The SEIR will address the most current monitoring results and other studies, and evaluate the Project's impacts accordingly.

Due to the time limits mandated by state law, public agencies are requested to send their responses to this Notice to the County at the address and person provided above as soon as possible but not later than 30 days after receipt of this Notice (which the County will assume is April 7, 2020 unless documented otherwise). Members of the public should provide scoping comments by May 7, 2020. Agencies and organizations are requested to provide a contact name in your organization for any further consultation.

BACKGROUND

The Altamont Pass Wind Resource Area (APWRA) was designated by the state of California as a wind resource area in the late 1970s and was developed with several thousand wind turbines by the mid-1990s operated by several different operating companies under various Conditional Use Permits (CUPs). These "wind farm" operations were approved for continued use through 2018 under 31 CUPs in 2005 with a requirement that phased repowering occur over the period of the CUPs, and that a Program EIR (PEIR) be prepared to evaluate the potential environmental impacts and effects of such repowering. Repowering is the replacement of older generation wind turbines with new turbines, technology and infrastructure; with goals that include greater efficiency, reduced maintenance costs, new and additional safety features, and lowering avian mortality that had been documented since the 1990s due to wind farm operations.

Consistent with the intent of the conditions of approval for the renewals or permit extensions in 2005, and pursuant to CEQA Guidelines Section 15168, the PEIR was prepared and certified on November 12, 2014. The Mulqueeney Ranch Repowering project was a foreseeable project at the time the PEIR was prepared and was listed as such in the PEIR. Additional background, discussion of the Mulqueeney Ranch Wind Repowering Project, and why a subsequent EIR appears appropriate is discussed further below.

PROJECT DESCRIPTION

Project Location. The Project is proposed on 29 nearly contiguous parcels extending over approximately 4,589 acres in the eastern Altamont Pass area of Alameda County, located both north and south of Patterson Pass Road between one and two miles north of Tesla Road, and approximately one mile south of Interstate 580. The 29 parcels are designated with the following Assessor’s Parcel Nos. (APNs): 99A-1800-2-3; 99A-1800-2-4; 99B-7890-2-4; 99B-7890-2-5; 99B-7890-2-6; 99B-7890-4; 99B-7900-1-3; 99B-7900-1-4; 99B-7900-1-5; 99B-7900-1-6; 99B-7900-1-7; 99B-7900-2; 99B-7910-1-1; 99B-7910-1-2; 99B-7925-2-1; 99B-7925-2-2; 99B-7925-2-3; 99B-7925-2-4; 99B-7925-2-5; 99B-7925-3; 99B-7950-2; 99B-7975-1; 99B-7980-1; 99B-7985-1-3; 99B-7985-1-4; 99B-7985-1-5; 99B-7985-1-6; 99B-8050-1; and 99B-8100-1-1.

Proposed Project. The Mulqueeny Ranch Wind Repowering Project would replace approximately 518 former turbine sites with up to 36 new wind turbines. The Project proponent is Mulqueeny Wind Energy, LLC, a wholly-owned subsidiary of Brookfield Renewable. The Project proposes to utilize turbines with generating capacities between 2.2 and 4.2 MW, all loosely similar in size and appearance, to develop up to 80 MW in generating capacity. The physical variations between the different faceplate capacities of the turbines considered in the PEIR and proposed for the current Project is shown in **Table 1**.

The proposed turbines would be three-blade, upwind turbines on tubular towers, generally similar to those analyzed in the PEIR. **Table 1** below shows the range of dimensions proposed compared with the largest of the turbine types considered under the PEIR.

Table 1. Turbine Specifications Contemplated in the PEIR and for Use with the Proposed Project

Turbine Model	PEIR Typical – 3.0 MW ¹	Proposed Range of Turbines
Nameplate capacity	3.0 MW	2.2 to 4.2 MW
Rotor type	3-blade/horizontal axis	3-blade/horizontal axis
Blade length	62.5 m (205 ft)	55-68 m (180-223 ft)
Rotor diameter	125 m (410 ft)	110-136 m (361-446 ft)
Rotor-swept area	12,259 m ² (131,955 ft ²)	9,503-14,527 m ² (102,289-156,367 ft ²)
Tower type	Tubular	Tubular
Tower (hub) height	96 m (315 ft)	80-86 m (262-282 ft)
Total height (from ground to top of blade)	153 m (502 ft)	135-152 m (443-499 ft)
Height of swept area above ground	33.5 m (110 ft)	14-25 m (46-82 ft)

¹ The smallest size of turbine described in the PEIR had a nameplate capacity of 1.6MW. The Patterson Pass project that was evaluated in the PEIR at a project level considered a 3.3 MW turbine with a 112-meter (367-foot) rotor diameter and 84-meter (276-foot) hub height. Though capable of more MW production, it was not physically larger in dimensions than the largest turbine considered typical for the PEIR.

As shown in **Table 1**, the proposed Mulqueeny Ranch turbines would be broadly comparable to the specifications provided in the PEIR for rotor type, tower type, tower (hub) height, and total height.

A conceptual layout is proposed, consisting of up to 36 wind turbines. The replacement of 518 previously existing turbines with 36 new turbines represents a replacement ratio of approximately one new turbine installed per 14 old-generation turbines removed. The final layout and turbine type would be selected based on site constraints (e.g., avian siting considerations, County setbacks, etc.), data obtained from meteorological monitoring of the wind resources, balance-of-plant considerations and turbine availability. Each of these factors would be considered when micro-siting turbines, with the final layout reflecting multiple considerations. Existing roads would be used where possible, and temporary widening and some new roads would be necessary. The Project would also require collection lines connecting the Project to a new substation which would be located adjacent to the PG&E Tesla Substation. A maintenance and operations building is not proposed; the applicant would lease existing office and commercial warehouse space in a nearby community.

Other Project components or major tasks include grading and construction of new or expanded roads (using existing road networks as much as possible), installing wind turbine foundations and pad-mounted transformers, erecting the turbine towers and installing the generators and rotor blades, and installing a power collection system (using existing electrical power transmission lines and substation infrastructure wherever possible). Decommissioning of existing turbines on the project site was completed in 2016 by another wind energy company prior to Brookfield's control of the project site and therefore decommissioning and removal of existing turbines prior to construction of the new project will not be required.

All the proposed wind turbines would require appropriate nighttime lighting to comply with Federal Aviation Administration (FAA) requirements for obstruction lighting on structures over 200 feet in height. Although it had been the goal for the number of lights to be minimized to avoid attracting birds during nighttime migrations, and to provide lights only on strategically located turbines to adequately mark the extent of the proposed Project, compliance with the FAA Obstruction Marking and Lighting Advisory Circular (AC70/7460-1K) has required lighting of each individual wind turbine. Intensity of the lights would be based on a level of ambient light, with illumination below 2 foot-candles being normal for the night and illumination of above 5 foot-candles being the standard for daytime.

CEQA BACKGROUND

Section 15168 of the CEQA Guidelines provides for a Program EIR to be used for a series of actions that are characterized as one large project, related geographically, logically, or as individual activities carried out under the same authority with generally similar environmental effects that can be mitigated in similar ways. The overall repowering of the APWRA within Alameda County was therefore appropriately evaluated in a PEIR. CEQA Guidelines Section 15168(b) lists the advantages of a PEIR as allowing the lead agency to consider broad policy alternatives and program-wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts. On this basis, the County is able to apply consistent and similar mitigation measures to each repowering project that may be proposed until repowering is considered complete. Additionally, Section 15152 of the Guidelines describes the use and advantages of tiering, wherein the analysis of general matters contained in a broader EIR (including a Program EIR per Section 15152(h)) is used with later EIRs and negative declarations on narrower projects, incorporating by reference the general discussions from the prior, broader EIR and concentrating the later CEQA analysis solely on the issues specific to the later project.

As set forth in Section 15168(d), a PEIR can be used to simplify the task of preparing environmental documents on later parts of the program (such as a repowering project not evaluated at a project level in the PEIR), and to provide a basis within an Initial Study to determine if the later activity would have

significant effects that were not recognized in the PEIR. Since the PEIR was certified in 2014, three other repowering projects have been evaluated at a project level with environmental checklists or an initial study, including a second Next Era project (Golden Hills North), the Summit Wind Energy Project approved for development by AWI (now Castlelake LP), and the Sand Hill project (proposed by Ogin, Inc.). A fourth repowering project, a revised and expanded Sand Hill project (under new ownership) was also initially evaluated at a project level with an environmental checklist in 2018, but was later evaluated under a SEIR, tiered from the PEIR.

To ensure that the latest concerns regarding biological resources are evaluated completely, the County has determined that new information of substantial importance is available in the form of new fatality monitoring reports, eagle population monitoring, and cumulative effects. Consequently, the County has elected to prepare a Subsequent EIR to address new information relevant to the Project. Furthermore, following careful consideration of the comments received on the previous Sand Hill project from the California Department of Fish and Wildlife, the U.S. Fish and Wildlife Service, the East Bay Regional Parks District, and the Golden Gate Audubon Society, the County has determined that each of the three conditions described in CEQA Guidelines Section 15162 exist and require a subsequent EIR.

PROPOSED SCOPE OF THE SUBSEQUENT EIR

The project-level analysis will address all resource topics; other topics for which there is new information that requires additional analysis are primarily related to biological resources, as outlined below:

1. Avian impacts
 - a. Considerations regarding recent studies, including golden eagles and other species
 - b. Consideration of recently available fatality estimates
 - c. Considerations of turbine size and turbine blade risk or swept area
 - d. Considerations of micro-siting and detailed consequences of grading
 - e. Consideration of candidate species and changes in status
 - f. Mitigation measures
2. Bat impacts
 - a. Consideration of ongoing research on fatality monitoring
 - b. Consideration of ongoing research on adaptive management and mitigation strategies
3. Cumulative impacts
 - a. Considerations regarding recently available information on avian and bat impacts
 - b. Considerations regarding the total buildout and maximum capacity of the APWRA

To the extent necessary, the SEIR will also address program-level issues, including:

- How the previously certified PEIR evaluated the construction of up to 450 MW of wind power in the APWRA and the extent to which the Mulqueeny Wind Repowering Project will or will not exceed the evaluated total.
- The latest science and monitoring results from operational projects in the APWRA and the implications for mortality of bird and bat species and changes to avian and bat fatality estimates.

COMMENTS. Comments submitted should focus on mitigation measures or alternatives that may be less costly or have fewer environmental impacts while achieving similar conservation and wind repowering objectives, and the identification of any significant social, economic, or environmental issues related to alternatives and mitigation measures.

DATES: Written comments on the scope of the SEIR, including the Project objectives, the impacts to be evaluated, and the methodologies to be used in the evaluations, should be provided to the County by May 7, 2020.

ADDRESS: Written comments on the Project scope should be sent to Andrew Young, Planner, ATTN: Mulqueoney SEIR, Alameda County Community Development Agency, 224 W. Winton Avenue, Suite 110, Hayward, CA, 94544, or via email with subject line “Mulqueoney SEIR” to: andrew.young@acgov.org.

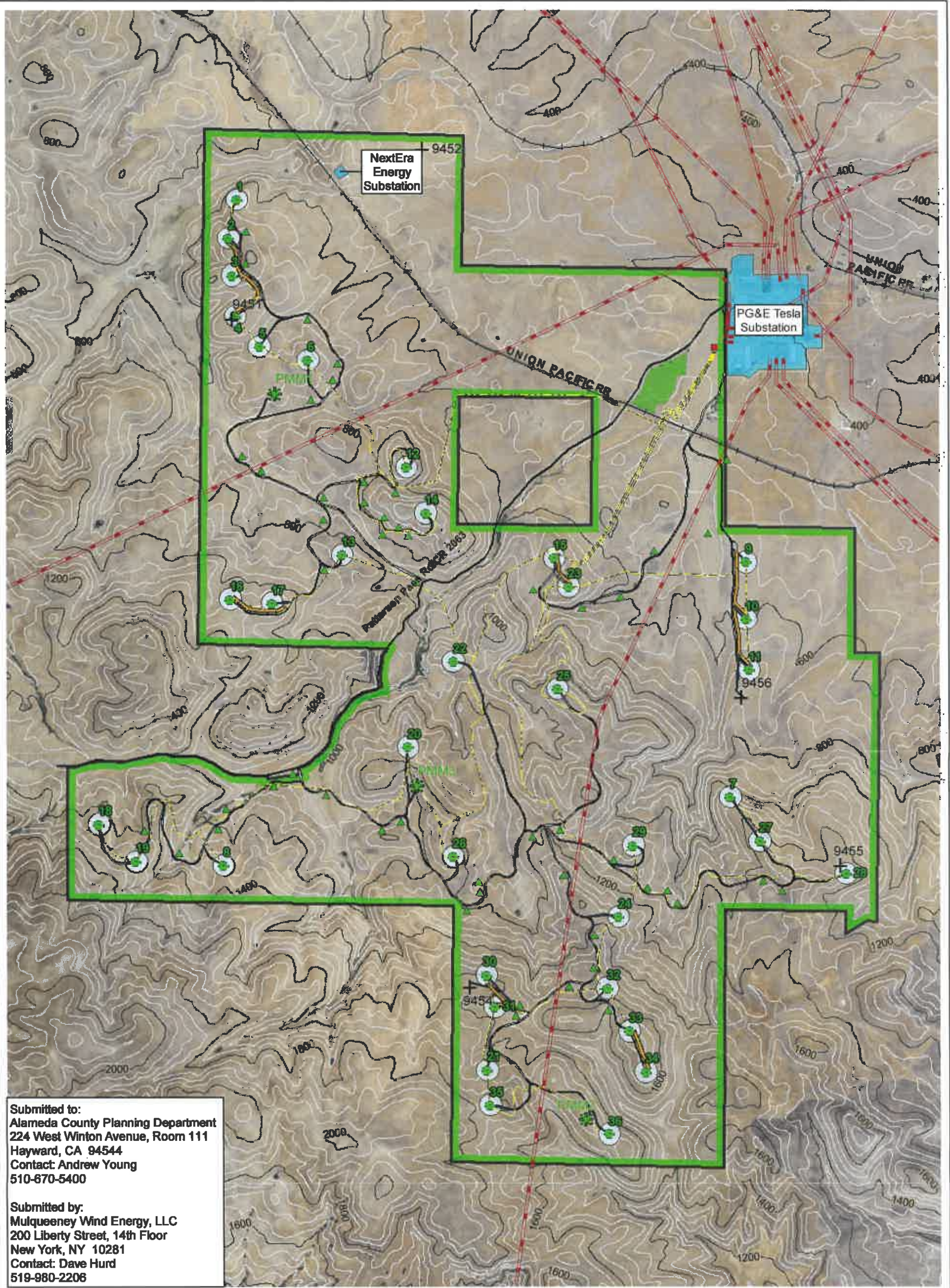
The Project objectives and description of the Project is available at the County’s Internet site: www.acgov.org/cda/planning/landuseprojects/currentprojects/ or see www.acgov.org/cda/planning, then successive links from Pending Land Use Projects, Current Development Projects, Wind Farm Projects and Mulqueoney Ranch Wind Repowering Project, Application No. PLN2019-00226

FOR FURTHER INFORMATION CONTACT: Andrew Young, Alameda County Planning Dept., 224 W. Winton Avenue, Suite 110, Hayward, CA, 94544, or at (510) 670-5400, or andrew.young@acgov.org.

Exhibit

Distribution:

United States Fish and Wildlife Service
United States Army Corps of Engineers
California Department of Fish and Wildlife
California Water Boards – San Francisco Regional Water Quality Control Board
California State Native American Heritage Commission
California Department of Justice/Office of the Attorney General, Oakland office
California State Clearinghouse, Office of Planning & Research
Golden Gate Audubon Society
East Bay Regional Park District
Brookfield Renewable, attn. Berk Gursoy and Jonathan Kirby



- | | | |
|------------------------------|--|---|
| Project Boundary | Existing Access Road-Widen and Resurface | Existing Infrastructure |
| Project Components | Existing Access Road-Regrade and Widen | Existing Temporary MET Mast (to be removed) |
| Wind Turbine Generator | New Access Road | Existing Transmission |
| Turbine Pad | Proposed Project Substation | |
| Proposed MET Mast | Temporary Construction Facility | |
| Radius Improvement | | |
| Crane Path | | |
| Electrical Collection System | | |



Project Layout, Black & Veatch, 10/15/2019
 Contour Interval: 50 feet



Mulqueeny Ranch Wind Repowering Project Conceptual Plan

NATIVE AMERICAN HERITAGE COMMISSION

April 13, 2020

Governor's Office of Planning & Research

APR 17 2020

STATE CLEARINGHOUSE

Andrew Young
Alameda County Community Development Agency
224 W. Winton Avenue, Suite 110
Hayward, CA 94544

Re: 2010082063, Mulqueeney Ranch Wind Repowering Project, Alameda County

Dear Mr. Young:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, § 15064.5 (b) (CEQA Guidelines §15064.5 (b))). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines § 15064 (a)(1))). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements.** If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.



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AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

- 1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project:** Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:
 - a.** A brief description of the project.
 - b.** The lead agency contact information.
 - c.** Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
 - d.** A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).

- 2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report:** A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subs. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1 (b)).
 - a.** For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).

- 3. Mandatory Topics of Consultation If Requested by a Tribe:** The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:
 - a.** Alternatives to the project.
 - b.** Recommended mitigation measures.
 - c.** Significant effects. (Pub. Resources Code §21080.3.2 (a)).

- 4. Discretionary Topics of Consultation:** The following topics are discretionary topics of consultation:
 - a.** Type of environmental review necessary.
 - b.** Significance of the tribal cultural resources.
 - c.** Significance of the project's impacts on tribal cultural resources.
 - d.** If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).

- 5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process:** With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).

- 6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document:** If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:
 - a.** Whether the proposed project has a significant impact on an identified tribal cultural resource.
 - b.** Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

- 7. Conclusion of Consultation:** Consultation with a tribe shall be considered concluded when either of the following occurs:
- a.** The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or
 - b.** A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).
- 8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document:** Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).
- 9. Required Consideration of Feasible Mitigation:** If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).
- 10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:**
- a.** Avoidance and preservation of the resources in place, including, but not limited to:
 - i.** Planning and construction to avoid the resources and protect the cultural and natural context.
 - ii.** Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.
 - b.** Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:
 - i.** Protecting the cultural character and integrity of the resource.
 - ii.** Protecting the traditional use of the resource.
 - iii.** Protecting the confidentiality of the resource.
 - c.** Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.
 - d.** Protecting the resource. (Pub. Resource Code §21084.3 (b)).
 - e.** Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).
 - f.** Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).
- 11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource:** An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:
- a.** The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.
 - b.** The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.
 - c.** The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

The NAHC's PowerPoint presentation titled, "Tribal Consultation Under AB 52: Requirements and Best Practices" may be found online at: http://nahc.ca.gov/wp-content/uploads/2015/10/AB52TribalConsultation_CalEPAPDF.pdf

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf.

Some of SB 18's provisions include:

1. **Tribal Consultation:** If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).
2. **No Statutory Time Limit on SB 18 Tribal Consultation.** There is no statutory time limit on SB 18 tribal consultation.
3. **Confidentiality:** Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).
4. **Conclusion of SB 18 Tribal Consultation:** Consultation should be concluded at the point in which:
 - a. The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
 - b. Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: <http://nahc.ca.gov/resources/forms/>.

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (http://ohp.parks.ca.gov/?page_id=1068) for an archaeological records search. The records search will determine:
 - a. If part or all of the APE has been previously surveyed for cultural resources.
 - b. If any known cultural resources have already been recorded on or adjacent to the APE.
 - c. If the probability is low, moderate, or high that cultural resources are located in the APE.
 - d. If a survey is required to determine whether previously unrecorded cultural resources are present.
2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.
 - a. The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
 - b. The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:
 - a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.
 - b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.

4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.
 - a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, § 15064.5(f) (CEQA Guidelines § 15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.
 - b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.
 - c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code § 7050.5, Public Resources Code § 5097.98, and Cal. Code Regs., tit. 14, § 15064.5, subdivisions (d) and (e) (CEQA Guidelines § 15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address: Nancy.Gonzalez-Lopez@nahc.ca.gov.

Sincerely,



Nancy Gonzalez-Lopez
Staff Services Analyst

cc: State Clearinghouse

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Of Counsel

*Admitted in Colorado

May 6, 2020

Via Email and U.S. Mail

Albert Lopez, Planning Director
Alameda County Planning Department
224 West Winton Avenue, Room 111
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Email: Albert.Lopez@acgov.org

Anika Campbell-Belton
Clerk of the Board of Supervisors
County of Alameda
221 Oak Street, Suite 536
Oakland, CA 94612
Email: cbs@acgov.org

Via Email Only

Andrew Young, Senior Planner
Email: andrew.young@acgov.org

**Re: Request for Mailed Notice of Actions and Hearings –
Mulqueeny Ranch Wind Repowering Project
(SCH No. 2010082063)**

Dear Mr. Lopez, Ms. Campbell-Belton, and Mr. Young:

We are writing on behalf of California Unions for Reliable Energy (“CURE”) to request mailed notice of the availability of any environmental review document, prepared pursuant to the California Environmental Quality Act, related to the Mulqueeny Ranch Wind Repowering Project (SCH No. 2010082063) (“Project”) proposed by Mulqueeny Wind, LLC (a subsidiary of Brookfield Renewable), as well as a copy of the environmental review document when it is made available for public review.

The Project proposes to repower (i.e., redevelop) an estimated 518 previously existing wind energy turbine sites with up to 36 new turbines with nameplate production capacity rated between 2.2 and 4.2 megawatts (MW) each, that together will have a maximum production capacity of approximately 80 MW. The Project is

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May 6, 2020
Page 2

proposed on 29 nearly contiguous parcels extending over approximately 4,589 acres within the southeastern quadrant of the Alameda County portion of the Altamont Pass Wind Resource Area (APWRA) in northern California.

We also request mailed notice of any and all hearings and/or actions related to the Project. These requests are made pursuant to Public Resources Code Sections 21092.2, 21080.4, 21083.9, 21092, 21108 and 21152 and Government Code Section 65092, which require local agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body.

Please send the above requested items by email and U.S. Mail to our South San Francisco Office as follows:

U.S. Mail


Sheila M. Sannadan
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080-7037

Email

ssannadan@adamsbroadwell.com

Please call me at (650) 589-1660 if you have any questions. Thank you for your assistance with this matter.

Sincerely,



Sheila M. Sannadan
Legal Assistant

SMS:acp

Young, Andrew, CDA

From: Beeler, Heather <Heather_Beeler@fws.gov>
Sent: Friday, May 8, 2020 1:41 PM
To: Young, Andrew, CDA; Rivera, Sandra, CDA
Cc: Leeman, Thomas
Subject: Mulqueeney Wind Repowering Project NOP

Andy and Sandi,

Unfortunately, we did not have time to prepare a comment letter on Alameda County's Notice of Preparation of a Subsequent Environmental Impact Report (SEIR) for the Mulqueeney Ranch Wind Repowering Project, County Planning Application PLN2019-00226. Even so, we ask the County to take into consideration all the previous recommendations we provided to you regarding our population level impact concerns, as well as avoidance and minimization measures for golden eagles and other migratory birds from the operational wind turbines in the Altamont Pass Wind Resource Area (APWRA). Please refer to recent comment letters we submitted to you for the Sand Hill Wind Project (February 12, 2020, October 9, 2019); our concerns and recommendations apply also to this proposed project. Our previous correspondence regarding the Golden Hills Wind Energy Facility, and the Golden Hills North Wind Energy Facility and all other projects for which we have provided recommendations also apply. In addition, as a Technical Advisory Committee (TAC) member of Alameda County's APWRA Repowering Program, I am on the record expressing the Service's concerns and making those same recommendations at multiple TAC meetings. All the same measures and recommendations apply equally to this proposed project. We look forward to our continued coordination aimed at ensuring the APWRA wide impacts remain at or below the baseline levels as identified in and required by your *2014 Alameda County Community Development Altamont Pass Wind Resource Area Repowering Final Program Environmental Impact Report*.

Please let Thomas and me know if you have any questions.

Thanks you,
Heather Beeler



HeatherBeel
Eagle Permit
Migratory Bi
U.S. Fish and

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May 7, 2020

Andrew Young
Alameda County Planning Department/Community Development Agency
Community Development Agency
224 West Winton Ave. Rm. 111
Hayward, CA 94544-1215

RE: Notice of Preparation of Subsequent Environmental Impact Report (SEIR) for the Mulqueeny Ranch Wind Repowering Project, County Planning Application PLN2019-00226.

Dear Mr. Young:

The East Bay Regional Park District ('District') appreciates the opportunity to comment on the County of Alameda's (County's) Notice of Preparation (NOP) of a Subsequent Environmental Impact Report (SEIR) for the proposed Mulqueeny Ranch Wind Repowering Project (Project), tiered under the Altamont Pass Wind Resource Area Repowering Final (APWRA) Program Environmental Impact Report (PEIR, State Clearing House #2010082063), certified November 12, 2014, County Planning Application PLN2017-00201.

The Project proposes replacement of approximately 518 former turbine sites with up to 35 new generation turbines with a nameplate capacity of between 2.3 and 4.2 megawatts (MW) each, and an overall maximum production capacity of up to 80 MW. The Project will be located on 29 parcels of privately-owned land encompassing nearly 4,589 acres within Alameda County, located both north and south of Patterson Pass Road within the eastern portion of the APWRA. The Project proponent is Mulqueeny Wind Energy, LLC, a wholly-owned subsidiary of Brookfield Renewable.

The District supports repowering of the Altamont Pass Wind Resource Area (APWRA) in a responsible manner that balances need for wind energy production with the protection of natural, cultural, and visual resources in the Altamont region. District Staff have an extensive record of conducting research with collaborators aimed at reducing the impacts of wind energy generation on volant animals (birds and bats), including but not limited to changing grazing practices to redistribute raptor prey species, conducting avian and bat flight behavior observations and satellite tracking of golden eagles to inform collision hazard maps (risk maps) that inform micro-siting of wind turbines, and numerous carcass searcher and scavenger removal studies to better estimate avian and bat fatality rates in wind farms. Risk maps have been produced for the four focal species of raptors (golden eagle, red-tailed hawk, American Kestrel and burrowing owl) that were identified as the standard by which to achieve a 50% reduction in their respective fatality rates through implementation of various mitigation measures, (2007 Settlement Agreement between Alameda County, Audubon, Californians for Renewable Energy (CARE) and several wind energy companies).

The District has a long-standing record of monitoring populations of raptors, especially golden eagle, burrowing owl and prairie falcon, species whose local populations are at risk due to the additive mortality rates caused by wind energy generation in the APWRA. District Staff serve on the Technical Advisory Committee for wind energy development for the Contra Costa County Conservation and Development Agency,

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We agree with and encourage consideration be accorded all aspects of the “Proposed Scope of the Subsequent EIR” as outlined in the NOP. We provide some additional comments for consideration:

I. Volant Animal Impacts and Mitigation Measures

- a. Golden Eagle (*Aquila chrysaetos*). The population of Golden Eagles in the Northern Diablo Range is subjected to many stressors. These can be direct, such as outright mortality through wind turbine blade strikes in the APWRA (Smallwood and Karas 2009) or indirect, such as through drought affecting productivity (Wiens et al. 2018). The United States Geological Survey (USGS) has produced several reports and papers on golden eagle territory occupancy and breeding success in the Diablo Range (Wiens et al. 2015, Wiens et al. 2018), including new information on golden eagle nesting territories within the APWRA (Kolar and Wiens, 2017). The direct and indirect impacts of repowering projects on nesting golden eagles within the APWRA has received little attention in previous Wind Project SEIRs and needs to be comprehensively addressed in the current and future SEIRs. Qualitative assessment of movement data of Golden Eagles outfitted with satellite transmitters suggests that pre-reproductive age classes (juveniles and subadults) from throughout the Diablo Range regularly use the APWRA, and that eagle use of the APWRA remains intense (Bell 2017a,b). Estimates on the extent to which the APWRA represents a population sink to the local golden eagle population have been revised (Hunt et al. 2017). Hunt et al. (2017) calculated that the reproductive output of 216-255 breeding pairs of Golden Eagles would be required to offset an estimated 55-65 wind turbine blade-strike mortalities in the APWRA each year to maintain population sustainability. Although this estimated number of eagle blade-strike deaths is based on pre-repowered APWRA conditions (Smallwood and Karas 2009), given the trends of golden eagle fatalities presented in monitoring reports of repowered projects in the APWRA (e.g. H.T. Harvey & Associates, 2017, 2018, 2020, H.T. Harvey & Associates and Great Basin Bird Observatory, 2020), the APWRA is exceeding the level of mortality set for golden eagles in the PEIR (2014). In addition, at anticipated build-out of the APWRA, one can expect the mortality rate to equal or exceed the pre-repowered mortality rate (Smallwood and Karas 2008) if all permitted and planned projects are completed (See cumulative impacts below).
- b. Other Focal Raptor Species. Red-tailed hawk (*Buteo jamaicensis*), Western burrowing owl (*Athene cunicularia*) and American kestrel (*Falco sparverius*), forage and nest on the Project site. Both direct impacts (mortality from turbine strikes, disturbance to nest sites and loss of productivity) and indirect impacts (loss of nesting habitat) should be considered for mitigation. The DEIR should compare regional population trends, such as may be gleaned from publications or eBird data, with existing APWRA mortality reports to highlight those species undergoing declining trends that may warrant additional mitigation measures or options. For example, American kestrel nest box occupancy in the eastern United States declined by 3% /year from 1984-2007 (Smallwood et al. 2009). In another example about the relevance of population trends, Dr. Shawn Smallwood has been censusing random plots throughout the APRWA for burrowing owl since 2011 (see also Smallwood et l. 2006, 2013). Smallwood states “In my assessment, the Altamont’s population of burrowing owls is in trouble. Wind turbines can certainly contribute cumulatively to a decline of burrowing owls. The newer turbines are not killing burrowing owls at the same rates as had the old turbines, but even the fewer numbers killed going forward could contribute significantly to the species’ decline and eventual extirpation. Burrowing owls are close to extirpation throughout the Bay Area west of the Altamont, and last I checked there were only 3 recent eBird records between Solano and Yolo Counties (east and north of the Altamont). In short, burrowing owls are declining regionally,

and not only in the Altamont” (Smallwood, personal communication). In addition, burrowing owls are closely tied to California ground squirrel (*Otospermophilus beecheyi*) colonies, and according to Smallwood “The overall ground squirrel decline [in the APWRA] was 64%... from 2011 to 2019. I also found that where there are no squirrels, there are no nesting attempts by burrowing owls” (Smallwood, personal communication). These observations highlight possible mitigation options, such as measures that would promote coexistence of ground squirrel colonies in well-managed rangelands.

- c. Prairie Falcon (*Falco mexicanus*). This species is on the California Department of Fish and Wildlife “Special Animals List” <https://www.dfg.ca.gov/wildlife/nongame/list.html>. The District remains concerned about the status of this species, which may be experiencing local declines in portions of the Diablo Range (Bell, unpublished data). Pairs that nest both within and outside of the APWRA forage within its boundaries in overlapping home ranges (Solomon 2012). Although fatality estimates of prairie falcons in the APWRA are low relative to the four focal species of raptor listed in the PEIR (2014), they may represent a significant impact to the sparse, local breeding population of prairie falcons. Both breeding adults and locally-fledged prairie falcons have been recovered as fatalities in the APWRA (USGS Bird Banding Laboratory Reports, Patuxent Wildlife Research Center, MD). In 2019, a prairie falcon fatality was recorded at Golden Hills North (GHN) on 8 May (H.T. Harvey & Associates and Great Basin Bird Observatory 2020), on 23 May 2019 two dead prairie falcon chicks were recovered from the nearest nest site, and no adults were observed in the vicinity, suggesting that the fatality at GHN may have led to the nest failure. This raises a cumulative impact not previously considered in fatality estimates, namely, wind project fatalities of adult birds during the nesting season which impact nest productivity. Although estimating this impact requires detailed information on species-specific population dynamic parameters, an important research topic for any species impacted by the APWRA, it nonetheless illustrates that most avian fatality estimates are likely underestimates which in turn underestimate population-level impacts.
- d. Small Birds and Bats. A recent assessment of avian guilds shows that 74% of grassland bird species in North America are in decline (Roseburg et al. 2019). This includes species such as Western Meadowlark (*Sturnella neglecta*) and horned lark (*Eremophila alpestris*), two species that are rising to the top of the list of passerine birds impacted by repowered projects in the APWRA (e.g. see H.T. Harvey & Associates and Great Basin Bird Observatory 2020). Recent use of dog search teams in fatality monitoring studies in the APWRA have shown that the mortality rates for small birds (e.g. passerines < 100g) and bats are several times to orders of magnitude higher, respectively, than previously assumed (Smallwood et al. 2020, H.T. Harvey & Associates, 2017, 2018, 2020, H.T. Harvey & Associates and Great Basin Bird Observatory, 2020). The DEIR should compare nation-wide or regional trends of species groups with existing APWRA mortality reports to highlight those species undergoing declining trends that may warrant additional mitigation options. For example, Hoary Bat (*Aeorestes cinereus*), which registers the second highest fatality rate among bats in the APWRA (e.g. H.T. Harvey & Associates 2020), is experiencing regional population declines in the Pacific Northwest (Rodhouse et al. 2019). Fortunately, for bats at least, it appears that increasing turbine cut-in speeds, and more importantly, curtailment of turbines during high risk periods such as peak bat migration in fall and spring, may offer effective mitigation measures to reduce bat fatalities (Smallwood and Bell 2020a). More research on bat flight behavior in relation to turbine operations (e.g. Smallwood and Bell 2020b) would improve the development of operational

mitigation strategies to reduce impacts with little effect on energy production. Furthermore, research on fatality monitoring that incorporates the use of dogs and optimizes search intervals would improve the precision of fatality estimates (Smallwood et al 2020, Smallwood 2020).

- e. Other Listed Avian Species. Swainson's hawk (*Buteo swainsoni*) and Tri-colored blackbird (*Agelaius tricolor*) nest and forge in the APWRA. Both direct impacts (mortality from turbine strikes, disturbance to nest sites and loss of productivity) and indirect impacts (loss of nesting habitat) should be considered in mitigation options.

2. Considerations of Turbine Size and Structure.

- a. Turbine size. Project proposes a range of rotor swept areas (RSA) from 9,503-14,527 m². The 2014 PIER specifies RSA of 12,259 m². In general, the larger the RSA, the greater the risk to volant animals. Risk from larger RSA could be mitigated by fewer turbine numbers overall. Project proposes a range of heights for swept area above ground: 14-25 m. Height of swept area above ground is another key risk factor, with lower heights creating substantially more risk to birds. The PIER (2014) specifies a height of rotor swept area above ground of 33.5 m (to reduce risk).
- b. Turbine Type. Project proposes 3-blade/horizontal axis turbines. Repowering with this turbine type is proving to be very deadly to volant animals. Project should consider other turbine types as alternatives, such as the shrouded turbine design previously proposed and approved as a project for the APWRA.

3. Turbine Micro-siting and Mitigation Measures.

- a. Micro-siting. Turbine micro-siting using quantitative, predictive collision hazard models has been employed to inform turbine placement during project planning and design in the APWRA to reduce risk to the four focal raptor species: golden eagle, red-tailed hawk, American kestrel and Western burrowing owl (Smallwood et al. 2009, 2017). So far, six versions of collision hazard models for each species have been developed, with latter versions of the models performing better at predicting collisions, especially for golden eagle, red-tailed hawk and America kestrel (Smallwood and Neher 2017). On-going research on raptor flight behavior, associated terrain elements, and satellite telemetry data from golden eagles has been instrumental for improving model performance. The Project should employ quantitative collision hazard modelling (aka Risk Mapping), to identify and rate proposed turbine sites and provide the modeling results in the SEIR. Serious consideration should be given to removing all high-risk turbine sites from the Project, as it is becoming abundantly clear from recent monitoring reports in the APWRA that the number of wind turbines and their relative density is likely defeating the gains achieved through micro-siting. In addition, Smallwood et al. (2008) showed that raptors tend to forage and use areas of turbine-free habitat more often than ridges with turbines. Thus, the most effective mitigation measure to reduce overall impacts to volant animals which are significant and unavoidable, would be to employ quantitative collision hazard modelling with micro-siting to identify high risk turbine sites and remove them from the Project's footprint. In addition to reducing collision hazards, this would provide "islands" of turbine free areas within a project. In effect, this could potentially save a project more costs than "after-the-fact" expensive mitigation options such as are now being employed at the Golden Hills Wind Project, e.g. IdentiFlight©, a mitigation measure whose effectiveness in the APWRA remains experimental.

- b. Other Mitigation Options. Other mitigation options should include landscape-level approaches, such as supporting ecosystem services through the East Bay Regional Conservation Investment Strategy (<https://scc.ca.gov/2019/03/25/east-bay-regional-conservation-investment-strategy-draft-released/>). Ecosystem services could include those provided by ground squirrel colonies in well-managed rangelands that in turn would provide revenue for private ranching operations. Being a keystone species, the California ground squirrel supports a host of rangeland species by providing burrow habitat and serving as a prey source.

4. Cumulative Impacts

- a. Project specific. The project will add to the existing cumulative APWRA-wide impacts to the four focal raptor species (golden eagle, red-tailed hawk, American kestrel, Western burrowing owl) in terms of fatality rates that are at, or close to, exceeding those set forth in the PEIR (2014) or will affect population sustainability. In addition, significant and unavoidable cumulative impacts to other volant animals, including other raptors, passerines and bats, are expected. The SEIR needs to address these Project-specific cumulative impacts and mitigation options.
- b. Future Projects, APWRA-wide. The County needs to address and evaluate the APWRA certified capacity of 450MW with the cumulative APWRA-wide impacts of existing, permitted and planned wind projects on the focal raptor species (golden eagle, red-tailed hawk, American kestrel, that will result in respective fatality levels that will exceed those set forth in the PEIR (2014). In addition, significant and unavoidable cumulative impacts to burrowing owls, other birds and bats need to be addressed moving forward. The APWRA is at a turning point. All evidence points to the likelihood that volant animal fatality rates caused by existing and planned repowering projects will rise to unsustainable levels for multiple species and reach or exceed pre-repowered conditions. At this point, the County should consider two non-exclusive options to stave this trend:
 - i. Employ verifiable, quantitative collision hazard modelling with micro-siting to identify high risk turbine sites and remove them from each proposed project to reduce the project's footprint and thereby reduce overall project impacts.
 - ii. Impose a moratorium on planned wind projects until monitoring of existing repowered projects is completed along with studies to verify the effectiveness of mitigation options.

Thank you for this opportunity to comment on the County's Notice of Preparation of Subsequent Environmental Impact Report (SEIR) for the Mulqueeney Ranch Wind Repowering Project, County Planning Application PLN2019-00226.

Sincerely yours,

Douglas A Bell

Douglas A. Bell, Ph.D.
Wildlife Program Manager

dbell@ebparks.org

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State of California – Natural Resources Agency

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May 4, 2020

Mr. Andrew Young

Project Planner

County of Alameda Planning Department, Community Development Agency

244 W. Winton Avenue, Room 111

Hayward, CA 94544

andrew.young@acgov.org

Subject: Mulqueeny Wind Repowering Project, PLN2019-00226, Notice of Preparation of a Subsequent Environmental Impact Report, SCH #2010082063, Alameda County

Dear Mr. Young:

The California Department of Fish and Wildlife (CDFW) has reviewed the County of Alameda's Notice of Preparation (NOP) of a Subsequent Environmental Impact Report (SEIR) for the Mulqueeny Wind Repowering Project (Project). The Project is an application for a Conditional Use Permit (CUP) to repower (i.e., replace) an estimated 518 previously existing wind energy turbine sites with up to 36 new turbines. The Project is proposed on 29 nearly contiguous parcels extending over approximately 4,589 acres within the southeastern quadrant of the Alameda County portion of the Altamont Pass Wind Resource Area (APWRA) in northern California. The Project is tiered under the Altamont Pass Wind Resource Area Repowering Final Program Environmental Impact Report (PEIR, SCH #2010082063), certified on November 12, 2014. The purpose of the SEIR will be to evaluate the specific environmental effects of the Project as proposed by Mulqueeny Wind, LLC, a subsidiary of Brookfield Renewable.

CDFW is providing comments and recommendations on the SEIR regarding those activities involved in the Project that are within CDFW's area of expertise and relevant to its statutory responsibilities (Fish and Game Code, § 1802), and/or which are required to be approved by CDFW (CEQA Guidelines, §§ 15086, 15096 and 15204).

CDFW ROLE

CDFW is a Trustee Agency with responsibility under the California Environmental Quality Act (CEQA; Pub. Resources Code, § 21000 et seq.) pursuant to CEQA Guidelines section 15386 for commenting on projects that could impact fish, plant, and wildlife resources. CDFW is also considered a Responsible Agency if a project would require discretionary approval, such as permits issued under the California Endangered Species Act (CESA), the Lake or Streambed Alteration (LSA) Program, or other provisions of the Fish and Game Code that afford protection to the state's fish and wildlife trust resources. CDFW is also a participating member of the Altamont Pass Wind Resource Area Technical Advisory Committee to provide scientific and permitting guidance to Alameda County on wind turbine projects.

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REGULATORY REQUIREMENTS

California Endangered Species Act

Please be advised that a CESA Permit must be obtained if the Project has the potential to result in “take” of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA Permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened or endangered species. (Pub. Resources Code, §§ 21001, subd. (c), 21083; CEQA Guidelines, §§ 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency’s FOC does not eliminate the Project proponent’s obligation to comply with Fish and Game Code section 2080.

Lake and Streambed Alteration

CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for Project activities affecting lakes or streams and associated riparian habitat. Notification is required for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, channel, or bank including associated riparian or wetland resources; or deposit or dispose of material where it may pass into a river, lake or stream. Work within ephemeral streams, washes, watercourses with a subsurface flow, and floodplains are subject to notification requirements. CDFW will consider the CEQA document for the Project and may issue an LSA Agreement. CDFW may not execute the final LSA Agreement (or Incidental Take Permit) until it has complied with CEQA as a Responsible Agency.

PROJECT DESCRIPTION SUMMARY

Proponent: Mulqueeny Wind, LLC

Description and Location: The Project is located at 170257 Patterson Pass Road (address for one of 29 nearly contiguous parcels) extending over approximately 4,589 acres in the eastern Altamont Pass area of Alameda County. The Project is located north and south of Patterson Pass Road between one and two miles north of Tesla Road, and approximately one mile south of Interstate 580. The Project will allow repowering of an estimated 518 previously existing wind energy turbine sites with up to 36 new turbines with a maximum production capacity of 80 megawatts (MW), using turbines rated between 2.2 and 4.2 MW per turbine.

The Project description in the draft SEIR should include a complete description of current site conditions. The Project description should detail activities that result in any type of ground disturbance, including “minor” disturbances (e.g., trampling, soil erosion, runoff, and sedimentation). For example, the Project description should include information on work areas, temporary and permanent access roads, equipment staging and storage areas, sources of

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water withdrawal (for dust control), stockpile storage, post-project destination of runoff from the Project site, changes in topography as a result of grading, and potential spills and leaks. As a construction-related measure, the draft SEIR should also specify that imported fill soils will be free from trash, debris, piping of any material, wooden boards, logs, branches or chips, broken concrete or asphalt, metal pieces of any kind, plastic, glass, or other human-made materials and not contain any chemicals, substances or contaminants at concentrations greater than those determined through required testing processes to be safe for human contact.

Environmental Setting

The NOP for the Project states that a total of 518 old generation wind turbines or former turbine sites will be replaced with up to 36 new wind turbines. The draft SEIR should provide details on existing site conditions and all additional work, such as removal of concrete foundations, that will be required.

The Project site is known to provide habitat for the federally and State threatened California tiger salamander (*Ambystoma californiense*), federally threatened and State Species of Special Concern California red-legged frog (*Rana draytonii*), State Species of Special Concern western burrowing owl (*Athene cunicularia*) and the federally endangered and State threatened San Joaquin kit fox (*Vulpes macrotis mutica*).

Adjacent Lands

The northeastern boundary of the proposed Project area is located adjacent to the Haera Wildlife Conservation Bank, a 299-acre property which was established as a conservation bank to provide compensatory credits for impacts to western burrowing owl and San Joaquin kit fox. The bank also provides habitat for California tiger salamander.

The northwestern boundary of the Project area is located adjacent to the former Jess Ranch, owned by Contra Costa Water District, which was established as conservation for the California tiger salamander, San Joaquin kit fox, California red-legged frog and western burrowing owl.

Near the center of the proposed Project area lies the Two Sisters Burrowing Owl Preserve, an approximately 155.76-acre property established as mitigation for western burrowing owl.

On the southern half of the eastern boundary lies Lawrence Livermore National Laboratory's Site 300 which is approximately 7,000 acres of protected land. Site 300 provides habitat for important plant and wildlife populations, such as the federally and state endangered large-flowered fiddleneck (*Amsinckia grandiflora*), as well as the state and federally threatened Alameda whipsnake (*Masticophis lateralis euryxanthus*) and California tiger salamander. The site also supports raptors such as the golden eagle (*Aquila chrysaetos*) which is a State Fully Protected Species (Fish and Game Code, § 3511), as well as red-tailed hawk (*Buteo jamaicensis*), western burrowing owl, and many species of resident and neotropical birds.

Adjacent properties on the southern and western boundaries of the proposed Project area support California tiger salamander, California red-legged frog, the State-threatened tricolored blackbird (*Agelaius tricolor*), as well as San Joaquin kit fox and western burrowing owl. These properties have a high potential for being protected as conservation lands, and a conservation bank for special-status species has been proposed in this area.

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A portion of the western boundary of the Project area is located adjacent to the Golden Hills Wind Energy Project (Golden Hills), also located within the APWRA, which is known to provide habitat for western burrowing owl, California tiger salamander, California red-legged frog, and San Joaquin kit fox. Over the required three years of post-construction fatality monitoring under the PEIR, the Golden Hills project has documented mortality of significant numbers of birds and bats, including species such as, golden eagle, red-tailed hawks, burrowing owl, tricolored blackbird, and hoary bat (*Aeorestes cinereus*) which is on the CDFW Watch List (those with restricted distributions and warranting monitoring of potential threats).

IMPACT ANALYSIS

There is substantial evidence indicating that the Project will have additional or more severe environmental effects on birds and bats, and other adverse effects on biological resources, than were previously analyzed in the PEIR. There also is substantial evidence that the Project will require additional or different alternatives or mitigation measures than were specifically analyzed and included in the PEIR.

CDFW recommends that the draft SEIR discuss the status of wind projects that have already been approved and are operating on both the Alameda and Contra Costa County sides of the APWRA, and the total amount of ongoing annual avian and bat deaths that are currently known or estimated to be occurring in the entire APWRA based on past monitoring results and other available information. A more appropriate and detailed analysis, to the extent scientifically possible in light of the best available current information, of all potential impacts of the Project should be conducted for the proposed Project.

CDFW recommends that Alameda County ensure that the SEIR include the following:

- 1) A complete evaluation of all new information since the PEIR, including all information identified in comment letters, the Golden Hills and Vasco Winds monitoring reports, and all new relevant scientific studies on the impacts of, and mitigation measures for, repowered turbines within the APWRA that have been published since the PEIR was certified. The SEIR should include a comprehensive update to PEIR impact analyses for avian and bat fatalities in light of this new information and the application to this specific Project.
- 2) Identification of precise amount and extent of grading for turbine pads and roads, and details regarding changes in topography expected as a result of access road construction and turbine pads and the potential changes in overland flow and drainage. In addition, the SEIR should analyze the effects of this grading, particularly as to its implications for turbine micro-siting and impacts of turbine operation on birds and bats (see below).
- 3) A detailed micro-siting report, including analyses of latest micro-siting science and field studies of topography for this Project (as modified by grading) as well as bird and bat behavior and use in the Project area. The micro-siting analysis should use a quantitative approach based on collision-hazard modeling, combined with expert opinion, rather than, or in addition to, a qualitative analysis. This quantitative analysis should be applied to all, rather than a subset of, proposed turbine sites. The proximity to active or historic raptor nests should be an additional factor assessed and discussed in the micro-siting analysis. The most dangerous anticipated turbine locations for birds and bats should be identified

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and those locations should be avoided. This micro siting analysis must be done in the SEIR itself and should not be delayed to a later date as with past projects under the PEIR. The micro-siting analysis should be provided for public review and comment in the SEIR.

- 4) A complete habitat assessment for the focal raptor species (golden eagle, red-tailed hawk, American kestrel and burrowing owl) and bats within the Project area and nearby surrounding lands. Lands should be assessed for their potential use by breeding, migrating and wintering species. The draft SEIR should include results of pre-Project construction avian and bat surveys and a requirement to conduct annual bird and bat surveys during the operational term of the Project.
- 5) Project-specific impact analyses on tri-colored blackbird and Swainson's hawk (*Buteo swainsoni*), two species listed under CESA as threatened. The draft SEIR must include detailed habitat assessments for these species and a thorough analysis of potential impacts of the Project on nesting, foraging and roosting habitats on the Project site during construction, as well impacts to the species from ongoing turbine operations. Tri-colored blackbirds are known to nest on the adjacent property to the south with one colony located 0.15 mile from the Project boundary and the other approximately 0.5 mile from the Project boundary. Tricolored blackbirds typically forage from 3 to 8 miles from nesting colonies (CDFW 2018) and would therefore be at great risk of collision with turbines within the Project area. Furthermore, the Golden Hills Wind Energy Project Post-Construction Bird and Bat Fatality Monitoring 2019 Summary Report, prepared by H.T. Harvey & Associates, dated January 2020, documents that the operation of the Golden Hills project has resulted in at least four tricolored blackbird mortalities. Three of the four fatalities occurred at turbines less than one mile from the northwestern Project boundary which could indicate an undocumented nest site in or near the north end of the Project area.
- 6) A clear description of turbine size, rotor swept area and height of blades above ground, and a corresponding analysis of impacts of each turbine model on birds and bats. The effects of larger turbines between 3-4.2 MW in size should specifically be analyzed in terms of rotor swept area. The proposed Project should include turbines with smaller rotor swept areas and adhere to the PEIR recommendation of a minimum blade height of 29m.
- 7) An analysis of effects of operation of turbines and effects of nighttime lighting on bats based on best available scientific information and monitoring reports.
- 8) An assessment of raptor perching, nesting and roosting opportunities provided by transmission lines and lattice towers in or near the Project area.

Alternatives

The SEIR must give serious consideration to a wide range of alternatives that will reduce avian and bat fatalities resulting from this Project, including serious consideration of the no-project alternative, reduction in project size (number and size of turbines), various turbine micro-siting arrays to avoid and minimize impacts to all four focal raptor species, other special-status avian species, and bats, and other alternatives. The Project alternatives should be developed in consideration of the existing high cumulative impacts to birds and bats due to turbine collisions in the APWRA.

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Mitigation measures

The SEIR must analyze a full array of more stringent mitigation measures and update the PEIR mitigation measures in light of all new information. CDFW provides the following comments and recommendations on appropriate and effective mitigation measures to be included in the draft SEIR:

- 1) More stringent micro-siting requirements: i) turbines determined to have a collision hazard rating of 3 or 4, based on modeling results for golden eagles and other focal raptors, should be considered high risk and those sites should be avoided; ii) turbines found to be at a moderate-high risk should be curtailed during all appropriate raptor nesting and communal roosting seasons.
- 2) A qualified biologist approved by CDFW should conduct annual surveys for the four focal raptor species as well as other raptors, and tricolored blackbird, in all suitable nesting habitat within a minimum of one mile of the turbine locations. Surveys should be conducted from December 15 to July 15 for golden eagles, typically from early March to early-mid September for other raptors, and March 1 to August 15 for tricolored blackbird. In addition to nesting season surveys, overwintering surveys should also be conducted for burrowing owl from December 1 to January 31. Annual surveys for bat maternity or roosting colonies should also be conducted. Protocol-level survey methodologies should be used, and guidance on survey methodologies for golden eagle, burrowing owl and other species can be found on our website at <https://wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds>. CDFW staff is also available to provide additional guidance on appropriate and effective survey protocols. These annual surveys should be conducted during the entire operational term of the Project.
- 3) Appropriate buffers to avoid noise and visual disturbances of avian and bat species during Project-related construction activities should be established. Protective buffers should be a minimum of 0.5 mile for large raptors, 0.3 mile for burrowing owl and 0.25 mile for tricolored blackbird and bat colonies. A qualified biologist approved by CDFW should conduct regular monitoring of any active raptor nests, and tricolored blackbird and bat colonies documented during annual surveys. The biologist should adjust the no-disturbance buffer during construction based on the behavior of the breeding adults and young to avoid nest disturbance.
- 4) All turbines located within one mile of a golden eagle or Swainson's hawk nest or communal roosting area, and within 0.5 mile of any other raptor nest or tricolored blackbird colony, should be curtailed. Curtailment should occur each year that active nests are detected during surveys. Curtailment of turbines located near raptor nests and tricolored blackbird colonies should be implemented during daylight and crepuscular hours during the entire nesting season or until young have fledged or the nests have been determined by a qualified biologist to be unsuccessful.

Turbines should also be curtailed nightly within a minimum of 0.5 mile of a bat colony during the appropriate breeding/roosting season. Curtailment should also occur nightly during the peak fall migration season for bats (typically early August to late November) which is a period that has been associated with high bat fatalities at existing repowered

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projects in the APWRA. Seasonal curtailment has been shown to be effective in the APWRA in reducing bat collisions (Smallwood and Bell 2020).

- 5) For bats, cut-in speeds should be increased during night-time periods during high periods of bat activity such as the migratory seasons. Cut-in speeds should start with five meters per second and increased incrementally through adaptive management until bat mortality is significantly reduced.
- 6) For turbine placement and operation, a setback of 0.3 mile should be established from the property lines of all protected or proposed to be protected land (described in *Environmental Setting* above) that provides habitat for western burrowing owls.
- 7) The compensatory mitigation program in the PEIR should be updated for this Project to reflect the best available scientific information regarding the nature and extent of unavoidable impacts of repowering projects on birds and bats. Compensatory mitigation should be designed to provide complete, quantified and effective compensation for all anticipated unavoidable impacts of the Project.
- 8) The updated analysis is very likely to necessitate a substantial increase in compensatory mitigation measures and fees than are currently provided in the PEIR. The type and amount of compensatory mitigation must be developed based on a quantifiable resource equivalency analysis or other formula, such as that provided in the 2010 Next Era Settlement, and specify the specific preferred measures to be implemented rather than just providing a range of possible future options as currently provided in the PEIR.

The PEIR's adaptive management programs for birds and bats must be significantly strengthened for the Project to require more immediate, significant reductions in identified fatalities at offending turbines or, if necessary, Project-wide curtailment of turbines during certain times of the day or year if anticipated to significantly reduce unavoidable effects on focal raptor species and/or bats. More stringent adaptive management measures could include turbine curtailment or shut downs during specific times of the day/night or months of the year in addition to curtailment recommendations described in this letter; real-time turbine curtailment using the latest detection and deterrent technology (for example, identification for golden eagle and acoustic deterrents for bats); implementing additional changes in turbine cut-in speed upon specified triggers, and other effective and legally-enforceable measures after one year of Project monitoring.

- 9) Updated and improved monitoring program based on the best available scientific information and monitoring for other projects since PEIR. This should include monitoring for more than three years, monitoring of all turbines on a weekly basis, use of scent detection dogs, etc.
- 10) An avian and bat protection plan must be included in the SEIR and not delayed to a later date as with past PEIR projects.

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FILING FEES

Filing fees for CEQA documents are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs., tit. 14, § 753.5; Fish and Game Code, § 711.4; Pub. Resources Code, § 21089).

CONCLUSION

CDFW appreciates the opportunity to comment on the proposed Project to assist Alameda County in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Ms. Marcia Grefsrud, Environmental Scientist, at (707) 644-2812 or Marcia.Grefsrud@wildlife.ca.gov; or Ms. Brenda Blinn, Senior Environmental Scientist (Supervisory), at (707) 944-5541.

Sincerely,

DocuSigned by:

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Gregg Erickson
Regional Manager
Bay Delta Region

cc: State Clearinghouse
Heather Beeler, U.S. Fish and Wildlife Service – Heather.Beeler@fws.gov
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References

- California Department of Fish and Wildlife [CDFW]. 2018. A status review of tricolored blackbird (*Agelaius tricolor*) in California. A Report to the Fish and Game Commission, Nongame Wildlife Program Report 2018, California Department of Fish and Game, Sacramento, CA, USA.
- H.T. Harvey & Associates. 2020. Golden Hills Wind Energy Center Post-construction Fatality Monitoring Project: Final 3-Year Report. Prepared for Golden Hills Wind, LLC, Livermore, California. DRAFT – January 8, 2020.
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