



May 22, 2014

Los Angeles Department of Regional Planning
ATTN: Thuy Hua
320 W Temple St 13th Floor
Los Angeles, CA 90012

RE: Renewable Energy Ordinance, Second Draft

Dear Ms. Hua:

The Endangered Habitats League (EHL) appreciates the opportunity to comment on this Ordinance. For your reference, EHL is Southern California's only regional conservation group. Our concern is with the adverse environmental effects of large scale solar and of wind turbines. *As a matter of policy, Los Angeles County should prioritize, incentivize, and facilitate rooftop solar as the renewable energy source of choice.*

Wind

We commend the requirement for compliance with the *California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development* for utility-scale turbines. However, the most important step in reducing the killing of birds and bats by turbines is their initial placement. Site selection is the critical factor, and it is not *explicitly* referenced in this Ordinance, as only design, construction, and operation are mentioned. The language of the Ordinance should reflect the emphasis of the *Guidelines* on initial site selection by making explicit that all aspects of the Guidelines must be followed, including placement, on both macro and micro scales.

The Ordinance can and should do far more to protect birds and bats for “small” turbines, which are 50 kw or less. Small turbines, which may be 80 feet tall or more, and particularly if sited badly, can also do great harm, as height only determines which species—low or high-flying—are killed or maimed. As an initial step, we urge more restrictive limits on the number of “small” turbines per parcel, both to reduce harm and in order to incentivize the environmentally superior option of small scale solar. Limits should be no greater than one per parcel of 5 acres or less, and two turbines for larger parcels.

The conditional use process of the County, which includes CEQA review, appropriately applies to “small” turbines. This review should mandate a Bird and Bat Study performed according to CEC guidance, and reviewed by a County biologist.

Please note that these very procedures have been adopted by Marin County¹ demonstrating their feasibility as mitigation measures. As a result of the site-specific Bird and Bat Study, siting and design should be optimized and no turbine should be allowed if an appropriate site with minimal risk to birds and bats is not identified.

A short list of siting and design measures is placed below, which is *not* a substitute for the site-specific Bird and Bat Study, but a summary of minimal mitigation measures that should be required by the forthcoming Ordinance. This list of mitigation measures should be characterized as “including but not limited to.” As these *exact* measures were imposed by San Diego County—which uses a ministerial rather than conditional use permit process for “small” turbines—in its 2013 Wind Energy Ordinance², they should all be considered feasible.

- Setbacks (300 feet or five times the turbine height, whichever is greater) from electric transmission lines and towers, where birds perch.
- Setbacks (300 feet or five times the turbine height, whichever is greater) from riparian areas and wetlands (which have high concentrations of birds) using the surrogate of “blue line” USGS maps for watercourses and water bodies when site-specific surveys are not available.
- Setbacks (300 feet or five times the turbine height, whichever is greater) from bat roosting sites.
- Setbacks (300 feet or five times the turbine height, whichever is greater) from preserve areas, protected open space, or recorded open space easements.
- Setbacks from golden eagle nests of a minimum of 4,000 feet.
- Avoidance of ridgelines (which are corridors for bird movement) and standards to prevent encroachment into ridgeline airspace. (A small wind turbine tower shall not be located on a ridgeline, and the turbine blades shall not exceed the height of the ridgeline in an area within 150 feet of the ridgeline.)
- Prohibition of guy wires and trellis designs (which are perching sites and collision hazards). Turbines must be self-supporting.
- Sole use of California Energy Commission-approved turbine models (May 23, 2012, California Energy Commission, List of Eligible Small Turbines).
- Siting in already disturbed locations and disturbance limits (25 foot radius around the base of a tower, and an access path to the tower that is a maximum of four feet wide).

¹ See Marin County Wind Energy Ordinance, November 2009 and Marin County Development Code Title 22. See also California Energy Commission and California Department of Fish and Game. 2007, California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development. <<http://www.energy.ca.gov/2007publications/CEC-700-2007-008/CEC-700-2007-008-CMF.PDF>>

² See Wind Energy Ordinance at Section 6951:
<http://www.sdcounty.ca.gov/pds/zoning/z6000.pdf>

- Clearing and prevention of vegetation growth at the base of the turbine. (The area within 10 feet of the base shall be cleared of all vegetation and shall be covered with gravel, mulch or other similar material.)
- Undergrounding of all power lines connecting turbine towers and/or generators to structures.
- Removal of non-operable turbines.

Please see the San Diego County ordinance text for sample language. A more complete list of mitigation measures (prepared by Scott Cashen, wildlife biologist) is also enclosed for reference. While prepared for the DEIR of the San Diego Ordinance, it is equally relevant here.

Solar

The Ordinance should contain siting standards for large scale solar when not part of the DRECP master plan. Such standards should target already disturbed areas like fallowed fields or agricultural land. Solar facilities that mimic water bodies through reflections should be prohibited.

Thank you very much for considering our recommendations.

Yours truly,

A handwritten signature in blue ink, appearing to read "Dan Silver", is centered on a light gray rectangular background.

Dan Silver
Executive Director

Recommended Mitigation for Potentially Significant Impacts Caused by the Ordinance

The Ordinance would have potentially significant impacts on several sensitive biological resources. Under CEQA, the County is obligated to adopt all feasible mitigation to avoid or lessen significant impacts. The DEIR is deficient in this regard because it fails to demonstrate a substantive attempt to formulate feasible mitigation measures that could reduce impacts to a level considered less than significant. The following mitigation measures are feasible, and they must be incorporated into the Ordinance's mitigation program. In addition, these measures will minimize a permittee's civil and potential criminal liability for violations of the Endangered Species Act, the Migratory Bird Treaty Act, and the Bald and Golden Eagle Protection Act—federal protections that preempt state law, including AB 45.

General standards-

1. Turbines should be sited on disturbed land when practical.
2. Existing roads should be used to the maximum extent feasible.
3. Construction should be scheduled to avoid disruption of wildlife reproductive activities or other important behaviors.
4. As has been adopted by Marin County, a Bird and Bat Study should be conducted for each proposed wind energy facility. A County-approved biologist should conduct the Bird and Bat Study according to California Energy Commission and CDFG guidelines.¹
5. If the Bird and Bat Study for a proposed ministerial project finds that there is a potential for impacts to any (a) listed State or Federal threatened or endangered species; or (b) bird or bat “species of special concern” found to nest or roost in the area of the proposed project site, the project should become discretionary.
6. Wind turbines, MET towers, and supporting infrastructure should be prohibited near sensitive biological resources, as determined by a County-approved biologist and/or the CDFG and USFWS. At a minimum, wind turbines, MET towers, and supporting infrastructure should be prohibited within 5 times the height or 300 feet, whichever is greater, of:
 - a. a known nest or roost of a listed State or Federal threatened or endangered species or “species of special concern.”
 - b. a known or suspected migratory concentration or stopover point.

¹ See Marin County Development Code Title 22. See also California Energy Commission and California Department of Fish and Game. 2007. California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development. Commission Final Report. California Energy Commission, Renewables Committee, and Energy Facilities Siting Division, and California Department of Fish and Game, Resources Management and Policy Division. CEC 700 2007 008 CMF.

- c. known or suspected corridors that enable movement of special-status species, especially narrow corridors (e.g., a culvert), or corridors that are essential to landscape-level connectivity.
- d. wildlife nursery sites.
- e. an essential habitat element (e.g., burrow) for any threatened or endangered species.
- f. any plant listed as threatened or endangered, or that is a candidate for future listing as threatened or endangered, under the California Endangered Species Act (“ESA”) or federal ESA.
- g. any plant listed as rare under the California Native Plant Protection Act, or as a “List 1” or “List 2” species by the California Native Plant Society.
- h. all water courses, ponds, lakes, and other wetlands.
- i. all riparian habitat.
- j. previous and pending mitigation lands, conservation reserves, and lands encumbered by a conservation easement.
- k. State and Federal parks, refuges, wilderness areas, and other designated wildlife management areas.
- l. in any areas where impacts would threaten the persistence of a special-status species population.

Information on the resources listed above should be obtained through a biological field study in conjunction with a review of previously completed field studies; consultation with state and federal resource agencies and local experts; and queries of the California Natural Diversity Database, California Partners in Flight Database, and California Consortium of Herbaria Database.

- 7. Areas disturbed during construction should be restored to the native habitat and subject to inspection. Habitat restoration should begin as soon as possible after the completion of construction. The County, in conjunction with the resource agencies, should develop success standards for all restoration efforts. If restoration sites do not meet success standards within five years following construction, the wind turbine operator should be responsible for funding remedial actions conducted by a County-approved contractor or purchasing credits at an approved habitat conservation bank.
- 8. All wind turbines operators should provide compensation for permanent impacts to native habitat. Compensation could be achieved through: (a) the acquisition and permanent protection of replacement habitat; (b) purchasing

credits at an approved habitat conservation bank; or (c) contribution to a mitigation fund established by the County.²

9. The wind turbine operator should be responsible for erosion and sediment control on slopes disturbed during construction. Disturbed slopes should be subject to inspection, and the wind turbine operator should be responsible for funding remedial actions conducted by a County-approved contractor if the wind turbine site does not meet water quality standards.
10. The County should conduct and document the aforementioned inspections at the frequency necessary to ensure compliance.
11. All large wind energy facilities should be responsible for implementing the “California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development,” and all other survey and mitigation guidelines issued by the State and Federal resource agencies.³ The Ordinance must specify that compliance with these guidelines is mandatory.

Birds and Bats-

1. Projects should not be located in areas with a high incidence of fog and mist, or other meteorological conditions that cause low visibility.
2. All large wind energy facilities should develop an (a) Avian and Bat Protection Plan; and (b) Adaptive Management Plan. These plans should conform to guidelines issued by the USFWS. The Ordinance must specify that preparation and implementation of the plans is mandatory.
3. Wind turbines of any size should be prohibited:
 - a. at the edge of a steep slope, on a steep slope, or in a saddle, ravine, or canyon.
 - b. along ridgelines, in saddles of ridges, in saddles between ridges, and especially where saddles form the apex of ravines that face a prevailing wind direction.
 - c. on benches of hill slopes or ridges, or at the base of shoulders of hills (i.e., in locations of sudden elevation changes).
 - d. next to artificial rock piles or natural rock formations.
 - e. next to transmission towers, electric distribution poles, or litter control fences around a landfill .

² See National Wind Coordinating Collaborative. 2007 May. Mitigation Toolbox. Available at: <http://www.nationalwind.org/publications/wildlifewind.aspx>

³ California Energy Commission and California Department of Fish and Game. 2007. California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development. Commission Final Report. California Energy Commission, Renewables Committee, and Energy Facilities Siting Division, and California Department of Fish and Game, Resources Management and Policy Division. CEC 700 2007 008 CMF.

- f. where slope-accelerated winds would likely position a raptor at the height domain of the rotor plain of functional turbines, including where lips in the slope can locally accelerate winds.⁴
4. Facilities shall be designed to discourage their use as perching or nesting substrates for birds.
5. Ground disturbance should be conducted outside of the avian breeding season. If vegetation clearing cannot occur outside the avian breeding season, a County-approved biologist should conduct a preconstruction survey for nesting birds no more than seven days prior to vegetation clearing.
6. Unavoidable impacts to birds and bats should be compensated. Feasible compensation measures include protecting habitat that benefits birds and bats, acquiring high-priority conservation sites, and implementing management actions that benefit species affected by wind-energy (among other potential measures).⁵
7. The County should implement a scientific study designed to examine the effects of small wind turbines on birds and bats. Data obtained from the study should be used to make informed decisions on turbine siting and adaptive management practices.
8. The County should develop a program that encourages wind turbine operators to report bird and bat fatalities. Fatality data should be kept in a County-maintained database.
9. The County, in conjunction with state and federal wildlife professionals, should establish acceptable mortality thresholds for target bird and bat species.
10. The County should conduct a scientifically defensible monitoring study to estimate fatality levels associated with wind turbines.
11. The County must establish a contingency plan to implement if operational monitoring shows unacceptable impacts to birds and bats or their habitat.
12. If significant mortality rates cannot be resolved, then turbines should be shut down during periods of peak risk to birds or bats.

Golden Eagle-

1. Wind turbines should be located at least six miles from a golden eagle nest.⁶

⁴ See Scientific Review Committee for the Altamont Pass Wind Resource Area. 2010 May 23. Guidelines for siting wind turbines recommended for relocation to minimize potential collision-related mortality of four focal raptor species in the Altamont Pass Wind Resource Area. Available at: www.altamontsrc.org/alt_doc/p70_src_relocation_guidelines.pdf

⁵ Smallwood KS, C Thelander. 2004. Developing Methods to Reduce Bird Mortality in the Altamont Pass Wind Resource Area. Prepared by BioResource Consultants for the California Energy Commission Public Interest Energy Research (PIER) Program, Report #500-04-052.

⁶ USFWS. 2010 Sep 20. Request for Comments on the Application for Site Certification for the Proposed Summit Wind Ridge project, Wasco County, Oregon.

2. All large wind energy facilities should develop an Eagle Conservation Plan that conforms to the guidelines issued by the USFWS. The Ordinance must specify that preparation and implementation of the plan is mandatory.
3. The County should not approve any project that does not comply with the Bald and Golden Eagle Protection Act.
4. Individuals that propose turbines that may impact the golden eagle should be required to provide compensatory mitigation such that the net effect on the eagle population is, at a minimum, no change. Feasible compensation measures are described in the USFWS's Draft Eagle Conservation Plan Guidance. These include retrofitting "lethal" power poles and provision of funding for eagle conservation.