

RECOMMENDED MODIFICATION TO PROPOSED FINAL EIR

Staff recommends that the following text be inserted into Mitigation Measure BIO-16.d *Adaptive Management Plan* (AMP); Level 2 – Response Options; following #4 on Page 3.5-108 of the proposed Final EIR. (Please refer to the discussion in Section 6.1.1.1 of this staff report.)

5. WTG Shutdowns. Special preventative measures shall be implemented if large-scale bird or bat mortality events are foreseeable. Shutdown or operational restrictions shall be required for specific WTG(s) if the Director of Planning and Development, in consultation with the California Department of Fish and Game, makes all of the following determinations:
 - i. Fatalities of Federal or California Listed Species, California Fully Protected Species, or non-listed sensitive bird or bat species, resulting from WTG collisions at a specific location (i.e., a single WTG or group of up to 3 WTGs), exceed the Level 2 Thresholds established for the entire project (e.g., more than 2 golden eagle fatalities at a location within a year);
 - ii. The mortality monitoring studies conducted pursuant to Condition Bio-16.b demonstrate that the fatalities are caused by the identified WTG(s) and the fatalities follow a distinct pattern that indicates excessive fatalities (as defined in Subsection (i) above) will predictably recur at that location, and that operational restrictions on the specific WTG(s) will significantly reduce future fatalities;
 - iii. All other Level 2 Response Options that could potentially reduce fatalities have been considered and cannot be implemented within the time required to reduce the impending, excessive fatalities;
 - iv. The required WTG shutdowns or operational restrictions have not been found infeasible.

The owner/operator shall implement the required shutdown(s) or operational restrictions within 24 hours of notification by the Director. Shutdowns or operational restrictions shall be limited to the specific WTG(s) responsible for excessive fatalities. Shutdowns may include temporary or permanent shutdowns. Operational restrictions means restricted operating hours during periods of elevated risk to birds and bats, based on substantiated, case-specific risk factors (which could include time of day, season, weather, etc.). Shutdown or operational restriction requirements shall be designed to minimize impacts to electrical generation to the maximum extent feasible, consistent with reducing excessive fatalities of protected and sensitive species.

Upon request by the permittee, the Director shall hold a hearing within 4 business days to consider whether the shutdown or operational restriction should continue. The permittee's request shall include all evidence supporting the request. The Director shall determine whether continuation of the shutdown(s) or operational restrictions are warranted, based on the above criteria (i. to iv.), including financial feasibility. The Director may amend, lift, or extend the shutdown or operational restrictions at the hearing or subsequently.

The owner/operator may appeal the Director's decision to the Planning Commission, as provided in Section 35.102.040 of the Land Use and Development Code. The Planning Commission shall hold a noticed public hearing on the appeal no later than the first regularly scheduled hearing at or after 45 days of the filing of an appeal. The appeal shall include a detailed explanation of the objection, which may include financial infeasibility, and any relevant supporting information or data. Technical or financial information pertinent to the Planning Commission decision, but which the owner/operator claims to be confidential or proprietary, may be provided to the Director under a claim of confidentiality. Any financial information provided shall be certified by the owner/operator's chief financial officer. The Planning Commission decision may be appealed to the Board of Supervisors. If so, the Planning Commission decision shall remain in force pending a final decision by the Board.

Further WTG shutdowns or restricted operations shall not be required after the conclusion of mortality monitoring, as provided in measure Bio-16.d. (See *Level 1 – First Alert and Enhanced Survey, above.*)