



MARIN COUNTY
COMMUNITY DEVELOPMENT AGENCY

ALEX HINDS, DIRECTOR

STAFF REPORT TO THE PLANNING COMMISSION

Schlesinger Appeal and McEvoy Appeal of the Deputy Zoning Administrator's
Conditional Approval of the McEvoy Use Permit and Design Review

Item No:	2.	Application No:	UP 03-31/DR 03-67
Applicant:	Russ Morita	Owner:	Nan McEvoy
Property Address:	5935 Redhill Road, Petaluma	Assessor's Parcels:	125-070-05, -06, and -16
Hearing Date:	October 10, 2005	Planner:	Curtis Havel

RECOMMENDATION:	Deny the appeals and conditionally approve the project
APPEAL PERIOD:	10 calendar days to the Board of Supervisors
LAST DATE FOR ACTION:	October 24, 2005

SUMMARY RECOMMENDATION:

The action to be considered by the Planning Commission consists of appeals filed by the applicant and neighbor of the Deputy Zoning Administrator's conditional approval for a wind energy conversion system (WECS) on the 552-acre McEvoy Olive Ranch in unincorporated Petaluma. Staff recommends that the Planning Commission deny both appeals and affirm the Deputy Zoning Administrator's conditional approval of the McEvoy Use Permit and Design Review application.

PROJECT DESCRIPTION:

The applicant is requesting Use Permit and Design Review approval to construct the following improvements on the McEvoy Olive Ranch in Petaluma: (1) a 660 kilowatt (kW), approximately 210-foot tall wind energy conversion system (131-foot tall tubular tower with 154-foot diameter rotor) for the generation of electricity; (2) an approximately 19.5-foot tall, 1,900 square foot accessory dwelling unit for the assistant orchard manager; and (3) 1,415 square feet of office and storage additions onto the existing olive pressing barn building.

The proposed wind energy conversion system (WECS) consists of a 40-meter (131.2 feet) tall tubular tower with an 11-foot diameter base mounted with a Vesta V47 wind turbine. The Vesta V47 wind turbine rotor has a radius of 23.5 meters (77 feet). The WECS would have setbacks of 730 feet to the easterly property line, approximately 1,400 feet from the residence located on the Reichel property (Assessor's Parcel 125-070-15), and approximately 1,310 feet from the residence located on the Schlesinger property (Assessor's Parcel 125-520-01). Electricity generated by the wind turbine would feed into a Pacific Gas and Electric (PG&E) connection at the base of the tower then connect to an existing PG&E service lateral on the property. The WECS would be painted with a white matte finish, and would include a shielded upright on the nacelle (the enclosed part of the wind turbine in which the generator is located) of the wind turbine for aircraft safety in compliance with Federal Aviation Administration (FAA) standards.

The proposed office and storage additions would incorporate heights, colors and materials to match the existing olive pressing barn building. Proposed building materials for the accessory staff dwelling unit include composition shingle roofing with board and batten siding. As proposed, the accessory dwelling would be located approximately 290 feet from the existing residence to the west and 260 feet from the storage and maintenance building to the southwest.

Use Permit approval is necessary for the expansion of the olive processing facilities. Design Review approval is necessary for the addition of additional building area in excess of 4,000 square feet, and for the construction of the WECS.

SUMMARY OF APPEALS:

Two appeals were filed in response to the Deputy Zoning Administrator's (DZA) conditional approval of the wind energy conversion system (WECS). Sumner Schlesinger, neighbor, filed an appeal asserting that the WECS will result in noise and visual impacts and impacts to avian resources, and would be incompatible with the rural setting of the area. Russ Morita, applicant representing the property owner Nan McEvoy, filed an appeal asserting that the project, as modified by the DZA, made the project infeasible because the modified siting would be problematic from a geotechnical standpoint and would violate provisions of the Marin County Code with respect to setbacks from property lines and nearby residences, and that conditions of approval make the project infeasible because the only available WECS for purchase would have a total height of 246 feet (164-foot tall tower and rotor radius of 82 feet), with a tower base diameter of 12 feet, and a maximum turbine power of 750 kilowatts.

An analysis further discussing both appeals is provided in the ensuing report.

GENERAL INFORMATION:

Countywide Plan:	AG1 (Agricultural, 1 unit per 30 to 60 acres)
Zoning:	A-60 (Agriculture and Conservation District, 60 acre minimum lot size)
Lot size:	552-acres
Adjacent Land Uses:	Agricultural and residential
Vegetation:	Native grass and woodland habitats, and various introduced agricultural crops
Topography and Slope:	Varied topography
Environmental Hazards:	None identified

ENVIRONMENTAL REVIEW:

The Environmental Coordinator has determined that this project is Categorically Exempt from the requirements of the California Environmental Quality Act pursuant to Section 15303 of the CEQA Guidelines because it entails improvements that are accessory to the primary agricultural use of the land and would not result in significant amounts of grading, tree removal or other adverse impacts on the environment.

The construction of one wind energy conversion system (WECS) would not result in adverse impacts to the environment. Staff reviewed the Natural Diversity Database Maps (NDDB) prepared by the California Department of Fish and Game on file at the Community Development Agency and did not find any listed bird or animal species on or near the subject property that would be adversely impacted by the construction of the WECS. The WECS is not located in an area that is a known corridor for raptor migration and there has been no evidence presented that any significant raptor mortality will occur at the site. The design of the WECS includes a tubular tower, no guywires, and slow rotor speeds which further reduces the possibility of impacts to avian resources. Finally, the construction of the WECS would be consistent with policies in the Marin Countywide Plan because the project would further the development of renewable energy systems and, as estimated by the applicant's energy consultant, would lower carbon dioxide emissions by 295 tons on an annual basis.

The construction of a detached agricultural worker dwelling unit and construction of an addition onto the existing olive processing facility would not result in any adverse impacts to the environment because the project would not entail excessive amounts of grading, any tree removal, and would be consistent with existing agricultural operations at the property.

PUBLIC NOTICE:

The Community Development Agency has provided public notice identifying the applicant, describing the project and its location, and giving the earliest possible decision date in accord with California Government Code requirements. This notice has been mailed to all property owners within 600 feet of the subject property.

BACKGROUND:

The McEvoy Olive Ranch is located 4 miles west of Highway 101 and takes access via a shared private driveway off Redhill Road. The 552-acre property is generally bowl shaped with wooded hillsides to the west and southwest, a grassland saddle to the east, and Redhill Road and Point Reyes Petaluma Roads to the north and northwest. Changes in elevation range from 350 feet up to 1,200 feet with the primary agricultural, residential, and storage buildings being located at the lower elevations of the property (approximately 400 feet).

The property is agriculturally developed with an organic olive orchard and contains facilities to process olives into olive oil. The operation produced 1,100 gallons of olive oil in 2002 and annual yield at full production is estimated to be approximately 4,000 gallons of olive oil as the olive orchard matures. Based on projected growth of the business, the applicant is proposing to construct a 1,415 square foot office and storage addition, a new 1,900 square foot accessory dwelling unit for a full-time assistant orchard manager, and a wind energy conversion system (WECS) to provide electricity for the agricultural operation.

The appeal filed by Russ Morita, project applicant, on behalf of the property owner, Nan McEvoy, was submitted in part to introduce a revised project for the Planning Commission's consideration. The applicant has proposed that the modified WECS be located approximately 300 feet to the south of the originally proposed site, 660 feet from the nearest (easterly) property line and 1,410 feet from the nearest residence. Furthermore, the applicant is no longer able to obtain a Vestas V-47 wind turbine that was approved by the DZA because the manufacturer no longer produces that model. Therefore, the appeal filed by the applicant objects to the conditions of approval that restrict the approved WECS to a Vestas V-47 that would have a maximum height of 210 feet. The applicant has proposed that the project be modified to allow a WECS that would have a total height of 246 feet (164-foot tall tower and rotor radius of 82 feet), with a tower base diameter of 12 feet, and maximum turbine power of 750 kilowatts.

Further analysis of the appeals is provided below.

COUNTYWIDE PLAN CONSISTENCY:

The project, as modified herein, is consistent with the Countywide Plan's Agricultural (AG-1, one unit per 30 to 60 acres) land use designation for the property (Policy CD-8.8) because the WECS would be incidental to and supportive of the ongoing agricultural operations at the property. The proposed development would conform to the 100-foot Streamside Conservation Area setback (Policies EQ-2.3 and EQ-2.4), would retain the natural vegetation, prevent water pollution, and minimize flood hazards from runoff (Policy EQ-3.21), would minimize the extent of excavation, grading, and filling on the property (Policy EQ-3.16), and would preserve existing mature trees (Policy EQ-3.14). The WECS does not possess sufficient mass or bulk to obstruct or significantly detract from views or vistas and does not require the removal of any trees (Policy EQ-3.11).

The WECS would support existing agricultural uses, would further policies contained in the Agriculture Element which promote the preservation of agricultural lands because the project, and would result in the intensification and diversification of agricultural uses on the property and the long-term preservation of agricultural productivity on the land through utilization of renewable energies consistent with organic farming practices currently being practiced by the agricultural operators (Policy A-1.4).

The WECS would also be consistent with the Noise Element of Countywide Plan, which refers to specific maximum noise levels for WECS established in the County's zoning regulations (Countywide Plan Section IV.C.2, Page N-8). As discussed below, the WECS would comply with these maximum allowable noise levels. Based on these factors, the project is consistent with the Countywide Plan.

ZONING CONSISTENCY:

The proposed WECS would be consistent with the A-60 zoning district and Marin County Code Section 22.32.180 (Wind Energy Conversion Systems). In summary, Marin County Code Section 22.32.180.D.2 establishes requires that a non-commercial WECS be located at least 1.25 time the total height of the WECS from any public highway, road, or lot line, and the WECS must be located at least 5 times the total height of the WECS from residential dwelling on an adjacent property.

The project is consistent with the afore-mentioned standards for the following reasons: (1) the lowest position of the WECS blade would be at least 54 feet above the grade at the base of the tower, which is well above the 30-foot minimum distance required per Marin County Code Section 22.32.180.D.1.a; (2) the WECS would meet the setback requirements of the A-60 zoning district and would be set back a distance well beyond the total height of the WECS from any residence and any other habitable structure; (3) the WECS would be located on an agricultural parcel greater than 5 acres in size; (4) the nearest adjoining parcels are greater than 5 acres in size and the WECS would be located a distance greater than five times the total height of the WECS (1,050 lineal feet) from residential dwellings on adjoining parcels; (5) the noise study provided by the project applicant indicates that the WECS would have a noise levels of 60 decibels at a distance of 40 meters (131 feet) from the turbine and 45 decibels at the nearest property line where a noise level of 60 decibels is allowed; and (6) the WECS would not be sited on a ridgeline that serves as a community separator and would not be located in a residentially zoned area.

PROJECT ANALYSIS:

This analysis focuses on the proposed WECS because both appeals are related to the WECS. The WECS, as modified by conditions of approval imposed by the Deputy Zoning Administrator, satisfies the requirements for WECS and findings for Design Review approval contained in Chapters 22.32 and 22.42 of the Marin County Code.

At the Deputy Zoning Administrator's Hearing of August 25, 2005, the Hearing Officer explained that the County is moving towards implementing more renewable energy resources as evidenced by policies in the proposed Countywide Plan update. For example, Countywide Plan Goal EN-2 and Policies EN-2.1 through EN-2.4 discuss increasing renewable resource uses by protecting local renewable resources and promoting renewable energy. Table 3-16 and Implementing Program EN-2.b of the Countywide Plan specifically identify wind as a renewable energy resource to be protected and promoted. Additionally, Section 22.32.180 of the Marin County Development Code lists a WECS as a permitted use subject to several requirements as discussed above in the *Zoning Consistency* section.

The Deputy Zoning Administrator's conditional approval of the project is an attempt to balance the County's goal for energy conservation and visual resource protection. The WECS would minimize reliance on fossil fuels and would be compatible with the existing agricultural land uses at the site and in the surrounding vicinity. In an effort to address merits issues related to Design Review findings, the Deputy Zoning Administrator (DZA) required the following conditions of project approval:

- The applicant is required to locate the WECS a vertical distance of 30 feet downhill (north-northeast) from “proposed windmill site #1,” to the east of the oak covered knoll. The final proposed location is to be determined in consultation with the neighbors, and subject to the review and approval of the Marin County Community Development Agency Director.
- The tower and nacelle (the enclosed part of the wind turbine in which the generator is located) are required to be painted a matte finish to match to color of the summer hills. In response to concerns raised during the DZA hearing (although no evidence was provided that the WECS would result in significant numbers of avian strikes), the rotors are required to be painted white or whatever color is determined by a qualified avian consultant to present maximum visibility to birds without increasing reflectivity to the human eye. The tips of the blades are required to be painted consistent with Marin County Code.
- Although no evidence was revealed that the project would result in significant impacts to the environment, the applicant is required to present a report from qualified rodent control and avian/raptor consultants that: (1) provides a baseline for current avian/raptor levels, including during the fall migration; (2) contains recommendations on how to minimize WECS impacts to avian species, including year-round control of rodents within whatever area around the WECS is determined to be a danger to raptors; and (3) lists a program for ongoing monitoring of avian/raptor levels and WECS impacts for a three year period. The reports from the consultants addressing those issues would be provided annually to the Community Development Agency.
- Finally, conditions would require lighting to be the minimum intensity allowed by FAA regulations, be shielded from direct ground view to the greatest extent allowed, and all electrical lines associated with the WECS would be placed underground.

ANALYSIS OF APPEALS:

Two appeals were filed related to the proposed wind energy conversion system:

- Sumner Schlesinger, neighbor, set forth the following bases of appeal: (1) the overall height and scale of the WECS will impact views and vistas in the area; (2) the WECS will generate excessive noise levels; (3) the proposed uplight located on the nacelle of the WECS will result in nighttime lighting impacts; (4) the WECS will not be compatible with the rural setting of the general vicinity; (5) the project will impact raptor and other avian resources; and (6) the siting of the WECS as modified by conditions of approval would locate the WECS closer to single-family dwellings on adjacent properties, and would violate the setback requirements of the Marin County Development Code for WECS.
- Russ Morita, applicant and appellant representing property owner, Nan McEvoy, set forth the following bases of appeal: (1) the siting as modified by conditions of approval would be problematic from a geotechnical standpoint due to ridge grade and soil composition at that location and would violate the setback requirements of the Marin County Development Code for WECS; (2) the WECS cannot be painted to comply with conditions of approval because painting over the manufacturer’s standard coating may affect the tower’s resistance to corrosion and void the manufacturer’s warranty; and (3) the WECS cannot be constructed to specifications listed in conditions of approval because the only available WECS for purchase would have a total height of 246 feet (164-foot tall tower and rotor radius of 82 feet), tower base diameter of 12 feet, and maximum turbine power of 750 kilowatts.

Schlesinger Appeal

1. *Visual Prominence*

The appellant asserts that the overall height and scale of the WECS will impact views and vistas in the area, potentially impacting property values. The appellant raised concerns that the tower height (whether 132 feet tall or 165 feet tall) is excessive and would result in a visually prominent and “monumentally high structure.”

Marin County Code Section 22.32.180.E establishes standards for the appearance and visibility of private WECS as generally follows:

- Locating WECS back from visually prominent ridgeline to minimize visual contrast from public access.
- Ensuring that WECS do not significantly impair a scenic vista or corridor.
- Minimizing adverse visual impacts from neighboring residential areas to the greatest extent feasible.
- Avoiding the visibility of brand names or advertising associated with the WECS from public access areas.
- Minimizing visual disruption through the use of appropriate colors and surface treatment for the WECS and supporting structures.
- Requiring air traffic warning lights where WECS exceed a total height of 175 feet.

The applicant hired Robert Gould of System Design to conduct a wind study of two different sites at the property. The wind study measured wind conditions from May 2001 through May 2004 (Attachment 20). The two sites were chosen for the primary wind evaluation due to historically consistent greater wind speeds, and because the proposed locations are closer to the main existing electrical line which provides the property with electricity. Furthermore, the consultant judged the remainder of the property to be of little value because of steep terrain, lack of sufficient elevation, or location outside the path of prevailing wind flow over the ranch.

The WECS, while partially visible from off-site residential areas and other locations, is compatible with the surrounding agricultural land uses and would reduce reliance upon fossil fuels for electricity production, as encouraged by the Countywide Plan (Policy CD 4.5). The WECS does not possess sufficient mass or bulk to obstruct views or vistas from roadways and adjoining properties. The WECS would not be sited on a ridgeline that serves as a community separator. The WECS maintains adequate separation from property lines and residential dwellings on adjacent properties consistent with Marin County Code Section 22.32.180. The total height of the WECS (including rotor) is 210 feet, and therefore requires air traffic warning lights. Finally, unlike a commercial windplant, the project is limited to one WECS for a private agricultural use. Therefore, the construction of one WECS would not result in development that significantly obstructs views and vistas.

2. *Noise*

The appellant is asserting that the noise of the wind energy conversion system (WECS) would disrupt noise levels in the area because the site and surrounding areas are presently very quiet. Marin County Code Section 22.32.180.F requires noise level of WECS to be less than 60 decibels at the property line in agricultural zoning districts.

The proposed WECS would be located over 600 feet from the nearest property line. Based on information provided by the applicant regarding sound pressure levels contained in Table 6d on page 20 of the “General Specification 660 kW Variable Slip Wind Turbines,” (see Attachment 23) the proposed WECS would have noise level of approximately 47 decibels at the nearest property line where a maximum of 60 decibels is allowed at the property line in an agricultural zoning pursuant to Marin County Code Section 22.32.180.F. It is also important to note that the WECS will not be operating during windless periods, and therefore would

not be generating any noise. During operation of the WECS, the noise generated by the wind would likely mask any rotor noise produced by the WECS.

In conclusion, the manufacturer's specifications provided by the applicant indicate that the WECS will produce noise levels of 45 decibels to 47 decibels at the property line, well below the 60-decibel threshold established by the Marin County Development Code. Based on the reasons discussed above, the WECS would not result in significant increases of noise levels in the vicinity of the project site.

3. *Nighttime Safety Lighting*

The appellant is asserting that the Federal Aviation Administration (FAA) safety lighting requirements would create nighttime lighting impacts. In addition to FAA requirements, Marin County Code Section 22.32.180.E requires WECS in excess of 175 feet in height be equipped with air traffic warning lights and painted rotor blade tips consistent with FAA requirements.

Rural areas in this portion of Marin generally do not experience the same type of nighttime lighting encountered in the more populated, urban areas. However, it is not uncommon to view the nighttime lighting of a number of agricultural operations throughout western Marin County. Agricultural operations commonly conduct work as necessary in response to events at the ranch or farm.

The applicant has indicated that the required safety lighting would be located on top of the turbine nacelle (the enclosed part of the wind turbine in which the generator is located) and would be equipped with a shielded, up-light to minimize any lighting disturbances below the WECS. While the lighting would be visible from off-site locations, staff maintains that the lighting would not cast glare onto adjacent properties or otherwise have an intensity that would disrupt the reasonable enjoyment of such properties.

In conclusion, the safety lighting required by the FAA and the Marin County Code will be shielded to the greatest extent feasible and, per conditions of approval, would be of minimum intensity consistent with FAA regulations. Based on the discussion above, the required safety lighting would not result in nighttime lighting impacts that are inconsistent with agricultural operations.

4. *Community Compatibility*

The appellant asserts the WECS would be incompatible with the rural setting, and that the project would set a precedent that will alter the future character of west Marin. Additionally, the appellant has expressed concerns that the project does not address how the WECS will be dismantled when it is no longer in use.

Pursuant to Table 2-1 of Marin County Code Section 22.08.030, two or fewer WECS are permitted uses in Agriculture and Conservation zoning districts subject to Design Review approval. The Design Review process and findings are supported by Marin County Code Section 22.32.180 which establishes site and design requirements for WECS, such as setback requirements from property lines and maximum noise levels for WECS. The Marin County Code specifically states, "WECS shall be designed and located to minimize adverse visual impacts from neighboring residential areas, to the greatest extent feasible."

However, the Marin County Code does not require that a WECS be invisible or substantially hidden from off-site locations, or be limited to a certain height. Furthermore, the fact that modern windmills are not commonly found in West Marin does not mean that the construction of a WECS is categorically incompatible with the prevailing community character.

The project would not establish a precedent for the widespread development of WECS throughout West Marin because the Marin County Code already identifies WECS as being a permitted use in agricultural zoning districts subject to Design Review approval. Through the discretionary review process, a review body can determine whether the proposed project is approvable as proposed, or whether it should be modified by conditions of approval. For example, the review body could establish conditions requiring the removal of a

WECS after a period of non-use, although the Marin County Code does not prescribe measures relating to the future dismantling of WECS.

In conclusion, the WECS, while partially visible from off-site locations, is compatible with the surrounding agricultural land uses and would reduce reliance upon fossil fuels for electricity production. Windmills have long been associated with agricultural operations throughout the state and nation. The project is not for a commercial windplant, and any subsequent proposals for WECS development in Marin County would be subject to discretionary review and approval. Furthermore, the Marin County Code identifies WECS as permitted uses in agricultural zoning districts. Therefore, the project would not significantly alter the character of the rural setting and on balance would provide a renewable source of energy that works towards protecting Marin's agricultural heritage.

5. *Avian resources*

The appellant asserts that the project may negatively impact native and migrating raptor populations due to the nature of the project. Earlier comments were made that the project would result in impacts similar to the Altamont Pass windplant located in the East Bay.

The A-60 zoning district (Agriculture and Conservation District, 60 acre minimum lot size) allows two or fewer WECS as a principally permitted use (Table 2-1, Marin County Code Section 22.08.030, Table 2-1) subject to the provisions of Marin County Code Section 22.32.180. Furthermore, the information available to staff at the time of the preparation of this staff report has not revealed that any listed bird or animal species would be adversely impacted by this project. Staff reviewed the Natural Diversity Database Maps (NDDB) prepared by the California Department of Fish and Game on file at the Community Development Agency and did not find any listed bird or animal species on or near the subject property that would be adversely impacted by the construction of the WECS.

Written comments provided by the appellant and testimony at the Deputy Zoning Administrator hearing cited studies and impacts from the Altamont Pass windplant, but did not present evidence or factual information specifically related to the proposed project. It is important to point out that the Altamont Pass windplant is of a much larger magnitude than the one WECS proposed to be constructed at the subject property (for purposes of comparison, there are over 5,400 WECS within a 50-square mile area at the Altamont Pass windplant compared to one proposed WECS at the project site). Furthermore, the Altamont Pass windplant project demonstrated that guywires, high wind turbine rotational velocity, and perching areas for birds significantly contributed to avian mortality rates.

The proposed project is for one WECS located on an agriculturally developed property and is not considered to be a commercial WECS operation because the WECS would produce energy for the farm, not for greater energy distribution and sales. The proposed WECS would locate the wind turbine atop a tubular tower and does not require guywires to keep the tower upright. The proposed WECS has a wind turbine rotational velocity of 28 rotations per minute (rpm) which is relatively slow compared to older wind turbines in the Altamont Pass area. The rotor of the proposed WECS only rotates in airspeeds of 9 miles per hour (mph) to 35 mph. The turbine will not rotate in airspeeds less than 9 mph or greater than 35 mph. Finally, the WECS does not contain suitable perching areas for birds.

The National Wind Coordinating Committee prepared a national study entitled "Avian Collisions with Wind Turbines: A Summary of Existing Studies and Comparisons of Avian Collision Mortality in the United States," in August of 2001. The study examined the rate of avian mortality as it relates to larger windplants on a national scale. While this project entails the construction of one solitary WECS and not a large commercial windplant, the data can be used to extrapolate information for this project. A portion of the conclusion is provided below and is available for further review on-line at http://www.west-inc.com/reports/avian_collisions.pdf.

Using the annual avian collision mortality estimate of 200-500 million, we estimate that at the current level of development, wind turbines constitute 0.01 percent to 0.02 percent (1 out of every 10,000 to 2 out of every 10,000) of the avian collision fatalities. Communication tower fatality estimates make up 1-2 percent (1 out of every 100 or 2 out of every 100) using the conservative estimates of 4 million annual avian fatalities due to collisions with these structures. The low range estimate from buildings/windows of 98 million (Klem 1991) would comprise approximately 25 to 50 percent of the collision fatalities. The low range estimate of 60 million vehicle collision fatalities comprises 15-30% of the total estimated collision fatalities. Our very wide range for estimates of powerline collision fatalities (>10,000 – 174 million) makes it extremely difficult to quantify the percentage of total fatalities due to this source. Nevertheless, we expect the total collisions with powerlines to be much higher than the total collisions with wind turbines given the number of miles of high-tension lines that exist across a wide range of habitats in the U.S. Given the uncertainty in the estimates, the true avian mortality, especially for communication towers, buildings and windows, powerlines and roads, could easily be different by several orders of magnitude.

Tom Willard, energy consultant to the applicant, has commented that the possible avian mortality rates considered for the proposed project are based on worst-case scenarios from data produced by the Altamont Pass project. Relying upon that data, 0.19 raptors are killed per year per WECS. In the case of one WECS standing alone, that accounts for 1 raptor kill every 5 years. An important distinction is that this data is for a windplant with over 5,000 wind turbines located in an area that is a corridor for raptor migration. The proposed project consists of one WECS located in an area that is not listed as a known raptor migratory corridor. Based on information available to staff, there are no known protected/listed bird species present at the site and there has been no evidence presented that any significant raptor mortality will occur at the site.

6. *Siting*

The appellant asserts that the siting of the WECS as modified by conditions of approval would locate the WECS closer to single-family dwellings on adjacent properties, and would violate the setback requirements of the Marin County Development Code for WECS.

Marin County Code Section 22.32.180.D.2 establishes setback for non-commercial WECS. In summary, a WECS must be located at least 1.25 times the total height of the WECS from any public highway, road, or lot line, and the WECS must be located at least 5 times the total height of the WECS from residential dwelling on an adjacent property.

Along with their appeal, the applicant provided a tentative partial site plan indicating the approved site location setbacks. The partial site plan depicts the WECS being located 610 feet from the nearest property line, and 1,030 feet from the nearest dwelling. The WECS approved by the Deputy Zoning Administrator has a total height of 210 feet. Therefore the WECS would be required to maintain a setback of at least 263 feet from the nearest property line, and 1,050 feet from the nearest dwelling on an adjacent parcel.

The Deputy Zoning Administrator imposed a condition of approval that the final location of the WECS was to be resolved prior to issuance of a Building Permit in consultation with the neighbors. The project approved by the Deputy Zoning Administrator would satisfy the setback for WECS established by the Marin County Code because the WECS would be located well over 1.25 times its total height from the nearest property line. Although the partial site plan indicates the WECS would be located 1,030 feet from the nearest dwelling on an adjacent property (20 feet less than required), the site plan is not survey quality and a distance of 20 feet would be easily accommodated in the siting of the WECS.

Based on the discussion above, the project approved by the Deputy Zoning Administrator would meet the setback requirements for WECS established by Marin County Code Section 22.32.180.D.2.

McEvoy Appeal

1. *Siting*

The appellant asserts the siting as modified by conditions of approval would be problematic from a geotechnical standpoint due to problematic soil composition at that location, and the modified would violate the setback requirements of the Marin County Development Code for WECS. Please refer to the discussion contained in basis of appeal item 6 above for discussion relating to the setback requirements for WECS.

Although the appellant asserts that the modified siting would be problematic from a geotechnical standpoint, no evidence has been provided to support this claim. Department of Public Works (DPW) staff reviewed the proposed project and required that a soils stability report be submitted for the project prior to the issuance of a Building Permit. Typically, if there are geotechnical issues that could be problematic, DPW staff will require a geotechnical report as a matter of completeness to determine if the project is feasible from a geotechnical standpoint.

As no factual information has been submitted supporting the appellant's claims that the modified siting would be problematic the project, and because DPW staff has reviewed the project and found it to be generally feasible, the modified siting is appropriate.

2. *Color treatment*

The appellant asserts that the WECS cannot be painted to comply with conditions of approval because painting over the manufacturer's standard coating may affect the tower's resistance to corrosion and void the manufacturer's warranty.

As discussed earlier in this document, WECS are subject to Design Review and as such colors and surface treatments should minimize visual disruption. The purpose of the condition requiring a modification to the color of the WECS was to blend it into the surrounding natural environment by painting it a color that matches the summertime hillsides.

Based on the discussion above and discussion contained within the Marin County Development Code, it is not the Community Development Agency's responsibility to ensure that a manufacturer's warranty is preserved, but rather to minimize the visual prominence of a structure and to address merits issues through the Design Review process. The condition of approval requiring a change to the color of the WECS helps to achieve this goal, and therefore is a reasonable requirement.

3. *Conditions of Approval*

The appellant asserts that the conditions of approval adopted by the Deputy Zoning Administrator render the project infeasible because the WECS cannot be constructed to specifications listed in conditions of approval. The appellant has submitted revised information relating to siting and the WECS specifications.

The revised WECS would have a total height of 246 feet (164-foot tall tower and rotor radius of 82 feet), tower base diameter of 12 feet, and maximum turbine power of 750 kilowatts. The revised WECS would be sited approximately 320 feet to 450 feet south-southwest from the site approved by the Deputy Zoning Administrator. The revised WECS would represent an increased total height of 36 feet and would be located 100 feet and 220 feet further away to the south and west from dwellings on adjacent properties.

The applicant has indicated that the revised WECS is necessary because the manufacturer no longer provides the Vestas V-47 and the only available WECS to provide sufficient energy to the ranch is the Vestas V-48 which is larger than the originally proposed project. Staff is unable to make findings that the revised project would be in substantial conformance with the originally proposed project. However, please refer to the discussion below regarding the project alternative.

CONCLUSION:

The WECS would minimize reliance on fossil fuels and would be compatible with the existing agricultural land uses at the site and in the surrounding vicinity. The project would advance Countywide Plan policies supporting agriculture and use of renewable energy resources and the Deputy Zoning Administrator's decision strikes a balance between neighbor's concerns about visibility with the applicant's desire to supplement their energy needs.

As an alternative to staff's recommendation, the Planning Commission may wish to consider the revised WECS proposed by the Russ Morita (applicant/appellant) which would consist of a 164-foot tall tower, 82-foot rotor radius, tower base diameter of 12 feet, and maximum turbine power of 750 kilowatts. As discussed above, the revised WECS proposal put forward by the applicant/appellant would be marginally larger and would be located a greater distance from dwellings on adjacent properties. Please refer to Attachment 3 for a partial site plan and more information regarding design specifications.

RECOMMENDATION:

Staff recommends that the Planning Commission review the administrative record, conduct a public hearing, and move to adopt the proposed resolution denying both appeals and sustaining the Deputy Zoning Administrator's action by conditionally approving the McEvoy Use Permit 03-31 and Design Review 03-67.

- Attachments:
1. Proposed Resolution recommending approval of the McEvoy Use Permit 03-31 and Design Review 03-67
 2. Sumner Schlesinger Petition for Appeal, 9/6/05
 3. Russ Morita for Nan Tucker McEvoy Petition for Appeal, 9/6/05
 4. Minutes and approved resolution from the August 25, 2005 hearing of the Deputy Zoning Administrator
 5. CEQA Exemption
 6. Location Map
 7. Site Plan
 8. Floor Plan
 9. Building Sections
 10. Elevations
 11. Visual simulation
 12. Letter from Charles Post, 9/29/05
 13. Letter from the Marin Conservation League, 9/22/05

The following attachments were provided to the Planning Commissioners only. They are available for public review at the Community Development Agency, Planning Division during regular business hours: Monday through Friday, 8:00 am to 4:00 pm.

14. Correspondence from Maggie Rufo, 8/15/05
15. Correspondence from Susie Schlesinger, 8/17/05, 8/3/05, 7/15/05 and 6/14/05
16. Marin County Fire Department Memorandum, 7/1/05
17. Department of Public Works, Land Use and Water Resources Memorandum, 6/28/05
18. Marin County Environmental Health Services Transmittal, 6/23/05 and 6/21/05
19. Correspondence from Sumner Schlesinger, 6/21/05, 5/9/05, and 7/24/03
20. Wind Measurement Study, 7/31/04
21. Letter from the Marin County Farm Bureau, 5/27/03
22. Wind Turbine Generator Information prepared by Bob Gould, 12/17/02
23. General Specification 660kW Variable Slip Wind Turbines (40 meter)
24. Letter from Donald Reinberg, 8/16/05
25. Letter from Allen Fish, 8/16/05
26. Letter from Jack Cummins, received 8/17/05
27. Letter from Bill Reid, received 8/17/05
28. Letter from Dave and Nancy Vegher, received 8/17/05
29. Formatted letters from Barbara Polack, and Lynne and Anthony Veronde, 8/15/05
30. Staff Report to the Deputy Zoning Administrator, 8/25/05

MARIN COUNTY PLANNING COMMISSION

RESOLUTION _____

A RESOLUTION DENYING THE SCHLESINGER AND MCEVOY APPEALS OF THE DEPUTY ZONING ADMINISTRATOR'S CONDITIONAL APPROVAL OF THE MCEVOY USE PERMIT 03-31 AND DESIGN REVIEW 03-67

ASSESSOR'S PARCELS 125-070-05, -06, AND -16
5935 REDHILL ROAD, PETALUMA

SECTION I: FINDINGS

I. WHEREAS Russ Morita, on behalf of the property owner, Nan McEvoy, has submitted a Use Permit and Design Review to construct the following improvements on the McEvoy Olive Ranch in Petaluma: (1) a 660 kilowatt (kW), approximately 210-foot tall wind energy conversion system (WECS) for the generation of electricity; (2) an approximately 19.5-foot tall, 1,900 square foot accessory dwelling unit for the assistant orchard manager; and, (3) 1,415 square feet of office and storage additions onto the existing olive pressing barn building. The proposed office and storage additions would match the existing olive pressing barn building. Proposed building materials for the accessory dwelling unit include composition shingle roofing with board and batten siding. As proposed, the accessory dwelling would be located approximately 290 feet from the existing residence to the west and 260 feet from the storage and maintenance building to the southwest.

The proposed wind energy conversion system (WECS) consists of a 40-meter (131.2 feet) tall tubular tower with an 11-foot diameter base mounted with a Vesta V47 wind turbine. The Vesta V47 wind turbine rotor has a radius of 23.5 meters (77 feet). The WECS would have setbacks of 730 feet to the easterly property line, approximately 1,400 feet from the residence located on the Reichel property (Assessor's Parcel 125-070-15), and approximately 1,310 feet from the residence located on the Schlesinger property (Assessor's Parcel 125-520-01). Electricity generated by the wind turbine would feed into a Pacific Gas and Electric connection at the base of the tower, then connect to an existing electrical line on the property. The WECS would be painted with a white matte finish, and would include a shielded upright on the nacelle of the wind turbine for aircraft safety in compliance with FAA standards.

Use Permit approval is necessary for the expansion of the olive processing facilities. Design Review approval is necessary for the addition of additional building area in excess of 4,000 square feet, and for the construction of the WECS.

The subject property is located at **5935 Redhill Road, Petaluma**, and is further identified as **Assessor's Parcels 125-070-05, -06, and -16**.

II. WHEREAS on August 25, 2005, the Deputy Zoning Administrator granted conditional approval of the proposed project with modifications to the siting and color of the WECS, and that required the submittal of a report monitoring the avian resources in the area.

III. WHEREAS on September 6, 2005, Sumner Schlesinger filed a timely appeal of the Deputy Zoning Administrator's decision. The Schlesinger appeal asserts the following: (1) the overall height and scale of the WECS will impact views and vistas in the area; (2) the WECS will generate excessive noise levels; (3) the proposed upright located on the nacelle (the enclosed part of the wind turbine in which the generator is located) of the WECS will result in nighttime lighting impacts; (4) the WECS will not be compatible with the rural setting of the general vicinity; (5) the project will impact raptor and other avian resources; and (6) the siting of the WECS, as modified by conditions of approval, would locate the WECS closer to single-

family dwellings on adjacent properties, and would violate the setback requirements of the Marin County Development Code for WECS.

- IV. Whereas, on September 6, 2005, Russ Morita, applicant and appellant representing property owner, Nan McEvoy, filed a timely appeal of the Deputy Zoning Administrator's decision. The McEvoy Appeal asserts the following: (1) the siting as modified by conditions of approval would be problematic from a geotechnical standpoint due to ridge grade and soil composition at that location and would violate the setback requirements of the Marin County Development Code for WECS; (2) the WECS cannot be painted to comply with conditions of approval because painting over the manufacturer's standard coating may affect the tower's resistance to corrosion and void the manufacturer's warranty; and (3) the WECS cannot be constructed to specifications listed in the proposal considered by the Deputy Zoning Administrator and conditions of approval because the only available WECS for purchase would have a total height of 246 feet (164-foot tall tower and rotor radius of 82 feet), tower base diameter of 12 feet, and maximum turbine power of 750 kilowatts.
- V. WHEREAS the Marin County Planning Commission held a duly noticed public hearing on October 10, 2005, to consider the appeals, the merits of the project, and hear testimony in favor of, and in opposition to, the project.
- VI. WHEREAS the Marin County Planning Commission finds that the proposed project is Categorically Exempt from the requirements of the California Environmental Quality Act, per Section 15303, Class 3 because it entails construction of improvements that are accessory to the primary agricultural use of the land and would not result in significant amounts of grading, tree removal or other adverse impacts on the environment.

The construction of a detached agricultural worker dwelling unit and construction of a new addition onto the existing olive processing facility would not entail excessive amounts of grading, any tree removal, and would be consistent with the agricultural operations at the property and would not result in any adverse impacts to the environment.

The construction of one WECS would not result in adverse impacts to the environment. Staff reviewed the Natural Diversity Database Maps (NDDDB) prepared by the California Department of Fish and Game on file at the Community Development Agency and did not find any listed bird or animal species on or near the subject property that would be adversely impacted by the construction of the wind energy conversion system (WECS). The WECS is not located in an area that is a known corridor for raptor migration and there has been no evidence presented that any significant raptor mortality will occur at the site. The WECS incorporates numerous bird-friendly features including monopole construction, lower revolutions per minute, and location off of the localized saddle. Finally, the construction of the WECS would be consistent with policies in the Marin Countywide Plan because the project would further the development of renewable energy systems and, as estimated by the applicant's energy consultant, would lower carbon dioxide emissions by 295 tons on an annual basis.

- VII. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with the Marin Countywide Plan for the following reasons:
 - A. The project is incidental to the primary use of the property as an olive farm which is permitted by the AG1 (Agricultural, one unit per 31 to 60 acres) land use designation governing the property;
 - B. The improvements would be located on previously disturbed portions of the property and would not require removal of trees or significant amounts of grading;
 - C. The project, as indicated by the applicant's energy consultant, would further the development of renewable energy systems and would lower carbon dioxide emissions by 295 tons on an annual basis;

- D. The project would be consistent with the Noise Element of Countywide Plan because the WECS would have a maximum noise level of 47 decibels at the property line where a maximum of 60 decibels is allowed consistent with maximum noise levels for WECS established in the County's zoning regulations (Countywide Plan Section IV.C.2, Page N-8);
- E. The project would enhance the long-term agricultural use of the land by allowing the property owner to accommodate the growing demand for high-quality, organic olive oil;
- F. Exterior lighting would be minimized in order to reflect the rural character of the surrounding area and to comply with Federal Aviation Aeronautical safety standards;
- G. The project would comply with Marin County standards for flood control, geotechnical engineering, and seismic safety, and include improvements to protect lives and property from hazard;
- H. The project would comply with governing development standards related to roadway construction, parking, grading, drainage, flood control and utility improvements as verified by the Department of Public Works;
- I. The project would not cause significant adverse impacts on water supply, fire protection, waste disposal, schools, traffic and circulation, or other services; and,
- J. The project would provide housing opportunities for agricultural workers in the Inland Rural Corridor on an agricultural property site which is served by existing roadways, and necessary public and community facilities within the Inland Rural Corridor.

Goal EN-2 and Policies EN-2.1 through EN-2.4 of the draft Countywide Plan (CWP) discuss increasing renewable energy use and encourage the increase of renewable resource uses by protecting local renewable resources and promoting renewable energy. Table 3-16 and Implementing Program EN-2.b of the CWP specifically identify wind as a renewable energy resource to be protected and promoted.

VIII. WHEREAS the Marin County Planning Commission finds that the proposed detached agricultural worker dwelling unit and addition to the olive processing facility is consistent with the subject A-60 zoning district because the project would further agricultural land uses on the property and would comply with the governing development standards related to setbacks to property lines and heights for a detached accessory structure that is located a distance of greater than 40 feet from a property line (Marin County Code Sections 22.08.030 – Table 2-1, 22.08.040 – Table 2-2, and 22.20.060.B).

The proposed WECS is consistent with the A-60 zoning district and Marin County Code Section 22.32.180 for the following reasons: (1) the lowest position of the WECS blade would be at least 54 feet above the grade at the base of the tower, where a distance of at least 30 feet is required; (2) the WECS would meet the setback requirements of the A-60 zoning district; (3) the WECS would be located on an agricultural parcel greater than 5 acres in size; (4) the nearest adjoining parcels are greater than 5 acres in size and the WECS would be located a distance greater than five times the total height of the WECS (1,050 lineal feet) from residential dwellings on adjoining parcels (1,450 feet and 1,310 feet respectively); (5) the noise study provided by the project applicant indicates that the WECS would have a noise level of 60 decibels at a distance of 40 meters (131 feet) from the turbine and a noise level of approximately 45 decibels at the nearest property line (approximately 600 feet away) where a maximum noise level of 60 decibels is allowed; and, (6) the WECS would not be sited on a ridgeline that serves as a community separator and would not be located in a residentially zoned area.

IX. WHEREAS the Marin County Planning Commission finds that, in accordance with the conditions of approval, the Mandatory Findings for a Use Permit per Section 22.48.040 of the Marin County Code can be made for the following reasons:

- A. The proposed project is allowed within the governing A-60 zoning district (Agricultural District, 60 acre minimum lot size);
- B. The proposed use is consistent with the Countywide Plan for reasons discussed in Section VII above;
- C. The proposed project is categorically exempt from the California Environmental Quality Act for the reasons discussed in Section VI above;
- D. The proposed project would be compatible with existing and future land uses in the area because the staff dwelling unit, WECS, and office addition are uses that are incidental to, and supportive of, surrounding agricultural land uses;
- E. The detached accessory structure and office addition would be visually compatible with proposed development on the subject parcel and surrounding parcels because it would utilize an architectural style and materials and colors that are harmonious with other architectural styles and building materials in the area. The WECS will be of a color that is compatible to the surrounding hills, and will be partially screened by topography and vegetation; and,
- F. The granting of the Use Permit will not be detrimental to the public interest, health, safety, convenience, or welfare of the County, or injurious to the property or improvements in the vicinity and zoning district in which the real property is located because the project will meet the setbacks prescribed by the A-60 zoning district and Marin County Development Code Section 22.32.180, will be consistent with maximum noise levels established by the Marin Countywide Plan and the Marin County Development Code, and will not obstruct any adjacent neighbor's views, air, light, or privacy. Additionally, the staff dwelling unit, office addition, and WECS would be required to meet Uniform Building Code standards and, therefore, would be constructed in a manner which would preclude potential injury to improvements on the subject property, and improvements on neighboring properties.

X. WHEREAS the Marin County Planning Commission finds that the proposed project is consistent with the mandatory findings to approve a Design Review per Marin County Code Section 22.42.060 for the following reasons:

- 1. **The proposed structure will properly and adequately perform or satisfy its functional requirements without being unsightly or creating incompatibility/disharmony with its locale and surrounding neighborhood.**

The project will be situated solely on the subject property and will maintain adequate distances to property lines and other buildings on surrounding properties consistent with the governing A-60 zoning district and Marin County Code Section 22.32.180 (Development Standards for Wind Energy Conversion Systems).

The wind energy conversion system (WECS), while partially visible from off-site locations, is compatible with the surrounding agricultural land uses and would reduce reliance upon fossil fuels for electricity production. The WECS does not possess sufficient mass or bulk to obstruct views or vistas from roadways and adjoining properties. As indicated above, the WECS would require nighttime lighting pursuant to the Marin County Code. However, the lighting would be upshielded to minimize shining on adjacent properties. The WECS maintains adequate separation from property lines and residential dwellings on adjacent properties consistent with Marin County Code Section 22.32.180.

Finally, the project is limited to a single WECS, and, therefore, will not significantly alter the character of the rural setting.

The proposed detached accessory dwelling unit and office addition will result in structures of height, mass and bulk proportionately appropriate to the 552-acre site. The project would result in development which is consistent with the existing agricultural operations at the site and the detached accessory dwelling unit and office addition incorporates architectural characteristics and building forms that are consistent with other development in the area. The accessory dwelling unit and office addition would be constructed using materials and colors, non-reflective and subdued in nature, to better blend with the surrounding natural and built environments.

- 2. It will not impair, or substantially interfere with the development, use, or enjoyment of other property in the vicinity, including, but not limited to light, air, privacy, and views, or the orderly and pleasing development of the neighborhood as a whole, including public lands and rights-of-way.**

The project has been sited on the property to meet all the setback requirements of the Marin County Code and the A-60 zoning district and the setback requirements for WECS prescribed by Marin County Development Code Section 22.32.180. The project is accessory and incidental to agricultural land uses at the subject property and in the area, and the topographical features of the area provide partial screening and privacy. The noise levels generated by the WECS will be well below the thresholds established for WECS on agricultural lands. Given the size, configuration, and topography of the subject property, the project will preserve the orderly and pleasing development of the surrounding community.

- 3. It will not directly, or cumulative, impair, inhibit, or limit further investment or improvements in the vicinity, on the same or other properties, including public lands and rights-of-way.**

The discussion contained in Findings X.1 and X.2 are supportive of this finding.

- 4. It will be properly and adequately landscaped with maximum retention of trees and other natural features and will conserve non-renewable energy and natural resources.**

The project will not require the removal of any trees or other vegetation, and will only require minimal grading for the location of the detached agricultural worker accessory dwelling unit. The WECS will eliminate the need to use fossil fuels to meet energy needs of the existing agricultural processing facility. In addition, the amount of energy produced by the proposed WECS would, according to the applicant's energy consultant, lower carbon dioxide emissions by 295 tons on an annual basis. The WECS is exemplary in reducing net energy consumption.

- 5. It will be in compliance with the design and locational characteristics listed in Chapter 22.16 (Planned District Development Standards) of the Marin County Development Code.**

The WECS would be located on a localized ridge in the northeasterly region of the property that is visible from several adjacent properties and from Red Hill Road. Marin County Code Section 22.32.180.E generally requires WECS to minimize visual contrast to the greatest extent feasible from any public access and neighboring residential areas, and where wind characteristics permit, WECS are encouraged to be located away from prominent ridgelines to minimize visual contrast from any public access.

The applicant hired Robert Gould of System Design to conduct a wind study of two different sites at the property. The wind study measured wind conditions from May 2001 through May 2004. The two sites were chosen for the primary wind evaluation due to historically greater wind speeds, and because the

proposed locations are closer to the main electrical line which provides the property with electricity. Furthermore, the consultant judged the remainder of the property to be of little value because of steep terrain, lack of sufficient elevation, and/or location outside the path of prevailing wind flow over the ranch.

The WECS does not possess sufficient mass or bulk to obstruct views or vistas from roadways and adjoining properties and has been sited to yield the greatest amount of energy possible based on the prevailing wind patterns at the project site. The WECS maintains adequate separation from property lines and residential dwellings on adjacent properties consistent with Marin County Code Section 22.32.180 and the A-60 zoning district. Finally, the project is limited to a single WECS, and, therefore, will not significantly alter the character of the rural setting and will be in compliance with the design and locational characteristics listed in Chapter 22.16 (Planned District Development Standards) of the Marin County Development Code.

The design of the proposed detached accessory dwelling unit and office addition would be compatible with that of other structures in the vicinity, would respect the surrounding natural environment, and would not diminish views from surrounding properties because materials and colors would be used to blend the structures in with the surrounding natural environment and the proposed structures incorporate heights, architectural styles, and sizes that are compatible with the surrounding neighborhood. The proposed detached accessory dwelling unit and office addition would not encroach onto adjoining private properties, public lands, or private and public easements and rights-of-way, and ample parking would be provided for occupants of the detached accessory dwelling unit and office addition. As discussed in Findings X.1 and X.2 above, the proposed detached accessory dwelling unit and office addition would not prevent the development, use, or enjoyment of other properties in the vicinity because no detriment with respect to light, air, privacy, height, and land use factors would result.

6. It will minimize or eliminate adverse physical or visual effects which might otherwise result from unplanned or inappropriate development, design, or placement. Adverse effects include those produced by the design and location of characteristics of the following:

a. The area, heights, mass, materials, and scale of structures;

As discussed in Findings X.1 and X.2 above, the detached accessory dwelling unit and office addition would result in development which incorporates architectural characteristics and building forms that are consistent with other development in the area and are harmonious with the surrounding natural and built environments. The detached accessory dwelling unit and office addition would be constructed using materials and colors, non-reflective and subdued in nature, to better blend with the surrounding natural environment as well as the built environment. The detached accessory dwelling unit and office addition maintains adequate separation from other structures and property lines. The overall scale of the detached accessory dwelling unit and office addition is compatible with other development on the property and in the area, and is appropriate given the size and configuration of the property.

As discussed in Findings X.1, X.5, X.6e and X.7, the WECS will be sited appropriately on the property and will be compatible with other development and land uses on the subject and surrounding properties.

b. Drainage systems and appurtenant structures;

The drainage system for the project has preliminarily been reviewed and accepted by the Department of Public Works. As part of the Building Permit review, the Department of Public Works will review the grading and drainage plans to ensure that the project incorporates suitable

drainage systems that would adequately collect, convey, distribute surface run-off into appropriate drainage systems.

c. Cut and fill or the reforming of the natural terrain, and appurtenant structures (e.g. retaining walls and bulkheads);

The primary grading to occur on the site is for the construction of the detached agricultural worker accessory dwelling unit and therefore will not disturb the majority of the existing topography. The grading that will occur will enable the detached agricultural worker accessory dwelling unit to maintain a lower profile and minimize its profile as viewed from off-site locations. Site disturbance will be limited to within the building footprint and driveway improvements.

d. Areas, paths, and rights-of-way for the containment, movement or general circulation of animals, conveyances, persons, vehicles, and watercraft; and

The development on the property will not interfere with the containment, movement, or circulation of animals, conveyances, or persons because the project would be located entirely on the subject property which is not listed as a known migratory corridor for raptors or other wildlife.

e. Will not result in the elimination of significant sun and light exposure, views, vistas, and privacy to adjacent properties.

The WECS, while visible from off-site locations, is compatible with the surrounding agricultural land uses and will reduce reliance upon fossil fuels for electricity production. The WECS does not possess sufficient mass or bulk to eliminate views or vistas from roadways and adjoining properties. The WECS maintains adequate separation from property lines and residential dwellings on adjacent properties consistent with Marin County Code Section 22.32.180. Finally, the project is limited to a single WECS, and, therefore will not result in the elimination of significant sun and light exposure, views, vistas, and privacy to adjacent properties.

The siting of the detached accessory dwelling unit and office addition will not eliminate the sun and/or light exposure on adjacent properties, or result in the elimination of views, vistas, or privacy. The building forms are adequately articulated thereby minimizing the visual profile of the structures as viewed from off-site locations. No significant views or vistas would be obstructed by the detached accessory dwelling unit and office addition and the design of the detached accessory dwelling unit and office addition would be compatible with that of other structures in the vicinity, would respect the surrounding natural environment, and would not diminish views from surrounding properties because materials and colors would be used to blend the structures in with the surrounding natural environment. Finally, the proposed detached accessory dwelling unit and office addition incorporate heights, architectural styles, and sizes that are compatible with the existing development on the subject property.

7. It includes features which foster energy and natural resource conservation while maintaining the character of the community.

The project includes the construction of a 660 kW wind energy conversion system (WECS) which would provide energy for the agricultural and residential uses occurring at the site, and would lower carbon dioxide emissions by 295 tons on an annual basis (per the applicant's energy consultant). The WECS, while partially visible from off-site locations, is compatible with the surrounding agricultural land uses and would reduce reliance upon fossil fuels for electricity production. The WECS does not possess sufficient mass or bulk to obstruct views or vistas from roadways and adjoining properties. As indicated above, the WECS would require nighttime lighting pursuant to the Marin County Code. However, the lighting would be upshielded to minimize shining on adjacent properties. The WECS

maintains adequate separation from property lines and residential dwellings on adjacent properties consistent with Marin County Code Section 22.32.180. Finally, the project entails the proposal of one WECS, not a new windplant containing multiple WECS. Therefore, the project would not significantly alter the character of the rural setting.

8. The design, location, size, and operating characteristics of the proposed use are consistent with the Countywide Plan and applicable zoning district regulations, are compatible with the existing and future land uses in the vicinity, and will not be detrimental to the public interest, health, safety, convenience, or welfare of the County.

The project would be consistent with policies and programs in the Countywide Plan because the project would involve the construction of a new detached accessory dwelling unit, office addition, and WECS which would comply with the AG1 (Agricultural, 1 unit per 30 to 60 acres) land use designation, and is a permitted use under the governing A-60 (Agriculture and Conservation District, 60 acre minimum lot size) zoning district. The project would provide housing opportunities for agricultural workers in the Inland Rural Corridor without adversely affecting agricultural areas or public open space in the project vicinity. The Department of Public Works has indicated that the proposed project would provide adequate parking on site, and has verified that, according to the applicant's geotechnical engineer, the improvements would be located in geologically stable portions of the property. Based on the findings above, the construction of the detached accessory dwelling unit, office addition, and WECS will not be detrimental to the public interest, health, safety, convenience or welfare.

XI. WHEREAS the Marin County Planning Commission finds that the Schlesinger and McEvoy Appeals cannot be supported for the following:

Schlesinger Appeal

1. *Visual Prominence*

The appellant asserts that the overall height and scale of the WECS will impact views and vistas in the area, potentially impacting property values. The appellant raised concerns that the tower height (whether 132 feet tall or 165 feet tall) is excessive and would result in a visually prominent and "monumentally high structure."

Marin County Code Section 22.32.180.E establishes standards for the appearance and visibility of private WECS as generally follows:

- Locating WECS back from visually prominent ridgeline to minimize visual contrast from public access.
- Ensuring that WECS do not significantly impair a scenic vista or corridor.
- Minimizing adverse visual impacts from neighboring residential areas to the greatest extent feasible.
- Avoiding the visibility of brand names or advertising associated with the WECS from public access areas.
- Minimizing visual disruption through the use of appropriate colors and surface treatment for the WECS and supporting structures.
- Requiring air traffic warning lights where WECS exceed a total height of 175 feet.

The applicant hired Robert Gould of System Design to conduct a wind study of two different sites at the property. The wind study measured wind conditions from May 2001 through May 2004 (Attachment 20). The two sites were chosen for the primary wind evaluation due to historically consistent greater wind speeds, and because the proposed locations are closer to the main existing electrical line which provides the property with electricity. Furthermore, the consultant judged the

remainder of the property to be of little value because of steep terrain, lack of sufficient elevation, or location outside the path of prevailing wind flow over the ranch.

The WECS, while partially visible from off-site residential areas and other locations, is compatible with the surrounding agricultural land uses and would reduce reliance upon fossil fuels for electricity production, as encouraged by the Countywide Plan (Policy CD 4.5). The WECS does not possess sufficient mass or bulk to obstruct views or vistas from roadways and adjoining properties. The WECS would not be sited on a ridgeline that serves as a community separator. The WECS maintains adequate separation from property lines and residential dwellings on adjacent properties consistent with Marin County Code Section 22.32.180. The total height of the WECS (including rotor) is 210 feet, and therefore requires air traffic warning lights. Finally, unlike a commercial windplant, the project is limited to one WECS for a private agricultural use. Therefore, the construction of one WECS would not result in development that significantly obstructs views and vistas.

2. *Noise*

The appellant is asserting that the noise of the wind energy conversion system (WECS) would disrupt noise levels in the area because the site and surrounding areas are presently very quiet. Marin County Code Section 22.32.180.F requires noise level of WECS to be less than 60 decibels at the property line in agricultural zoning districts.

The proposed WECS would be located over 600 feet from the nearest property line. Based on information provided by the applicant regarding sound pressure levels contained in Table 6d on page 20 of 20 of the "General Specification 660 kW Variable Slip Wind Turbines," the proposed WECS would have noise level of approximately 47 decibels at the nearest property line. Marin County Code Section 22.32.180.F requires that the noise levels of a WECS not exceed 60 decibels at the property line on an agricultural property. It is also important to note that the WECS will not be operating during windless periods, and therefore would not be generating any noise. During operation of the WECS, the noise generated by the wind would likely mask any rotor noise produced by the WECS.

In conclusion, the manufacturer's specifications provided by the applicant indicate that the WECS will produce noise levels of 45 decibels to 47 decibels at the property line, well below the 60-decibel threshold established by the Marin County Development Code. Based on the reasons discussed above, the WECS would not result in significant increases of noise levels in the vicinity of the project site.

3. *Nighttime Safety Lighting*

The appellant is asserting that the Federal Aviation Administration (FAA) safety lighting requirements would create nighttime lighting impacts. In addition to FAA requirements, Marin County Code Section 22.32.180.E requires WECS in excess of 175 feet in height be equipped with air traffic warning lights and painted rotor blade tips consistent with FAA requirements.

Rural areas in this portion of Marin generally do not experience the same type of nighttime lighting encountered in the more populated, urban areas. However, it is not uncommon to view the nighttime lighting of a number of agricultural operations throughout western Marin County. Agricultural operations commonly conduct work as necessary in response to events at the ranch or farm.

The applicant has indicated that the required safety lighting would be located on top of the turbine nacelle (the enclosed part of the wind turbine in which the generator is located) and would be equipped with a shielded, up-light to minimize any lighting disturbances below the WECS. While the lighting would be visible from off-site locations, staff maintains that the lighting would not cast glare

onto adjacent properties or otherwise have an intensity that would disrupt the reasonable use and enjoyment of such properties.

In conclusion, the safety lighting required by the FAA and the Marin County Code will be shielded to the greatest extent feasible and, per conditions of approval, would be of minimum intensity consistent with FAA regulations. Based on the discussion above, the required safety lighting would not result in nighttime lighting impacts that are inconsistent with agricultural operations.

4. *Community Compatibility*

The appellant asserts the WECS would be incompatible with the rural setting, and that the project would set a precedent that will alter the future character of west Marin. Additionally, the appellant has expressed concerns that the project does not address how the WECS will be dismantled when it is no longer in use.

Pursuant to Table 2-1 of Marin County Code Section 22.08.030, two or fewer WECS are permitted uses in Agriculture and Conservation zoning districts subject to Design Review approval. The Design Review process and findings are supported by Marin County Code Section 22.32.180 which establishes site and design requirements for WECS, such as setback requirements from property lines and maximum noise levels for WECS. The Marin County Code specifically states, "WECS shall be designed and located to minimize adverse visual impacts from neighboring residential areas, to the greatest extent feasible."

However, the Marin County Code does not require that a WECS be invisible or substantially hidden from off-site locations, or be limited to a certain height. Furthermore, the fact that modern windmills are not commonly found in West Marin does not mean that the construction of a WECS is categorically incompatible with the prevailing community character.

The project would not establish a precedent for the widespread development of WECS throughout West Marin because the Marin County Code already identifies WECS as being a permitted use in agricultural zoning districts subject to Design Review approval. Through the discretionary review process, a review body can determine whether the proposed project is approvable as proposed, or whether it should be modified by conditions of approval. For example, the review body could establish conditions requiring the removal of a WECS after a period of non-use, although the Marin County Code does not prescribe measures relating to the future dismantling of WECS.

In conclusion, the WECS, while visible from off-site locations, is compatible with the surrounding agricultural land uses and would reduce reliance upon fossil fuels for electricity production. Windmills have long been associated with agricultural operations throughout the state and nation. The project is not for a commercial windplant, and any subsequent proposals for WECS development in Marin County would be subject to discretionary review and approval. Furthermore, the Marin County Code identifies WECS as permitted uses in agricultural zoning districts. Therefore, the project would not significantly alter the character of the rural setting and on balance would provide a renewable source of energy that works towards protecting Marin's agricultural heritage.

5. *Avian resources*

The appellant asserts that the project may negatively impact native and migrating raptor populations due to the nature of the project. Earlier comments were made that the project would result in impacts similar to the Altamont Pass windplant located in the East Bay.

The A-60 zoning district (Agriculture and Conservation District, 60 acre minimum lot size) allows two or fewer WECS as a principally permitted use (Table 2-1, Marin County Code Section 22.08.030,

Table 2-1) subject to the provisions of Marin County Code Section 22.32.180. Furthermore, at the time of the preparation of this report, the information available to staff has not revealed that any listed bird or animal species would be adversely impacted by this project. Staff reviewed the Natural Diversity Database Maps (NDDDB) prepared by the California Department of Fish and Game on file at the Community Development Agency and did not find any listed bird or animal species on or near the subject property that would be adversely impacted by the construction of the wind energy conversion system (WECS).

Written comments provided by the appellant and testimony at the Deputy Zoning Administrator hearing cited studies and impacts from the Altamont Pass windplant, but did not present evidence or factual information specifically related to the proposed project. It is important to point out that the Altamont Pass windplant is of a much larger magnitude than the one WECS proposed to be constructed at the subject property (for purposes of comparison, there are over 5,400 WECS within a 50-square mile area at the Altamont Pass windplant compared to one proposed WECS at the project site). Furthermore, the Altamont Pass windplant project demonstrated that guywires, high wind turbine rotational velocity, and perching areas for birds significantly contributed to avian mortality rates.

The proposed project is for one WECS located on an agriculturally developed property and is not considered to be a commercial WECS operation because the WECS would produce energy for the farm, not for greater energy distribution and sales. The proposed WECS would locate the wind turbine atop a tubular tower and does not require guywires to keep the tower upright. The proposed WECS has a wind turbine rotational velocity of 28 rotations per minute (rpm) which is relatively slow compared to older wind turbines in the Altamont Pass area. The rotor of the proposed WECS only rotates in airspeeds of 9 miles per hour (mph) to 35 mph. The turbine will not rotate in airspeeds less than 9 mph or greater than 35 mph. Finally, the WECS does not contain suitable perching areas for birds.

The National Wind Coordinating Committee prepared a national study entitled "Avian Collisions with Wind Turbines: A Summary of Existing Studies and Comparisons of Avian Collision Mortality in the United States," in August of 2001. The study examined the rate of avian mortality as it relates to larger windplants on a national scale. While this project entails the construction of one solitary WECS and not a large commercial windplant, the data can be used to extrapolate information for this project. A portion of the conclusion is provided below and is available for further review on-line at http://www.west-inc.com/reports/avian_collisions.pdf.

Using the annual avian collision mortality estimate of 200-500 million, we estimate that at the current level of development, wind turbines constitute 0.01 percent to 0.02 percent (1 out of every 10,000 to 2 out of every 10,000) of the avian collision fatalities. Communication tower fatality estimates make up 1-2 percent (1 out of every 100 or 2 out of every 100) using the conservative estimates of 4 million annual avian fatalities due to collisions with these structures. The low range estimate from buildings/windows of 98 million (Klem 1991) would comprise approximately 25 to 50 percent of the collision fatalities. The low range estimate of 60 million vehicle collision fatalities comprises 15-30% of the total estimated collision fatalities. Our very wide range for estimates of powerline collision fatalities (>10,000 – 174 million) makes it extremely difficult to quantify the percentage of total fatalities due to this source. Nevertheless, we expect the total collisions with powerlines to be much higher than the total collisions with wind turbines given the number of miles of high-tension lines that exist across a wide range of habitats in the U.S. Given the uncertainty in the estimates, the true avian mortality, especially for communication towers, buildings and windows, powerlines and roads, could easily be different by several orders of magnitude.

Tom Willard, energy consultant to the applicant, has commented that the avian mortality rates for the proposed project are based on worst-case scenarios from data produced by the Altamont Pass project. Relying upon that data, 0.19 raptors are killed per year per WECS. In the case of one WECS standing alone, that accounts for 1 raptor kill every 5 years. An important distinction is that this data is for a windplant with over 5,000 wind turbines located in an area that is a corridor for raptor migration. The proposed project consists of one WECS located in an area that is not listed as a known raptor migratory corridor. Based on information available to staff, there are no known protected/listed bird species present at the site and there has been no evidence presented that any significant raptor mortality will occur at the site.

6. *Siting*

The appellant asserts that the siting of the WECS as modified by conditions of approval would locate the WECS closer to single-family dwellings on adjacent properties, and would violate the setback requirements of the Marin County Development Code for WECS.

Marin County Code Section 22.32.180.D.2 establishes setback for non-commercial WECS. In summary, a WECS must be located at least 1.25 times the total height of the WECS from any public highway, road, or lot line, and the WECS must be located at least 5 times the total height of the WECS from residential dwelling on an adjacent property.

Along with their appeal, the applicant provided a tentative partial site plan indicating the approved site location setbacks. The partial site plan depicts the WECS being located 610 feet from the nearest property line, and 1,030 feet from the nearest dwelling. The WECS approved by the Deputy Zoning Administrator has a total height of 210 feet. Therefore the WECS would be required to maintain a setback of at least 263 feet from the nearest property line, and 1,050 feet from the nearest dwelling on an adjacent parcel.

The Deputy Zoning Administrator imposed a condition of approval that the final location of the WECS was to be resolved prior to issuance of a Building Permit in consultation with the neighbors. The project approved by the Deputy Zoning Administrator would satisfy the setback for WECS established by the Marin County Code because the WECS would be located well over 1.25 times its total height from the nearest property line. Although the partial site plan indicates the WECS would be located 1,030 feet from the nearest dwelling on an adjacent property (20 feet less than required), the site plan is not survey quality and a distance of 20 feet would be easily accommodated in the siting of the WECS.

Based on the discussion above, the project approved by the Deputy Zoning Administrator would meet the setback requirements for WECS established by Marin County Code Section 22.32.180.D.2.

McEvoy Appeal

1. *Siting*

The appellant asserts the siting as modified by conditions of approval would be problematic from a geotechnical standpoint due to problematic soil composition at that location, and the modified location would violate the setback requirements of the Marin County Development Code for WECS. Please refer to the discussion contained in basis of appeal item 6 above for discussion relating to the setback requirements for WECS.

Although the appellant asserts that the modified siting would be problematic from a geotechnical standpoint, no evidence has been provided to support this claim. Department of Public Works (DPW) staff reviewed the proposed project and required that a soils stability report be submitted for the project prior to the issuance of a Building Permit. Typically, if there are geotechnical issues that could be problematic, DPW staff will require a geotechnical report as a matter of completeness to determine if the project is feasible from a geotechnical standpoint.

As no factual information has been submitted supporting the appellant's claims that the modified siting would be problematic the project, and because DPW staff has reviewed the project and found it to be generally feasible, the modified siting is appropriate.

2. *Color Treatment*

The appellant asserts that the WECS cannot be painted to comply with conditions of approval because painting over the manufacturer's standard coating may affect the tower's resistance to corrosion and void the manufacturer's warranty.

As discussed earlier in this document, WECS are subject to Design Review and as such colors and surface treatments should minimize visual disruption. The purpose of the condition requiring a modification to the color of the WECS was to blend it into the surrounding natural environment by painting it a color that matches the summertime hillsides.

Based on the discussion above and discussion contained within the Marin County Development Code, it is not the Community Development Agency's responsibility to ensure that a manufacturer's warranty is preserved, but rather to minimize the visual prominence of a structure and to address merits issues through the Design Review process. The condition of approval requiring a change to the color of the WECS helps to achieve this goal, and therefore is a reasonable requirement.

3. *Conditions of Approval*

The appellant asserts that the conditions of approval adopted by the Deputy Zoning Administrator render the project infeasible because the WECS cannot be constructed to specifications listed in conditions of approval. The appellant has submitted revised information relating to siting and the WECS specifications.

The revised WECS would have a total height of 246 feet (164-foot tall tower and rotor radius of 82 feet), tower base diameter of 12 feet, and maximum turbine power of 750 kilowatts. The revised WECS would be sited approximately 320 feet to 450 feet south-southwest from the site approved by the Deputy Zoning Administrator. The revised WECS would represent an increased total height of 36 feet and would be located 100 feet and 220 feet further away from dwellings on adjacent properties.

The applicant has indicated that the revised WECS is necessary because the manufacturer no longer provides the Vestas V-47 and the only available WECS to provide sufficient energy to the ranch is the Vestas V-48 which is larger than the originally proposed project. Staff is unable to make findings that the revised project would be in substantial conformance with the originally proposed and approved project.

SECTION II: CONDITIONS OF PROJECT APPROVAL

NOW, THEREFORE, BE IT RESOLVED that the Marin County Planning Commission hereby denies the Schlesinger Appeal and the McEvoy Appeal and sustains the Deputy Zoning Administrator's action by conditionally approving the McEvoy Use Permit 03-31 and Design Review 03-67 subject to the following conditions.

Marin County Community Development Agency, Planning Division

1. Pursuant to Marin County Code Sections 22.48.040 and 22.42.060, the McEvoy Use Permit 03-31 and Design Review 03-67 approval hereby authorizes the construction of the following improvements on the McEvoy Olive Ranch in Petaluma:
 - a. A 660 kW, approximately 210-foot tall wind energy conversion system;
 - b. A 19.5-foot tall, 1,900 square foot accessory staff dwelling unit; and,
 - c. A 1,415 square foot office and storage addition onto the existing olive pressing barn building.

The approved wind energy conversion system (WECS) consists of a 40-meter (131.2 feet) tall tubular tower with an 11-foot diameter base mounted with a Vesta V47 wind turbine. The approved Vesta V47 wind turbine rotor has a radius of 23.5 meters (77 feet). ~~The WECS is approved to maintain setbacks of at least 730 feet to the easterly property line, 1,400 feet from the residence located on the Reichel property (Assessor's Parcel 125-070-15), and 1,310 feet from the residence located on the Schlesinger property (Assessor's Parcel 125-520-01). The tower shall be located a vertical distance of 30 feet downhill (north-northeast) from "proposed windmill site #1," to the east of the oak covered knoll with the final location determined by the applicant after consultation with the neighbors.~~ The WECS is approved to be painted with a white matte finish, and to include a shielded uplight on the nacelle of the wind turbine for aircraft safety in compliance with FAA standards.

The office and storage addition are approved to be constructed at the same height as the existing olive pressing barn building and to utilize existing colors and materials. The accessory staff dwelling unit is approved to utilize composition shingle roofing with board and batten siding. The accessory staff dwelling unit is approved to be located approximately 290 feet from the existing residence to the west and 260 feet from the storage and maintenance building to the southwest. The subject property is located at **5935 Redhill Road, Petaluma**, and is further identified as **Assessor's Parcels 125-070-05, -06, and -16**.

2. Plans submitted for a building permit shall substantially conform to the following plans on file in the Marin County Community Development Agency:
 - a. "Exhibit A," entitled, "McEvoy Ranch, Staff Cottage," consisting of 24 sheets, prepared by BAR Architects, dated May 6, 2002 and revised August 29, 2002, and revised Sheet A2.01 date stamped June 3, 2005;
 - b. "Exhibit B," entitled, "McEvoy Ranch – Olive Barn Office and Storage Addition," consisting of 13 sheets, prepared by Appleton and Associates, Inc., Architects, dated April 11, 2003;

- c. "Exhibit C," entitled, "Composite Site Map," consisting of 4 sheets, prepared by Dimensions 4 Engineering Inc., dated February 2004;
 - d. "Exhibit D," entitled, "Location Map for Water Springs," consisting of 1 sheet, prepared by Dimensions 4 Engineering Inc., dated March 2005; and,
 - e. "Exhibit E," entitled, "McEvoy Ranch – Windmill Project," consisting of a bound report in a blue cardboard cover date stamped May 12, 2003 prepared by Robert Gold.
3. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall revise site plan or other first sheet of the office and job site copies of the Building Permit plans to list these Use Permit and Design Review Conditions of Approval as notes.
 4. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall revise the plans to depict the location and type of all exterior lighting for review and approval of the Director. Exterior lighting for the staff dwelling unit and office addition shall be permitted for safety purposes only, must consist of low wattage fixtures, and must be hooded. The Building Plans shall include specifications (cut sheet) for all exterior lights. Lights for the wind energy conversion system shall comply with Federal Aviation Administration standards.
 5. *BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall present a report from qualified rodent control and avian/raptor consultants that: provides a baseline for current avian/raptor levels, including during the fall migration; contains recommendations on how to minimize WECS impacts to avian species, including year-round control of rodents within whatever area around the WECS is determined to be a danger to raptors; and lists a program for ongoing monitoring of avian/raptor levels and WECS impacts for a three year period. Reports from the consultants addressing those issues shall be provided annually to the Community Development Agency.*
 6. BEFORE FINAL INSPECTION, the applicant shall install the project substantially consistent with Exhibits A, B, C, D, and E and all conditions of approval. If the Director determines it is necessary to verify conformance with this approval regarding the location and height of the wind turbine, a certification letter from a licensed Surveyor may be required to verify conformance. The applicant shall call for a Community Development Agency, Planning Division staff inspection of the wind turbine and all facility components at least five working days before the anticipated completion of the project. Failure to pass inspection will result in withholding of the final inspection and imposition of hourly fees for subsequent reinspections.
 7. Except for such non-noise generating activities, including but not limited to, painting, sanding, and sweeping, construction activity is only permitted between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, and 9:00 a.m. and 4:00 p.m. on Saturday. No construction shall be permitted on Sundays or the following holidays (New Year's Day, Martin Luther King Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving, Christmas). If the holiday falls on a weekend, the prohibition on noise-generating construction activities shall apply to the ensuing weekday during which the holiday is observed. At the applicant's request, the Community Development Agency staff may administratively authorize minor modifications to these hours of construction.
 8. All utility connections and extensions serving the project shall be installed underground.
 9. All flashing, metal work and trim for the office addition and detached agricultural worker dwelling unit shall be an appropriately subdued, nonreflective color.
 10. *The tower and nacelle shall be painted a matte finish to match the color of the summer hills. The rotors shall be painted white or whatever color is determined by a qualified avian consultant to present maximum*

visibility to birds without increasing reflectivity to the human eye. The tips of the blades shall be painted consistent with Marin County Code. No product decals are allowed other than for safety purposes.

11. In the event that the terms of this Use Permit approval are violated or that the approved uses are carried on in such a manner as to adversely affect the health, welfare, or safety of persons residing or working in the neighborhood, or be detrimental to the public welfare or injurious to the property or improvements in the neighborhood, this Use Permit may be revoked or suspended pursuant to Marin County Code, Chapter 22.120.
12. *Lighting shall be of the minimum intensity allowed by FAA regulations, and shall be shielded from direct ground view to the greatest extent allowed.*
13. *All electrical lines associated with the WECS shall be placed underground.*
14. All relevant Conditions of Approval for the McEvoy Use Permit adopted by the Deputy Zoning Administrator under Resolution 96-098 shall apply.
15. Any changes or additions to the project shall be submitted to the Community Development Agency in writing for review and approval before the contemplated modifications may be initiated. Construction involving modifications that do not substantially comply with the approval, as determined by the Community Development Agency staff, may be required to be halted until proper authorization for the modifications are obtained by the applicant.

Department of Public Works, Land Development

16. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall provide pertinent design information as specified below.
 - a. Submit a Stability Report prepared by a registered Civil Engineer with geotechnical expertise or by a certified Geotechnical Engineer. The report must attest to the suitability and geological feasibility of placing a building on the site and identify any drainage or soils problems that the design of this project must accommodate.
 - b. Improvement Plans shall be prepared by a registered Civil Engineer, signed and stamped.
 - c. Apply for a separate building permit for retaining walls. Submit two sets of structural calculations signed and stamped by the Design Engineer.
 - d. Plans must be reviewed and approved by the soils engineer. Certification shall be by stamp and signature on the plans or by a stamped and signed letter.
 - e. Sheet 4 of 4 shall be consistent with sheet 3 of 4 regarding the new 12' wide gravel roadway and proposed parking. Modify plans accordingly.
 - f. Sheet 2 of 4 does not comply with California Title 24. The disabled parking stall at the Olive Pressing Barn Building shall have the loading/unloading area located on the passenger side of the vehicle. "No Parking" shall be painted on the pavement of both loading/unloading areas.
 - g. All parking and path of travel shall comply with all federal and state accessibility requirements. Construction documents must be drawn of sufficient clarity to indicate nature and extent of work. Add note on site plan: Contractor to verify that all barriers in the path of travel have been removed or will be remove under this project, and path of travel complies with CBC 1133B.

- h. Note on plans that the Design Engineer shall certify to the County of Marin in writing (stamped and signed) that all grading, drainage, retaining wall construction and excavation were done in accordance with approved plans and field directions. Certification letters shall include the project address, assessor's parcel number and building permit number. Also note on plans that prior to final inspection driveway, parking and site improvements shall be inspected by DPW Engineer.

Marin County Environmental Health Services

Sewage

17. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall fulfill the following requirements:
 - a. Obtain Septic Tank Installation Permit(s). Septic tank siting must observe all setbacks.
 - b. Provide a written statement that the proposed office will be limited to providing space for four or fewer additional employees. The existing mound septic system is designed for the 8 existing employees plus four additional employees (and the flow from the proposed two bedroom residence).

Water

18. BEFORE ISSUANCE OF A BUILDING PERMIT, the applicant shall obtain a valid water permit is issued by Environmental Health Services. The applicant must apply directly to EHS for a water system permit.

Marin County Fire Department

19. PRIOR TO FOUNDATION INSPECTION, the applicant shall provide confirmation to the Planning Division that the Fire Marshal has approved the Vegetation Management/Defensible Space Plan and that the project complies with all applicable fire safety requirements.
20. BEFORE FINAL INSPECTIONS, the applicant shall submit written certification from the District Fire Marshal that the project complies with all District regulations, including, but not limited to the following items listed below.
 - a. Payment of all required fees.
 - b. If a gate is contemplated, Fire Department approval for gates on the access road and/or driveway is required. If the gate is locked in any fashion, a MCFD Knox rapid entry system is mandatory.
 - c. Road signage indicating the address of the new 2nd Unit is required. Numbers are to be a minimum of 4" in height with a 3/8" stroke, on a sharply contrasting background.
 - d. Residential Sprinkler System (design approval and site inspection by the Building Dept.) As part of the sprinkler system installation, a spare sprinkler head cabinet containing two spare sprinkler heads, and the applicable sprinkler head wrench will be required prior to final approval of the sprinkler system.
 - e. Commercial Sprinkler System (if required, design approval and inspection by the Fire Dept.)
 - f. Class "A" Roofing (design approval and site inspection by the Building Dept.)
 - g. Smoke Detection System (design approval and site inspection by the Building Dept.)

SECTION III: VESTING, PERMIT DURATION, AND APPEAL RIGHTS

NOW, THEREFORE BE IT FURTHER RESOLVED that the applicant must vest this Use Permit and Design Review approval by obtaining a Building Permit for the approved work and substantially completing all work before October 10, 2007, or all rights granted in this approval shall lapse unless the applicant applies for an extension at least 10 days before the expiration date above and the Community Development Agency Director approves it. An extension of up to four years may be granted for cause pursuant to Section 22.56.050.B.3 of the Marin County Code. Upon completion of the requirements to vest this application, the Use Permit shall remain valid in perpetuity as long as all the terms of this permit are maintained.

The Building Permit approval expires if the building or work authorized is not commenced within one year from the issuance of such permit. A Building Permit is valid for two years during which construction is required to be completed. All permits shall expire by limitation and become null and void if the building or work authorized by such permit is not completed within two years from the date of such permit. Please be advised that if your Building Permit lapses after the vesting date stipulated in the Use Permit and Design Review approval (and no extensions have been granted), the Building Permit, Use Permit and Design Review approvals may become null and void. Should you have difficulty meeting the deadline for completing the work pursuant to a Building Permit, the applicant may apply for an extension to the Use Permit and Design Review at least 10 days before the expiration of the Use Permit and Design Review approval.

NOW, THEREFORE BE IT FURTHER RESOLVED that this decision is final unless appealed to the Marin County Board of Supervisors. A Petition for Appeal and a \$700.00 filing fee must be submitted in the Community Development Agency - Planning Division, Room 308, Civic Center, San Rafael, no later than **4:00 p.m. on October 20, 2005.**

SECTION IV: VOTE

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the County of Marin, State of California, on the 10th day of October, 2005, by the following vote to wit:

AYES:

NOES:

ABSENT:

STEVE THOMPSON, CHAIR
MARIN COUNTY PLANNING COMMISSION

Attest:

Kim Shine
Planning Commission Secretary