

MARIN COUNTY PLANNING COMMISSION HEARING MINUTES
October 10, 2005 – Items 2 (McEvoy), 5 (Director’s Report), and 8 (Kidson)
Marin County Civic Center, Room 328 - San Rafael, California

Commissioners Present: Steve C. Thompson, Chairman (arrived at 10:44 a.m.)
Jo Julin, Vice Chair
Hank Barner
Don Dickenson
Mark Ginalski
Randy Greenberg
Wade Holland

Commissioners Absent: None

Staff Present: Alex Hinds, Agency Director
Brian Crawford, Deputy Director of Planning
Curtis Havel, Planner
Christine Gimmler, Senior Planner
Kim Shine, Recording Secretary

Minutes Approved on: October 24, 2005

Convened at 10:37 a.m.
Adjourned at 6:19 p.m.

2. USE PERMIT AND DESIGN REVIEW APPEAL: MCEVOY (SCHLESIGNER AND MCEVOY) CH

Public hearing to consider the McEvoy Appeal of the Deputy Zoning Administrator's approval of the McEvoy Use Permit and Design Review. The applicant, Russ Morita, on behalf of the owner, Nan McEvoy, is requesting approval proposing to construct the following improvements on the McEvoy Olive Ranch in Petaluma: (1) a 660 kW, approximately 210-foot tall wind energy conversion system (40 meter tall tubular tower with 47 meter 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 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 of the wind turbine for aircraft safety in compliance with 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. The subject property is located at **5935 Redhill Road, Petaluma**, and is further identified as **Assessor's Parcels 125-070-05, -06, and -16**.

Staff summarized the staff report and recommended that the Planning Commission review the administrative record, conduct a public hearing, and adopt the recommended resolution approving the project as modified and approved by the Deputy Zoning Administrator.

The Commissioners asked staff for clarification of the following points:

- Setback provisions
- Color, height, and scale of the WECS
- Visibility of the light on top of the WECS
- Availability of lower height turbine models
- Maintenance of the WECS
- Methodology for rodent control
- Requirements for the use permit
- Marking the space for parking of cars with handicapped stickers
- Location of the tower
- Consideration of multiple, smaller towers or combination of wind and solar power
- FAA requirements for WECS tower
- Energy requirements for the olive pressing plant
- Wind speed necessary for the WECS to operate
- Amount of power the WECS can produce vs. the amount of power needed, and what happens if there is an excess or deficiency of power

The public hearing was opened.

Tom Williard, project manager for the McEvoy project, made a presentation of the project and the McEvoy Appeal to the Commission.

The following people spoke in support of the project, testifying that McEvoy Ranch has long focused on organic and sustainable agricultural practices; the need to add to renewable energy supply is urgent and important; it is unlikely that approving this project would lead to a forest of windmills in Marin County; project has strong Marin County agricultural support, including local ranchers, the local farm bureau, and the Marin County Agricultural Commissioner; energy costs and rapidly changing environmental conditions put agriculture at risk, and can only be addressed by generating clean, renewable energy locally; the project is appropriately scaled for the McEvoy Ranch, in that it meets the energy needs of the ranch; the project is important to Marin agriculture and therefore for the

County of Marin; bird monitoring will address any concerns about avian impacts; there should be a moratorium on future WECS until the code and regulations are updated; a single tower in the proposed location, which is not a major flyway, should not be of major concern regarding avian impacts; infrastructure is not in place to serve the market for the used wind turbine industry; .

- Charles Post, Wind Harvest Company
- Jeff Creque, consultant for McEvoy Ranch
- Gordon Bennett, Sierra Club
- Peter Asmus, Stinson Beach

The following people expressed their objections or concerns about the project, testifying that the project would adversely impact the neighbors and the area in terms of noise and light on neighbors and nocturnal wildlife, as well as adversely impact the rural character of the area due to the height, color, scale, and location of the WECS; WECS should not be considered on an ad hoc basis; the need for CEQA review; concern about the impact on surrounding viewshed; the proposed location is on a major tourist corridor; lower WECS are available; the WECS should be made smaller or moved to another area; solar or a combination of solar and wind energy should be considered.

- Sumner Schlesinger, appellant
- Terrance Hallinan, attorney for appellant
- Jana Haehl, Marin Conservation League
- Toni Schlesinger, appellant
- Bob Levitt, San Rafael
- Barbara Polach, Corte Madera
- Beverly McIntosh, San Anselmo
- Joshua Reichek, Petaluma
- Laure Reichek, Petaluma
- Mimi Luebermann, Petaluma
- Susie Schlesinger, appellant

The following people spoke to the Commission about energy concerns and environmental issues in general:

- Lea Earnheart, Bolinas
- Gwen Johnson, Sausalito

The public hearing was closed.

Commissioner Dickenson stated that he supports the concept of alternative energy sources, but the scale of this project is inappropriate to the proposed location, the proposed location is marginal from a wind generation standpoint, and the project's impact on neighbors is unacceptable.

Commissioner Greenberg stated that while she supports the use of alternative energy, she also values the aesthetics of Marin County, and a 246-foot WECS on a ridgetop is out of sync with the aesthetics of rural, agricultural Marin. Rather than approving this type of project piecemeal, she expressed the need for updated comprehensive guidelines and standards for such projects, and voiced her concern about setting a precedent by approving this project.

Commissioner Ginalski said he agreed with Commissioners Greenberg and Dickenson that this application, while laudable in its goal, is not acceptable due to the location of the WECS and the impact on neighbors, and feels that a moratorium on these types of projects is a reasonable approach until the best methodology is defined.

Commissioner Holland said he understood his colleagues' statements and was sympathetic to neighbors' concerns, but believes that sacrifices must be made to protect the planet. He believes that the Development Code and Countywide Plan policies are clear that the applicant has a right to build the WECS on agricultural land, the plan is credible, and he could make the findings to deny the Schlesinger appeal and approve the McEvoy appeal with respect to the re-siting of the WECS.

Commissioner Barner said that he agrees with the concept of sustainability and reducing the use of fossil fuel, but feels that alternative sites for the WECS, as well as the possibility of using lower towers, need to be considered. He

stated that it is apparent that this tower is not appropriate for a scenic agricultural area, and expressed a desire to have this project go back for further investigation regarding siting, avian problems, and noise generated by the WECS.

Vice Chair Julin noted that Marin County is a progressive community and people understand the dire need to develop renewable energy supplies, but she feels the community is not ready for the equivalent of a 24-story tower on a secondary ridge. In her view it is essential for the County to immediately address the potential opportunities and impacts of wind power generation by developing policies that would apply to this and any future applications, and that such policy work should be concluded before any decision is made to go forward with approval of this or any other wind generation project, rather than approving the project on an ad hoc basis.

Chairman Thompson said that he is cautious about the effect the WECS would have on the surrounding neighbors, and if the tower can't be re-sited to be out of the range of private residences and other people's homes, the project should not go forward.

M/s Greenberg/Ginalski to uphold the Schlesinger Appeal only as it applies to the WECS and not to the other components of the project, sustain the Deputy Zoning Administrator's decision, including the conditions on the remainder of the project (i.e., agricultural worker housing and addition to olive processing facility), and direct staff to return at the meeting on October 24, 2005, with a resolution that summarizes the Commission's concerns.

The Chairman conducted a roll call, and the motion carried 6/1/0 (Commissioner Holland dissenting). The decision may be appealed to the Board of Supervisors within ten calendar days from the date the final resolution is adopted. The resolution is expected to be adopted at the meeting of October 24, 2005.

The Commission adjourned at 1:35 p.m. and reconvened at 1:45 p.m.

8. CERTIFICATE OF COMPLIANCE APPEAL: KIDSON CG

Public hearing to consider the Kidson Appeal of the Community Development Agency's administrative approval of the Kidson Certificate of Compliance, which determined that the subject property was legally created in its present size and configuration as a remainder "Park" parcel by the Map of Bolinas Beach, recorded in 1927. The appeal submitted by Hanson Bridgett, attorneys for Jeremy Kidson, asserts that: (1) the determination that the subject property was created "as a remainder 'Park' parcel" is factually and legally incorrect; and (2) the determination that the zoning governing this property is Coastal, Open Area, is factually incorrect and legally impermissible. The 47.5 acre subject property is located along Ocean Parkway, Bolinas, and is further identified as Assessor's Parcel 191-300-01, 192-233-01, 192-243-01, 192-253-01, & 192-263-01.

Staff summarized the staff report and recommended that the Commission review the administrative record, conduct a public hearing, and deny the Kidson Appeal and sustain the Director's approval of the Kidson Certificate of Compliance. The Commission asked staff for clarification on the chain of ownership of the property.

The public hearing was opened.

Hussein Saffouri, attorney representing the appellant, made a presentation to the Commission and answered questions from the Commission.

The following people expressed their objections or concerns about the project, including that there were no signs posted to exclude the public nor fences to keep public out; there are extensive trails in the erosion zone which have damaged the hillside and habitat; the area is eroding and not appropriate for residential development; the bluffs are impassable because of erosion; policies in the Bolinas Gridded Mesa and the Local Coastal Program are clear that there is to be no residential development or substantial construction near the bluffs; the property was zoned for open area when the appellant purchased it; the bluff erosion zone is environmental sensitive according to the Coastal Act; and staff should consult with the Coastal Zone regarding developing a trail system through this area.

- Meg Simonds, Bolinas Village
- Hilary Winslow, Bolinas
- David Kimball, Bolinas
- Cela O'Connor, Bolinas
- Bob Hunter, Bolinas
- Jacqueline Thomas, Bolinas
- Sarah Sanders, Bolinas
- Ralph Camiccia, Bolinas
- John Norton, Bolinas
- Park Huntley, Bolinas
- Catherine Caufield, EAC
- Gordon Bennett, Sierra Club
- Angie Tadeo, Bolinas

The public hearing was closed.

In response to a question from Commissioner Dickenson, staff stated that a title report was submitted with the application showing the owner to be the Bolinas Beach Preservation LLC, a corporation set up by the appellant.

M/s Julin/Greenberg to adopt the staff recommendation denying the Kidson appeal and sustaining the Director's approval of the Kidson Certificate of Compliance.

The Chairman conducted a roll call vote and the motion carried 7/0/0. The decision is not final and may be appealed to the Board of Supervisors within ten calendar days, no later than October 20, 2005, at 4 p.m.

The Commission recessed at 3:05 p.m. and reconvened at 3:20 p.m.

5. DIRECTOR'S REPORT

The Board of Supervisors has proposed that the Planning Commission meetings be digitally video recorded, and a trial run will take place on October 24, 2005. Vice Chair Julin suggested a sign be posted outside the Planning Chambers to inform the public that the meeting will be digitally recorded, and also to forward that idea to the Board of Supervisors.

The minutes of September 26, 2005, were postponed to the meeting on October 24, 2005.

The meeting was adjourned at 6:19 p.m.

MARIN COUNTY PLANNING COMMISSION HEARING MINUTES FOR
ITEM 9, LAWSON'S LANDING DRAFT ENVIRONMENTAL IMPACT REPORT
LAWSON'S LANDING MASTER PLAN, COASTAL PERMIT, AND TIDELANDS PERMIT
October 10, 2005
Marin County Civic Center, Room 328 - San Rafael, California

Commissioners Present: Steve C. Thompson, Chairman
Jo Julin, Vice Chair
Hank Barner
Don Dickenson
Mark Ginalski
Randy Greenberg
Wade Holland

Commissioners Absent: None

Staff Present: Alex Hinds, Agency Director
Brian Crawford, Deputy Director of Planning
Tim Haddad, Environmental Coordinator
Kim Shine, Recording Secretary

Minutes Approved on: November 14, 2005

9. DRAFT ENVIRONMENTAL IMPACT REPORT: LAWSON'S LANDING TH/BB
MASTER PLAN, COASTAL PERMIT, AND TIDELANDS PERMIT: LAWSON'S LANDING

Public meeting to consider the adequacy of the Draft Environmental Impact Report (DEIR) for the Lawson's Landing Master Plan, Coastal Permit, and Tidelands Permit project. At the meeting, the Commission will consider a possible action pursuant to State CEQA Guidelines Section 15088.5 recommending the EIR be fundamentally revised to incorporate and evaluate a different baseline of existing uses and environmental setting conditions and recirculated for review and comment as a new DEIR. The Commission will also discuss the issues of primary concern to the Commission that need to be addressed in a Final EIR Response to Comments if no action is taken to recommend revision of the EIR baseline. A (Draft) Final EIR Response to Comments may then be prepared and circulated for public review and comment pursuant to Marin County EIR Guidelines Section VI I(2) prior to consideration for certification of the Final EIR (The Planning Commission closed the public hearing, previously held on September 12, 2005, for public testimony on the DEIR, and continued the meeting for further deliberation by the Commission on the adequacy of the DEIR.) The subject property's address is **137 Marine View Drive,**

Dillon Beach, and is further identified as **Assessor's Parcel 100-100-48, et al.** *This item was continued from the September 12, 2005, meeting)*

The Commission advised the audience that two narrow and technical issues would be considered at this meeting, i.e., whether the DEIR baseline needs to be revised and whether new information will require recirculation of the DEIR now or in the future.

Staff summarized the staff report and recommended that, after review and discussion of the relevant legal issues, the Commission should consider whether the baseline used in the DEIR is so fundamentally and basically inadequate and conclusory that meaningful public comment has been precluded. If so, the Commission should specify another baseline that should be in the EIR and give direction to staff and EIR consultants on the specific baseline use levels that are required to be evaluated in a new DEIR. If the Commission doesn't act on the baseline to reject the DEIR, the Commission should take up consideration of those issues of primary concern that need to be addressed in the Final EIR Response to Comments and return it to the Commission for consideration and recommendation for action.

The Commission recessed at 3:48 p.m. and reconvened at 3:56 p.m.

The Commission discussed the baseline and asked staff to clarify how the baseline was calculated. Staff responded that when the EIR was initiated, a 200 vehicle day use limit was included in the baseline, along with 233 permanent trailers and 1,000 campsite vehicles, based on a letter from the applicant's attorney stating that this level of daily use should be included in the baseline, and based on the legal opinion from the CEQA expert attorney allowing unauthorized uses in the baseline. This level of use was an update of information made available at the time the Initial Study was initiated and was verified by staff at the time the County started the EIR.

In response to Commissioner Holland, staff elaborated on the environmental assessment (EA) for the project and indicated the EA is included in the proposed Master Plan, and when the Commission considers the merits of the project, the environmental assessment can be compared to the proposed location of existing uses and constraints.

Applicant Nancy Vogler and her representatives Leah Goldberg and Gary Giacomini addressed the Commission regarding the following issues:

- Concern about the future of Lawson's Landing and frustration at the lengthy process
- All requirements of the County planning department have been met
- The legal opinion on which the baseline was set should be given deference because Mr. Remy was a neutral CEQA expert
- Peak use vs. average daily use defined
- Peak use baseline ensures that environmental impacts are not underestimated, but doesn't expand the project
- Applicant has a self-imposed limit of 200 day users per day
- State HCD regulates camping, not day use, so they limited the number of vehicles to 233 trailers and 1,000 vehicles for campers
- Day use numbers are over and above the 1,000 campers
- Recirculation of the DEIR would delay the project for years, which is unfair to the applicant because they have acted responsibly
- No evidence that recirculation would define any additional issues that would change the EIR

Commissioner Greenberg asked the applicant if Lawson's Landing has a policy of limiting vehicles to a

maximum of 1,000. The applicant responded in the affirmative and said that they have been limiting the number of vehicles to 1,000 maximum for at least the past three years.

The public hearing was opened.

The following people addressed the Commission in support of the project, and their comments relative to the DEIR included the following: the DEIR is adequate and the Commission should move forward; the snowy flover (sic) doesn't exist at Lawson's Landing according to the State; the Environmental Coordinator's numbers should be accepted; the applicants imposed limits voluntarily; the Countywide Plan recommends focusing on open space and recreational uses; and there should be a balance between conservation and recreational use.

- Robert King, Sacramento
- Dennis Carter, Newcastle
- Jennifer Woodward, Manteca
- Terri Brodsky, Newcastle
- Merv Zimmerman, Marshall
- Bob Edwards, Dillon Beach
- Harolyn Nelson, Vacaville
- Robert Burbank, Dillon Beach

The following people expressed their concern about the project and the issues raised included: levels of existing uses; baseline vs. the impact of the project; whether the project EIR provides the level of information needed to make a judgment on the project; the program EIR can't be used to defer analysis of detailed points; the Master Plan is inadequate and has to be revised and recirculated whether or not the baseline is changed; there is confusion about the analysis of worst case conditions with what is being presented as the baseline, which is in itself a worst-case scenario; and neither the environmental groups nor their attorney had agreed to any use figures, and the environmental coordinator's testimony that they had agreed with the use figures is incorrect.

- Nona Dennis, Marin Conservation League
- Catherine Caufield, Environmental Action Committee
- Gordon Bennett, Sierra Club

The public hearing was closed.

In response to Vice Chair Julin, staff confirmed that the Commission could ask for additional information when reviewing the merits of the project for approval, conditional approval, or disapproval of any component of the Master Plan, including additional information about the existing uses and proposed uses, and more detailed information from the project sponsors with respect to some of the issues raised in the EIR.

Vice Chair Julin made the point that certification of the FEIR does not close off the decision-makers' access to information. She recommended that it's time to look at the uses that are there, the uses that need to be there, the uses that will be compatible with the sensitivity of the land and meet the needs of the visitors, and allow the County to begin to do the job of enforcement. She stated that she understands the points the environmental community has raised, but given that there is judicial opinion on this, the community would be best served if the Commission recommended that the DEIR goes forward.

In response to Commissioner Barner's question regarding whether issues such as the alternate site for the drainage fields can be addressed in the Response to Comments as opposed to revisions, staff assured the

Commission that analysis had been done to determine feasibility of the alternate upland wastewater system at the planning level and further detailed analysis would need to be done on a specific facility design and location. If it is found at that time that the specific system proposed for the upland location isn't feasible, then either there won't be a project or there will be another system proposed and it will be evaluated, which would require further environmental review.

Director Hinds noted that the Response to Comments should adequately address all concerns that have been raised, including those concerns raised by other regulatory agencies. If the other regulatory agencies feel that the effort has fallen short, they can require supplemental environmental information specific to their needs when they get ready to make their decision on the project.

Commissioner Holland said that his opinion changed after reading the case law supplied by the environmental coordinator, because the Commission has to act according to the State Supreme Court's interpretation of the law, and according to that interpretation the approach used to set the baseline is the legally correct approach. Case law also settled the issue of recirculation, because the first three tests for recirculation only apply to the FEIR. The fourth test, whether the DEIR was so fundamentally inadequate and conclusory in nature that meaningful public review and comment were precluded, doesn't apply because there is no dearth of meaningful comment from the public, other agencies, and environmental organizations on the Lawson's Landing DEIR. Whether the Response to Comments can correct all problems, find mitigations for new impacts, and gain the approval of the applicants is unknown at this point, but he was not in favor of delaying the DEIR. In conclusion, he asked that the Response to Comments address all meaningful issues that have been raised in the letters received.

Chairman Thompson stated that the baseline is not a minimum or a maximum, but simply a fact. The cumulative impacts will be addressed in the FEIR and everyone will be educated sufficiently to make the choices they have to make at the Master Plan stage. He agreed with Commissioner Holland regarding recirculation of the DEIR.

Commissioner Ginalski noted that the CEQA process is not taken lightly and is the best process to balance having the best project with environmental constraints of a particular site. He is convinced that as the process evolves, issues can and will be addressed, and it is appropriate at this time to move forward.

Commissioner Greenberg stated that she has trouble with the baseline from a purely logical point of view. After considering the legal opinions and the input, she is satisfied that what the law requires is what was on the ground at the time of the NOP. After the testimony today, she said that it is not clear that what has been accepted as baseline reflects those conditions. She said that she is disappointed because it seems that the day use was incorporated into the maximum of 1,000 vehicles, allowed on site at the time of the NOP, but the DEIR states that another 200 vehicles, 20% more than allowed by the Lawson's at the NOP date, are part of the baseline.. On the issue of recirculation, she agreed that the appropriate time to make that decision is after the Response to Comments has been received. She believes that the Response to Comments should include a wetlands delineation. Mitigations for significant cumulative impacts should also be included in the Response to Comments since they are all caused by the project, as should the critical issue of the wastewater treatment site, and considering it on a conceptual level is not acceptable. In addition, compliance with the Local Coastal Plan and the Dillon Beach Community Plan has not been established, and secondary impacts, such as stabilizing the mobile dunes for leachfields, have not been adequately mitigated.

Commissioner Dickenson said that it is likely that the DEIR will have to be recirculated, particularly because of the significant deficiencies, and to do that further along in the process may be more expensive in

time and money. In terms of the issue of the baseline, the EIR considers the 233 trailers, 1,000 vehicle campers, and 200 day users, so the question becomes what are the existing conditions. The law states that actual existing conditions must be used, rather than theoretical conditions. Because of the applicant's statement that the number of users has been limited to less than the permitted number, it is clear to him that, contrary to the CEQA guidelines, the baseline used in the preparation of the DEIR overstates the existing use. Since they are available, he would like staff to come back with figures on the actual existing use and they should be utilized to determine the baseline.

Commissioner Holland stated that, while he doesn't disagree with the theory of the baseline, he wants the numbers verified, including whether the 1,000 figure refers to vehicles or campsites.

In response to a procedural question from the Commission, staff stated that if the intent of the Commission is that no action shall be taken to require revision and recirculation of the DEIR based on the baseline issue, the Commission could inform staff to that effect, and staff will address the Commission's stated primary concerns in the Final EIR and Response to Comments and return it to the Commission for consideration and recommendation for action.

M/s Julin/Holland to instruct staff to proceed with preparation of the Response to Comments for the Draft FEIR.

Commissioner Greenberg recognized that valid issues have been raised about the baseline numbers, and she suggested the motion have a second part requiring that the baseline numbers be confirmed before a vote is taken to accept the current baseline. Vice Chair Julin stated that this concern, along with all other concerns raised, will be addressed by the consultant in the Response to Comments. The mover and seconder of the motion rejected adding the second part to their motion.

The Chairman called for a roll call vote, and the motion carried by a vote of 5/2/0 (Commissioners Dickenson and Greenberg dissenting).

The decision is not final and may be appealed to the Board of Supervisors within ten calendar days, no later than October 20, 2005, at 4 p.m.