

Exhibit to Agenda Items #9b & 9c

- b. Determine and adopt **Findings** that there is **No Feasible Alternative** to the **Project**, rendering zoning ordinances inapplicable to the **Project** pursuant to California Government Code section 53096.
- c. Determine the **Project** is consistent with the purposes of the **State Aeronautics Act** and adopt **Findings**, overriding a determination by the **Solano County Airport Land Use Commission** that the **Project** is inconsistent with the **Travis Air Force Base Land Use Compatibility Plan**.

Board of Directors Meeting

Thursday, August 19, 2021, scheduled to begin at 5:30 p.m.

Virtual Meeting (online)

Government Code Section 53096

Background:

Government Code section 53091(e) exempts from zoning ordinances power generation projects but not “transmission” by local agencies.

In a recent case (*City of Hesperia v. Lake Arrowhead*), the Court held that the term *transmission* is as defined in Websters, not the utility industry, and thus would essentially eliminate from the exemption any facility that involves the “flow of electricity.” This would include any power generation project, thus effectively eliminating the power generation exemption altogether.

Government Code Section 53096 (cont.)

In the words of the Court:

“We are not troubled by the possibility that the absolute exception in section 53091(e) *may never apply to the location or construction of electrical energy facilities*. In the same legislation that first amended section 53091 to include the exception to the exemption, the Legislature also enacted section 53096(a), which provides a qualified exemption to a local government's land use regulations under certain conditions.”

Government Code Section 53096 (cont.)

Section 53096(a) authorizes the governing board of a local agency such as SMUD, by vote of four–fifths of its members, to render zoning ordinances inapplicable to a proposed use of property if the local agency at a noticed public hearing determines by resolution that there is no feasible alternative to its proposal.

The Section also requires notice to be provided to local landowner(s) and at the project site. Notice of tonight’s hearing was provided by letter to all landowners within 300 feet of the project. Notice was also posted at the site.

Government Code Section 53096 (cont.)

The Board's making a finding of no feasible alternative to the Solano 4 Wind Project will make all transmission-related zoning ordinances nonapplicable to the Project. This would apply to the wind turbines themselves as well as any ordinances that would otherwise apply to the laying of generation collection feeder circuits to convey the energy to the substation. The Project does not involve the construction of transmission facilities in the sense that electrical utilities use the term, and the way SMUD has interpreted the term in Section 53091(e) since its adoption.

The ordinances would include any by the County and the Solano County Airport Land Use Commission.

No Feasible Alternative

Why is there no feasible alternative?

1. The 2030 Zero Carbon Plan provides a roadmap of how SMUD can achieve zero carbon emissions, and **all scenarios will require wind energy as part of the portfolio**. Wind is a highly effective counterpart to solar, and, as of today, solar, storage, hydro and other technologies will not achieve the goal without wind. Moreover, we expect that in addition to wind, we will need unproven technologies as well. This analysis is also consistent with the EIR.

No Feasible Alternative (cont.)

Why is there no feasible alternative?

2. There is no alternative wind technology for the Project. SMUD commissioned a study by Black and Veatch which evaluated various technologies to achieve the 2030 Zero Carbon goal. The Study found that minimal offshore wind would be available to SMUD by 2030, leaving onshore wind.

No Feasible Alternative (cont.)

Why is there no feasible alternative?

3. The Black and Veatch study also evaluated other onshore wind projects, but the cost is an additional 33% above Solano 4, and there are topographical access challenges to those sites. Staff also identified the timeline to navigate the California Independent System Operator (CAISO) connection process would make eliminate such sites, leaving Solano.

Solano 4 contains the only land within the Solano Wind Resource Area with end of life and nearing end of life projects and some undeveloped.

State Aeronautics Act

SMUD applied to the Solano County Airport Land Use Commission (ALUC) for an advisory opinion on the compatibility of the Solano 4 Wind Project with the Travis Air Force Base Land Use Compatibility Plan (Travis Plan).

The ALUC found the Project incompatible with the Travis Plan, despite its own consultant finding SMUD's submitted material persuasive that the Project could be approved under a section of the Plan allowing approval based on site specific conditions.

State Aeronautics Act (cont.)

Under Public Utilities Code section 21676, a local agency's governing board may overrule an airport land use commission's finding of inconsistency by a two-thirds vote as long as it first makes specific findings that the proposed action is consistent with the purposes of the State Aeronautics Act.

The Act's two relevant purposes in this case are to avoid noise and safety impacts.

The following findings are relevant to determining the Project is consistent with the purposes of the Act.

State Aeronautics Act (cont.)

Finding: SMUD is a local agency under the Act. Supported by plain language of the statute and legislative history.

Finding: The Project is in an area already devoted to an incompatible use. The Wind Resource Area is the site of eight currently operational wind projects, consisting of 528 turbines, of maximum heights ranging from 340' to 428' and majority of these are already located within the Travis AFB DASR's line-of-sight. The Project sites are the location of current and former wind projects or are burdened by existing impediments to air navigation in the form of 500-foot-tall plus transmission towers.

State Aeronautics Act (cont.)

Finding: the Project will have no noise impacts. The Act's noise purpose is to protect residents from airport noise. The Project will make not airport noise and includes no housing or other noise sensitive uses.

Finding: The Project will not cause safety issues for people on the ground or aircraft in flight. FAA determined the Project would pose no hazard to air navigation as long as SMUD meets certain standard requirements (marking/lighting).

State Aeronautics Act (cont.)

Finding: The Project will not cause a significant impact to radar.

- The Project was designed to have **no net increase** in impacts to digital radar. Modeling by SMUD consultant, the FAA, Travis Air Force Base, and the Department of Defense confirm, in different terms, that there will be no material difference to the radar or military operations as a result of the Project.
- Wind turbines do not affect secondary radar systems that rely on transponders to communicate with aircraft in flight.
- Per our consultant, the vast majority of aircraft in the vicinity use transponders.

State Aeronautics Act (cont.)

Finding: There will be no cumulative impacts to air safety.

- FAA: “The cumulative impact of the proposed structures, when combined with other proposed and existing structures, is not considered to be significant. Study did not disclose any significant adverse effect on existing or proposed public-use or military airports or navigational facilities, nor would the proposals affect the capacity of any known existing or planned public-use or military airport.”
- “Therefore, it is determined that the proposed construction would not have a substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on any air navigation facility and would not be a hazard to air navigation providing the conditions set forth in this determination are met.”

State Aeronautics Act (cont.)

Summary.

- Westslope's studies indicate that removing and replacing 23 existing wind turbines with ... up to 19 150-meter rotor diameter modern wind turbines will have no material difference to the DASR or on the air traffic controllers' displays in STARS.
- Department of Defense Clearinghouse determined that the Project "will not present an adverse impact to military operations."
- Travis Air Force Base concluded the Project "should have minimal negative impact on Travis AFB operations."

Requested Action

9. Solano 4 Wind Project (Project):

- a. Certify the **California Environmental Quality Act (CEQA) Solano 4 Wind Project (Project) Final Environmental Impact Report (FEIR)**, adopt the **Mitigation Monitoring and Reporting Program** for the **Project**, adopt the **CEQA Findings and Statement of Overriding Considerations in Connection with the Solano 4 Wind Project**, and approve the **Project**.
- b. Determine and adopt **Findings** that there is **No Feasible Alternative** to the **Project**, rendering zoning ordinances inapplicable to the **Project** pursuant to California Government Code section 53096.
- c. Determine the **Project** is consistent with the purposes of the **State Aeronautics Act** and adopt **Findings**, overriding a determination by the **Solano County Airport Land Use Commission** that the **Project** is inconsistent with the **Travis Air Force Base Land Use Compatibility Plan**.



Questions?