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\_\_\_\_\_ Approved as to Form  
DONNA R. ZIEGLER, County Counsel  
By Heather M. Littlejohn, Deputy County Counsel

**THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA,  
STATE OF CALIFORNIA**

On motion of Supervisor \_\_\_\_\_

Seconded by Supervisor \_\_\_\_\_

and approved by the following vote:

Ayes:                      Supervisors

Noes:

Excused or Absent:

**THE FOLLOWING RESOLUTION WAS ADOPTED MARCH 24, 2015:  
NUMBER R-2015-\_\_\_\_\_**

**RESOLUTION DENYING IN PART AND GRANTING IN PART THE APPEAL OF  
ALTAMONT WINDS, INC. (“AWP”), OF THE EAST COUNTY BOARD OF ZONING  
ADJUSTMENTS DECISION ON FEBRUARY 2, 2015 TO DENY APPLICATION  
PLN2014-00028, A REQUEST TO EXTEND 16 CONDITIONAL USE PERMITS FOR  
THE MAINTENANCE AND CONTINUED OPERATIONS OF EXISTING WIND  
TURBINE ASSETS IN THE ALTAMONT PASS WIND RESOURCES AREA (APWRA)  
OF ALAMEDA COUNTY HELD BY THE APPELLANT ALTAMONT WINDS, INC.  
APPLICATIONS OF:**

**C-8036**, Altamont Infrastructure Company/Frick & Costa, APN: 099B-5680-015-00;

**C-8037**, Altamont Infrastructure Company/Pombo, APNs: 099B-6300-002-01, 099B 6300-002-02, 099B-6325-002-03, 099B-6325-002-04 and 099B-6425-001-06;

**C-8134**, Altamont Infrastructure Company/Rooney, APN: 099B-6125-002-00;

**C-8137**, Altamont Infrastructure Company/Mulqueeney, APNs: 099A-1800-002-03, 99A-1800-002-04, 99B-7890-002-04, 99B-7890-002-05, 99B-7900-001-05, 99B 7900-001-07, 99B-7910-001-01, 99B 7925-002-04, 99B-7925-002-05, 99B 7975-001-00, 99B-7980-001-00, 99B 7985-001-03, 99B-7985-001-04, 99B 7985-001-05, 99B-7985-001-06 and 99B 8050-001-00;

**C-8191**, WindWorks Inc./Mulqueeney, APN: 099B-7910-001-01;

**C-8216**, WindWorks Inc./Alameda County Waste Management Authority, APN: 099A-1810-001-00;

**C-8232**, Altamont Infrastructure Company/Guichard (formerly Egan), APN: 099B 6125-003-00;

**C-8233**, Altamont Infrastructure Company/Elliott, APN: 099B-6125-004-00;

**C-8235**, Altamont Infrastructure Company/Corbett, APNs: 099A-1785-001-14 and 099B-5650-001-04;

**C-8236**, Altamont Infrastructure Company/Dunton, APN: 099B-5680-001-00;

**C-8237**, Altamont Infrastructure Company/DeVincenzi (formerly Valhalla Enterprises), APNs: 099B 5610 001-00 and 099B-6075-003-00;

**C-8238**, Altamont Infrastructure Company/Ralph Properties II, APNs: 099B 7375 001-07, 099B-7300-001-05 and 099B-6325-001-03;

**C-8241**, Altamont Infrastructure Company/Walker Family Trust, APNs: 099B 6100 002-10, 099B-6100-002-11, 099B-6100-003-10, 099B 6100 003 11, and 099B-6100-003-15;

**C-8242**, Altamont Infrastructure Company/Marie Gomes Farms, APNs: 099B 6150 002-07, 099B-6150-003-00 and 099B-6150-004-10;

**C-8243**, Altamont Infrastructure Co./Alameda County Waste Management Authority: APNs: 099A-1770-002-01, 099A-1770-002-02, 099A-1770-002-03, 099A-1780-001-04, 099A-1790-003-00 and 099A-1810-001-00; and

**C-8244**, Altamont Infrastructure Company/Marie Gomes Farms, APNs: 099A-1795-001-00, 099A-1790-002-00 and 099B-6425-002-03;

Additionally, under an asset exchange proposed in 2014 between AWI and Green Ridge Power LLC (“GRP”) and completed on February 23, 2015, and described in the Supplemental Environmental Impact Report for the application, all wind turbines and supporting infrastructure assets owned by AWI and associated with six Conditional Use Permits listed above, C-8216, C-8243, C-8235, C-8244, C-8137 and C-8191 were transferred to GRP in exchange for wind turbines and supporting infrastructure owned by GRP, and are now deemed withdrawn from the application, and the following two Conditional Use Permits held by Altamont Infrastructure Company on behalf of Green Ridge Power, LLC are now deemed part of the application:

**C-8231**, Altamont Infrastructure Company/ Waste Management, Inc., APNs: 099B-6062-003-00, 099B-6425-002-04, 099B-6250-001-00, 099B-6275-001-01, 099B-6062-005-00, 099B-6225-001-00; and

**C-8239**, Altamont Infrastructure Company/Jackson, APN: 099B-6125-005-00;

#### Recitals

**WHEREAS**, applications concerning the foregoing applications were originally submitted to Alameda County in 2003 by the Applicant Altamont Winds, Inc. (“AWI”) through its subsidiary WindWorks, Inc., or by the Altamont Infrastructure Company on behalf of both AWI and Green Ridge Power, LLC (“GRP”) to renew individual permits on parcels on which

both AWI and GRP operated turbines first approved and constructed between 1982 and 1993; and

**WHEREAS**, on September 22, 2005 the Alameda County Board of Supervisors approved Resolution Number R-2005-453, on appeal of the East County Board of Zoning Adjustments decisions on November 13, 2003 and January 29, 2004 to conditionally approve a total of 29 conditional use permits (CUPs) for the maintenance and continued operations of existing wind turbines, including one permit (C-8191) held by WindWorks, Inc. (as an operating partner of Altamont Winds, Inc.), thirteen (13) permits held by Altamont Infrastructure Company LLC (a management company which does not own individual turbines) on behalf of Altamont Winds, Inc. and three other companies (SeaWest Power Resources, LLC, Altamont Power, LLC {a subsidiary of FPL Group, Inc. and ESI Energy LLC, and also operating as Green Ridge Power, LLC} and enXco., Inc., collectively the Wind Power Companies) that own turbines (or “beneficially own”), thereby approving with findings included that the CUPs, including those CUPs listed above (with the exception of CUPs C-8216 and C-8243, which were not complete applications at that time), were exempt from the California Environmental Quality Act (CEQA), and with conditions modified from the original Board of Zoning Adjustments decision, said Resolution and conditions are incorporated herein by reference; and

**WHEREAS**, on January 12, 2006 the East County Board of Zoning Adjustments adopted Resolutions Z-06-03 and Z-06-04, respectively approving two Conditional Use Permits, C-8216 and C-8243, having found that they were exempt from the California Environmental Quality Act (CEQA), to allow continued operation of existing turbines by WindWorks, Inc. (C-8216), and Altamont Infrastructure Company LLC (C-8243) on separate sites in the APWRA, said use permits having not been included in Resolution R-2005-453, but made subject to the same conditions therein by Resolutions Z-06-03 and Z-06-04; and

**WHEREAS**, Resolutions R-2005-453, Z-06-03 and Z-06-04, among other conditions, established an Avian Wildlife Protection Program and Schedule (AWPPS, Condition 7), with detailed requirements established in Exhibit G to reduce avian mortality by removing turbines identified as hazardous to avian wildlife, removing derelict turbines, shutting down turbines during winter months when bird use increases, and for the purpose of implementing the repowering program, permanently removing 10% of the existing turbines by September 30, 2009, an additional 25% by September 30, 2013, an additional 50% of the original turbines by September 30, 2015, and the remaining 15% of turbines by September 30, 2018; and

**WHEREAS**, Resolutions R-2005-453, Z-06-03 and Z-06-04 also required the Permittee to sponsor preparation of an Environmental Impact Report (EIR) to evaluate the environmental effects of the repowering program, the phased removal of turbines and existing operations (Condition 8); and

**WHEREAS**, in 2005 a coalition of five regional Audubon groups (Golden Gate Audubon Society, Ohlone Audubon Society, Mount Diablo Audubon Society, Santa Clara Valley Audubon Society and Marin Audubon Society, collectively Audubon) and CARE petitioned the Alameda County Superior Court to set aside Resolutions R-2005-453, and

subsequently Z-06-03 and Z-06-04 on various grounds, including that such action violated the County's General Code and CEQA, whereupon Audubon, CARE, the County and the Wind Power Companies agreed to participate in mediation and negotiations which led to a Settlement Agreement among the petitioners, the County, and three companies (the "Settling Companies") that own turbines in the APWRA but not including Altamont Winds, Inc. (the "Non-Settling Company"), with the objective of achieving a 50 percent reduction in the mortality rates of four avian raptor species (American kestrel, burrowing owl, golden eagle and red-tailed hawk) by November 1, 2009, adding a conservation planning component to the approved CUPs in consultation with the California Department of Fish and Game (CDFG, recently renamed the Department of Fish and Wildlife or CDFW) regarding such a component and enabling other programs and contingency adaptive management measures; and

**WHEREAS**, on January 11, 2007 the Alameda County Board of Supervisors adopted Resolution R-2007-111, which authorized the County's participation in the Settlement Agreement and amended the CUPs, thereby replacing Exhibit G (Avian Wildlife Protection Program and Schedule) of the prior Resolution R-2005-453, with Exhibit G-2 for the turbines beneficially owned by the Settling Companies (the "Applicable Turbines"), and Exhibit G-2 for turbines beneficially owned by the Non-Settling Company (Altamont Winds, Inc.) which for all intents and purposes was identical to the original Exhibit G, and made other changes to the conditions of approval of the prior Resolutions for the Applicable Turbines of the Settling Companies, including eliminating the requirement for an EIR to be prepared on the specified schedule and certain requirements related to relocation of identified Tier 1 and Tier 2 hazardous turbines; and

**WHEREAS**, Altamont Winds, Inc. applied in 2011 to modify sixteen (16) use permits under which it operated wind turbine assets, by eliminating selected requirements of Exhibit G-2 of Resolution R-2007-111 for the remaining life of the permit (years six through eight and years nine through thirteen: October 2010 to September 2018) and require termination of the CUPs on December 31, 2015, or more specifically:

- a) Eliminate the requirement for the annual 3½-month winter season shutdown, from November 1 of each year to the following February 15;
- b) Eliminate the requirement for repowering or permanent shutdown of an additional twenty-five (25) percent of currently operating turbines (10 percent of its turbines having been permanently shut down by September of 2009);
- c) Replace the requirement for repowering or permanent shutdown of an additional fifty (50) percent of operating turbines by September 2015 with a requirement that 100 percent of all originally approved turbines be permanently shut down on December 31, 2015; and
- d) Add a requirement that the County consider the human health, wildlife and climate benefits of wind power generated in the APWRA when making regulatory and use permit decisions;

**WHEREAS**, the Planning Department determined that the proposed permit modifications of 2013 would result in potentially significant adverse environmental impacts and therefore be a project subject to the California Environmental Quality Act (CEQA), and that completion of an Environmental Impact Report (EIR) would serve to comply with Condition 8 of Resolution R-2005-453 (and Condition 8 of Resolution R-2007-111); and

**WHEREAS**, an EIR was prepared in compliance with CEQA to evaluate the permit modifications, ongoing operations and future decommissioning impacts associated with repowering as required by Condition 8 of Resolution R-2007-111, and the East County Board of Zoning Adjustments held a public hearing and certified the Final EIR (FEIR) on July 18, 2013; and

**WHEREAS**, on July 18, 2013 the East County Board of Zoning Adjustments approved by Resolution Z-13-36 Alternative 1 as defined in the FEIR, as a version of the application to modify the use permits allowing for undiminished operation (without phased decommissioning as required under the AWPPS program of the 2005 CUPs) of the applicant's turbines, providing for continued winter seasonal shutdowns between November 1 and the following February 15 of each year, removal or relocation of individual turbines with a Hazardous Rated Turbine (HRT) ranking of 9.5 and 10.0, retrofitting of power poles to compensate for projected golden eagle fatalities and expiration on October 31, 2015; and

**WHEREAS**, the applicant has complied with the conditions of approval under Resolution Z-13-36 to continue the winter season shutdowns, remove designated HRT turbines and retrofit the requisite number of power poles in coordination with a local utility provider; and

**WHEREAS**, Altamont Winds Inc. and Windworks Inc. filed the subject application in early 2014 requesting extension of 16 permits under which it operated its wind turbine assets through the end of 2018, which was one of the alternatives considered in the 2013 FEIR (Alternative 3), but for which the Board made findings in July 2013 to reject as infeasible and as likely to result in the next highest level of avian mortality after the proposal to operate without the winter season shutdown, and in order to address continued operations only and not the effects of decommissioning addressed in the 2013 EIR, provide the basis for findings in support of operations through 2018, incorporate new mitigation options and provide for adequate public review, the County required the preparation of a Supplemental Environmental Impact Report (SEIR); and

**WHEREAS**, a Draft SEIR was completed on November 17, 2014, which made the same findings as the original 2013 EIR of significant adverse impacts, either directly or through habitat modifications, on special-status avian species, and identified the same mitigation measures applicable to ongoing operations as the 2013 EIR but also identified a new Mitigation Measure 17a to provide optional strategies to mitigate impacts on special-status avian species; and

**WHEREAS**, the East County Board of Zoning Adjustments held a public hearing on said application at the hour of 1:30 p.m. on the 18th day of December, 2014 for the purpose of

receiving comments on the Draft SEIR, and again at 1:30 p.m. on the 2nd day of February, 2015 for the purpose of receiving comments on the project proposal, in the City of Pleasanton Council Chambers, 200 Old Bernal Avenue, Pleasanton, California; and

**WHEREAS**, the Planning Department submitted a Staff Report to the Board of Zoning Adjustments summarizing the facts and circumstances of the request to extend the Conditional Use Permits for three years and the Final SEIR evaluation of the requested extensions; and

**WHEREAS**, it satisfactorily appears from affidavits on file that proper notice of said public hearing was given in all respects as required by law; and

**WHEREAS**, the East County Board of Zoning Adjustments approved Resolution Z-15-03 on February 2, 2015 to certify that the Final SEIR has been completed in compliance with CEQA, that the Final SEIR was presented to the Board and reviewed and considered the information contained in the Final SEIR, that the Final SEIR reflects the independent judgment of the Board; and

**WHEREAS**, the East County Board of Zoning Adjustments considered the proposed Exhibit A (Written Findings of Significant Effects), Exhibit B (Mitigation Monitoring and Reporting Program) and Exhibit C (Statement of Overriding Considerations) of the Draft Resolution, each of which are required by State and Local CEQA Guidelines; and

**WHEREAS**, on the basis of reports, recommendations and testimony received at its hearing on February 2, 2015, the East County Board of Zoning Adjustments found the following with respect to the requested Conditional Use Permit extensions:

1. That the recitals above were accurate and thereby adopted as findings of the Board of Zoning Adjustments;
2. The proposed Statement of Overriding Considerations does not meet the requirements of Section 15093 of the CEQA Guidelines in that it does not identify economic, legal, social, technological or other benefits of the project that outweigh its unavoidable adverse environmental risks, or that are supported by substantial evidence in the record;
3. Based on testimony received, and the evidence before it, that the economic benefit of the proposal to extend for three years the existing CUPs does not exceed the value of impacts on biological resources; and
4. No substantial evidence had been presented that no repowering project, which was the principal intent of the prior Resolution Z-13-36, or that no other wind power project, will move forward should the application be denied, nor has substantial evidence been provided that there would be a loss of jobs as a result of disapproval of the application sufficient to outweigh the unavoidable adverse environmental risks of the project; and

**WHEREAS**, the Board of Zoning Adjustments voted unanimously to deny the application to amend the subject fourteen (14) Conditional Use Permits as approved by Resolutions R-2005-453, R-2007-111 and Z-13-36, and took no action on the two (2) Permits withdrawn from the application by the applicant (the subject of Resolutions Z-06-03 and Z-06-04), and therefore the remaining subject 14 Conditional Use Permits would continue to be subject to the conditions of approval of Resolution Z-13-36 and expire on October 31, 2015; and

**WHEREAS**, on February 12, 2015, within a ten-day period following the denial of the permit extensions, as permitted by the Alameda County General Code, Altamont Winds, Inc. appealed the decision of the East County Board of Zoning Adjustments to deny Conditional Use Permit PLN2014-00028, a request for modifications to C-8036, C-8037, C-8134, C-8137, C-8191, C-8232, C-8233, C-8235, C-8236, C-8237, C-8241, C-8242, C-8238 and C-8244, on the basis that the Board of Zoning Adjustments did not adequately consider the social, economic, and environmental benefits of the Applicant's wind farm operations, including offsets of greenhouse gases in Alameda County and the environment as a whole, consistency of the use with CEQA's goals of reducing environmental damage, the over-mitigation of impacts that the Applicant has agreed to, and the substantial evidence in the administrative record in support of the Statement of Overriding Considerations; and

**WHEREAS**, on February 12, 2015, also within a ten-day period following the denial of the permit extensions, Audubon California and four regional Audubon groups (Golden Gate Audubon Society, Mount Diablo Audubon Society, Marin Audubon Society and Santa Clara Valley Audubon Society, collectively Audubon) appealed the decision of the East County Board of Zoning Adjustments to certify the Supplemental Environmental Impact Report (SEIR) for the proposed Conditional Use Permit extensions, asserting that the SEIR used an incorrect baseline, underestimated bird mortality, disregarded U.S. Fish and Wildlife Service guidelines on maximum tolerable eagle mortality, and contained similar and related flaws in its analysis; and

**WHEREAS**, on February 23, 2015 Altamont Winds, Inc. and Green Ridge Power LLC completed the proposed asset exchange, whereby a) all wind turbines and supporting infrastructure assets owned by AWI south of I-580, which are associated with Conditional Use Permits C-8216, C-8243, C-8235, C-8244, C-8137 and C-8191, were transferred to GRP and b) an equal number of wind turbines and supporting infrastructure owned by GRP north of I-580, which are associated with Conditional Use Permits C-8231, C-8233, C-8237, C-8238, C-8239 and C-8241, were transferred to AWI; and

**WHEREAS**, the turbines no longer operated by AWI associated with the six permits identified above for parcels located south of I-580, including permits on the two parcels owned by the Alameda County Waste Management Authority (C-8216 and C-8243), will be permanently shut down by GRP pursuant to its repowering efforts; and

**WHEREAS**, the turbines now owned by AWI associated with permits C-8231, C-8233, C-8237, C-8238, C-8239 and C-8241, are subject to the 2014 application and this resolution such that AWI has all the privileges and responsibilities for managing its newly acquired wind energy assets under the same conditions of approval as all other Conditional Use

Permits subject to this resolution, and will not as a result have increased its operating capacity or number of turbines to be allowed; and

**WHEREAS**, this Board of Supervisors held a hearing on the appeal on March 24, 2015, at which time the Board took public testimony from the Appellants, landowners, other organizations and the public; and

**WHEREAS**, the Planning Department submitted a letter to the Board of Supervisors summarizing the facts and circumstances of the request to extend the Conditional Use Permits for three years and the Final SEIR evaluation of the requested extensions and has made available to the Board all of the documents constituting the record upon which the appeal was taken; and

**WHEREAS**, it satisfactorily appears from affidavits on file that proper notice of said public hearing was given in all respects as required by law; and

**WHEREAS**, the Board of Supervisors approved Resolution R-2015-\_\_\_\_ on March \_\_\_\_, 2015 to deny the appeal by Audubon California regarding the certification of the Final SEIR, and affirms that the SEIR has been completed in compliance with CEQA, that the Final SEIR was presented to the Board and the Board reviewed and considered the information contained in the Final SEIR, and that the Final SEIR reflects the independent judgment of the Board; and

**WHEREAS**, the Board has considered Exhibit A (Written Findings of Significant Effects), Exhibit B (Mitigation Monitoring and Reporting Program) and Exhibit C (Statement of Overriding Considerations) of this Resolution, each of which are required by State and Local CEQA Guidelines; and

**WHEREAS**, having considered the appeal and other testimony and all reports and substantial information before it, this Board approves the implementation of the Mitigation Monitoring and Reporting Program attached as Exhibit B, which would provide for all of the significant effects on the environment to be eliminated or substantially lessened where feasible, as indicated in the Written Findings of Significant Effects attached as Exhibit A, recognizes that there are remaining significant effects on the environment found to be unavoidable which are acceptable due to overriding concerns as indicated in the Statement of Overriding Considerations attached as Exhibit C; and

**WHEREAS**, adoption of the programs, requirements, procedures, legal and financial commitments and all other specifications as set forth in the conditions of approval for the use permit extensions and the amendments herein, is found to be necessary for the public health and safety and as a necessary prerequisite to ensure that all of the existing wind energy facilities are managed in such a way as to serve the goals and objectives of the Alameda County General Plan, and to reduce to the greatest extent feasible the ongoing but unintentional death of protected species of raptors and other birds in the Altamont Pass area, while also maintaining sustainable levels of wind energy production as a renewable, non-polluting source of energy; and



**WHEREAS**, the amendments and conditions herein, including all the programs, requirements, procedures, legal and financial commitments and all other specifications as set forth herein are necessary to affirm the findings of Resolutions R-2005-453 and R-2007-111 that continued operation of the existing wind energy facilities, including those facilities beneficially owned either partly or wholly by Altamont Winds, Inc. is required by the public need, properly related to other land uses and facilities in the vicinity, will not materially affect adversely the health and safety of persons or property, will not be materially detrimental to the public welfare or public improvements in the vicinity, and will not be contrary to character or performance standards for the "A" Agriculture District in which they are located; and

**WHEREAS**, the Alameda County Board of Supervisors did hear and consider all said reports, recommendations and testimony as hereinabove set forth;

**NOW THEREFORE BE IT RESOLVED**, that the Alameda County Board of Supervisors does hereby find the following with respect to the requested Conditional Use Permit extensions:

1. That the recitals above are accurate and are hereby adopted as findings of this Board of Supervisors; and

2. The Board shall require Mitigation Measure BIO-17 to be implemented on the basis of the average golden eagle fatality rate (0.061) obtained from the Avian Monitoring Reports results for the bird years 2008 to 2010, in recognition that such rate is consistent with a fatality rate used in the 2013 EIR;

OR 2. The Board shall require Mitigation Measure BIO-17 to be implemented on the basis of the average golden eagle fatality rate (0.075) obtained from the Avian Monitoring Reports results for the bird years 2008 to 2012, in recognition that such a rate represents the largest number of years (i.e., more supporting data) during which time the winter season shutdown was in effect;

OR 2. The Board shall require Mitigation Measure BIO-17 to be implemented on the basis of the average golden eagle fatality rates (0.085) obtained from the Avian Monitoring Reports results for the bird years 2005 to 2010, in recognition that such a rate represents the worst-case rate and the worst-case rate available in 2013 used to calculate Mitigation Measure 17 under the 2013 EIR;

**BE IT FURTHER RESOLVED** that the Alameda County Board of Supervisors does hereby in part deny and in part grant the appeal of Altamont Winds, Inc., and amends twelve (12) Conditional Use Permits approved by Board of Supervisors' Resolutions R-2005-453 and R-2007-111, as amended by the Board of Zoning Adjustments Resolution Z-13-36, applicable to parcels on which the Applicant, Altamont Winds, Inc., owns and operates wind energy turbines, towers and supporting infrastructure assets located north of Interstate Highway 580, specifically CUPs C-8036, C-8037, C-8134, C-8231, C-8232, C-8233, C-8236, C-8237, C-8238, C-8239, C-8241 and C-8242, held in separate files in the offices of the Community

Development Agency, Planning Department, 224 West Winton, Rm. 111, Hayward, CA, 94544), subject to the following amended and additional conditions:

1. Avian Wildlife Protection Program & Schedule: By exercise of the amended Permits, the Permittee agrees to the continued implementation of **Exhibit G-2**, Avian Wildlife Protection Program & Schedule (AWPPS), attached to Resolution R-2007-111, with the following changes using strikeout and underlined new text:

YEARS NINE ELEVEN THROUGH THIRTEEN – OCTOBER 2013 FEBRUARY 15 2016 TO SEPTEMBER OCTOBER 31, 2018

1. From November 1 of each year to the following February 15 (the maximum period of the 3 ½ month shutdown) or for a different 3-½-month minimum period also based on monitoring results as in prior years, the Permittee shall cease operations of 100 percent of their turbines.
2. Beginning on February 15, 2016, the Permittee shall be limited to operate its wind energy turbine facilities to have an installed total operating capacity of 91.2 MW over three years, either by operating all facilities until June 22, 2017 (i.e., a total of 12-¾ months), or by shutting down 50% of its turbines through October 31, 2018, or in other stages such that the three-year installed or operating capacity may not be greater than 91.2 MWs. The Permittee shall submit its plans to the Planning Director to operate a set number of turbines for a set number of months prior to each February 15 of the years 2016 to 2018, and cease operating all turbines after the installed and operating capacity in these three years reaches 91.2 MWs based on the number and months of operations reported in said plans.
3. By October 31, 2015 ~~2013~~, the Permittee shall permanently shut down all turbines on sites with a ranking of 9.5 and 10.0 8.5 or greater under the ~~Hazardous Rated~~ High-Risk Turbine (HRT) evaluation system adopted by the Scientific Review Committee (~~44~~ 21 turbines, or as may be acquired by the Permittee), and shall report by letter to the Planning Director to confirm the shutdown by ~~October~~ December 31, 2013 2015. Turbine nacelles may be relocated to other turbine sites with an HRT ranking of ~~9.0~~ 8.0 or lower. Turbine towers on such discontinued HRT sites shall be removed by ~~October~~ January 31, 2014 2016. Subject to state and federal review and compliance with the Mitigation Monitoring and Reporting Program as provided for in Exhibit B ~~for~~ of this Resolution Z-13-35, all ~~14~~ 14 HRT turbine sites shall be fully decommissioned (cleared of equipment and foundations) at the time other turbines owned by the Permittee are fully decommissioned.
4. Unless the Permittee chooses to apply for an eagle take permit as described in Mitigation Measure BIO-17a (and submits a complete draft Eagle Conservation Plan and meets other USFWS requirements for an ETP) within six months of approval of the CUP modifications, the Permittee shall make a deposit to a trust account of adequate funds prior to the start of each operational year (February

15th of each year, starting in 2016), that are dedicated to implementing Mitigation Measure BIO-17 and/or BIO-17a. Such deposits for the use of power pole retrofits, or contributions to regional conservation of raptor habitat may be adjusted (supplemented with additional funds or refunded) at the end of each operational year (2016 to 2018) based on actual expenditures and power pole retrofits completed.

2. Mitigation Monitoring and Reporting Program: In all the remaining years of the Permits the Permittee shall implement and cooperate with Alameda County and its agencies to ensure implementation of all mitigation measures identified in the Mitigation Monitoring and Reporting Program attached as Exhibit B to this Resolution.
3. Repowering Progress Reporting. The Permittee shall submit a report semi-annually (twice yearly) to the Board of Zoning Adjustments describing, relative to each of the potential obstacles to repowering outlined as “Circumstances Outside of AWI’s Control” in the FSEIR.
4. Expiration: These permits shall expire on October 31, 2018 one month after their 13<sup>th</sup> (thirteenth) anniversary. The Permittee(s) shall have no express or implied right to operate existing turbines under these Permits after October 31, 2018.
5. Indemnity: The Permittee shall defend, indemnify and hold harmless Alameda County and its agents, officers and employees from any claim, action or proceeding against Alameda County, and/or its agents, officers and/or employees to attach, set aside, void, or annul these amendments to the Conditional Use Permits, the County’s findings and determinations under the California Environmental Quality Act (“CEQA”), or any combination thereof. Such indemnification shall include, but not be limited to, attorneys’ fees and costs incurred by Alameda County, with counsel selected by Alameda County. The County shall promptly notify the Permittee of any such challenge.
6. Compliance and Conditions. Permittee agrees to comply with all applicable regulations, rules and requirements of the County of Alameda and its Agencies, all subdivisions and departments of such agencies, and to comply with specific conditions of approval described herein by the representatives of said agencies, including but not limited to:
  - a. Community Development Agency, Planning Department
  - b. Public Works Agency, Building Inspection Department
  - c. Public Works Agency, Land Development Department
  - d. Public Works Agency, Grading Division
  - e. Fire Department
  - f. County Sheriff
  - g. Health Services Agency, Environmental Health Department

Permittee further agrees to comply with all applicable local, state or federal statutes, laws, ordinances, regulations, rules and requirements, including but not limited to those of the following agencies:

- |  |   |
|--|---|
| a. California Public Utilities Commission  | e. Bay Area Air Quality Management District |
| b. California Energy Commission  | f. United States Fish and Wildlife Service  |
| c. California State Department of Fish and Wildlife  | g. Federal Aviation Administration          |
| d. California State Water Quality and Control Board - San Francisco and Central Valley Regions |   |

Pursuant to Section 17-52.050 of the Alameda County Zoning Ordinance each said Conditional Use Permit shall be implemented within a term of three (3) years of its issuance or it shall be of no force or effect.

Failure to act in compliance with the conditions herein will be construed as a violation of Zoning and enforcement proceedings shall commence as provided for by Section 17.58 of the Alameda County Zoning Ordinance.

If implemented, each said Conditional Use Permit shall terminate on October 31, 2018, and shall remain revocable for cause in accordance with Section 17-54.030 of the Alameda County Zoning Ordinance.

**ALAMEDA COUNTY BOARD OF SUPERVISORS**

**THE FOREGOING** was **PASSED** and **ADOPTED** by a majority vote of the Alameda County Board of Supervisors this **24th** day of **March, 2015** to wit:

**AYES: Supervisors**

**NOES: Supervisors**

**EXCUSED: Supervisors**

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**PRESIDENT, BOARD OF SUPERVISORS  
COUNTY OF ALAMEDA, STATE OF CALIFORNIA**

**ATTEST:**

ANIKA CAMPBELL-BELTON, Clerk  
of the Board of Supervisors

By: \_\_\_\_\_



I certify that the foregoing is a correct copy of a Resolution adopted by the Board of Supervisors, Alameda County, State of California

ATTEST:

ANIKA CAMPBELL-BELTON, Clerk  
Board of Supervisors

By: \_\_\_\_\_