

REEL

IMAGE

_____ 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 THE APPEAL OF AUDUBON CALIFORNIA, GOLDEN GATE AUDUBON SOCIETY, MOUNT DIABLO AUDUBON SOCIETY, MARIN AUDUBON SOCIETY AND SANTA CLARA VALLEY AUDUBON SOCIETY (“AUDUBON”), OF THE EAST COUNTY BOARD OF ZONING ADJUSTMENTS DECISION ON FEBRUARY 2, 2015 TO CERTIFY THE SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT (SEIR) FOR 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/Mulqueeny, 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./Mulqueeny, 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 included as a potential outcome in the project application, and completed on February 23, 2015, 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 the six CUPs have been 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 Notice of Preparation (NOP) of a Draft Supplemental Environmental Impact Report (Draft SEIR) was issued on September 15, 2014, soliciting public input regarding the environmental analysis of the project (the proposed permit modifications) and comment letters were received thereafter regarding the scope of the Draft SEIR; and

WHEREAS, the Draft SEIR was completed on November 18, 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, BIO-17a, to provide optional strategies to mitigate impacts on special-status avian species; and identified significant and unavoidable adverse impacts on biological resources, in particular, an increase in avian mortality; and

WHEREAS, a Notice of Availability (NOA) of the Draft SEIR was issued on November 18, 2014 and copies of the Draft SEIR provided to the state Office of Planning and Research – State Clearinghouse (SCH) for distribution to state Responsible Agencies, and was also provided to other interested agencies, organizations and area property owners and residents to solicit comment on the Draft SEIR during a 45 day comment period ending on January 2, 2015, which comment period was thereafter extended to January 12, 2015 at 5:00 p.m., and the Draft SEIR was made available at the offices of the Alameda County Planning Department at 224 West Winton Avenue, Hayward, California, 94544, at a Planning Department branch office at 3585 Greenville Road (Martinelli Center) Livermore, California, 94550, made available on the Planning Department’s public website on November 18, 2014, and at the Livermore Public Library, 1188 South Livermore Ave, Livermore, California, 94550; and

WHEREAS, the East County Board of Zoning Adjustments held a public hearing 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 Final SEIR and the project proposal, in the City of Pleasanton Council Chambers, 200 Old Bernal Avenue, Pleasanton, California; and

WHEREAS, in accordance with the CEQA Guidelines Section 15132 a Final SEIR (Final SEIR) document was prepared which includes a full revision of the Draft SEIR, with a markup version of the document as appendix for reference, all comments received on the Draft SEIR, a list of persons, organizations and agencies commenting on the Draft SEIR, and responses to each comment, and said Final SEIR was provided on January 23, 2015 to the Office of Planning and Research – State Clearinghouse for distribution to state Responsible Agencies, and the Final SEIR was provided by the Planning Department to other interested agencies, organizations and persons who commented on the Draft SEIR, and made available on the County’s public website on January 23, 2015; 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, on February 2, 2015, after receiving public comment on both the Final SEIR and the proposed CUP extensions, the East County Board of Zoning Adjustments voted by two in favor and one opposed to approve Resolution Z-15-03 to certify that the Final SEIR was completed in compliance with CEQA, that the Final SEIR was presented to the Board and it had reviewed and considered the information contained in the Final SEIR, and that the Final SEIR reflected 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 certification of the SEIR and the denial of the permit extensions, as permitted by the Alameda County General Code, 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 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, this Board of Supervisors held a hearing on the appeal on March 24, 2015, at the hour of 11:00 a.m. at which time the Board took public testimony from the Appellants, landowners, other organizations and the public regarding the certification of the SEIR and the denial of the CUP extensions; and

WHEREAS, the Planning Department submitted a letter to the Board of Supervisors summarizing the facts and circumstances of the appeal by Audubon California and affiliated regional groups to overturn the certification of the SEIR, and has made available to the Board all of the documents constituting the record upon which the appeal was taken, indicating that the Final SEIR has been completed in compliance with CEQA including Sections 15089 and 15132 of the CEQA Guidelines, and that the impact of the project on protected avian wildlife species will remain significant and unavoidable, or in the case of cumulative impacts, cumulatively considerable; 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 Alameda County Board of Supervisors did hear and consider all said reports, recommendations and testimony as hereinabove set forth;

WHEREAS, the Final SEIR did not identify any significant new information as defined in CEQA Guidelines 15088.5 requiring recirculation of the Final SEIR; and

NOW, THEREFORE, BE IT RESOLVED that this Board certifies that the Final SEIR for the proposed modifications to the 16 Conditional Use Permits identified above, including those Permits that were subsequently withdrawn and the 2 Conditional Use Permits for assets now under the control of Altamont Winds, Inc. located north of Interstate Highway I-580, has been completed in compliance with CEQA; and

BE IT FURTHER RESOLVED as follows:

1. The Board certifies that it has been presented with all of the information described in the above recitals and has reviewed and considered this information, the 2013 EIR and the Final SEIR prior to adopting this Resolution and considering approval of the project.
2. The Board certifies that the above recitals and the Final SEIR are true and correct.
3. The Board certifies that the Final SEIR reflects the County's independent judgment and analysis.
4. Notice of the Board's hearings on the Draft and Final SEIRs has been given as required by law and the actions were conducted pursuant to the Planning and Zoning Law, CEQA, the State CEQA Guidelines and the County's CEQA Guidelines.
5. The Board is an elected decision-making body for the local lead agency, and that the certification of the Final SEIR by the Alameda County Board of Supervisors is final, for .
6. All individuals, groups and agencies desiring to comment were given adequate opportunity to submit oral and written comments on the Draft SEIR and to the degree permitted by the CEQA Guidelines also the Final EIR, which met or exceeded the requirements of the Planning and Zoning Law and CEQA.
7. All comments submitted during the public review and comment period on the Draft SEIR were responded to adequately in the Final SEIR.
8. No new comments or information has been submitted during or prior to the hearing on the Final SEIR that would change the analysis or conclusions of the Final SEIR or require recirculation of the Final SEIR.

NOW THEREFORE BE IT RESOLVED, that the Alameda County Board of Supervisors does hereby deny the appeal of Audubon California, Golden Gate Audubon Society, Mount Diablo Audubon Society, Marin Audubon Society and Santa Clara Valley Audubon Society, of the East County Board of Zoning Adjustments decision on February 2, 2015 to certify the Supplemental Environmental Impact Report for application PLN2014-00028, and hereby certifies said Supplemental Environmental Impact Report.

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

**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: _____