

**RESOLUTION NO. Z-21-13 OF
THE EAST COUNTY BOARD OF ZONING ADJUSTMENTS ADOPTED AT THE
HEARING OF APRIL 22, 2021
CERTIFYING THE FINAL SUBSEQUENT ENVIRONMENTAL IMPACT REPORT
FOR THE MULQUEENEY RANCH WIND PROJECT,
CONDITIONAL USE PERMIT PLN2019-00226,
IN COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

WHEREAS, Mulqueeney Wind Energy, LLC (Mulqueeney Wind), a subsidiary of Brookfield Power US Holding America Co., filed an application for Conditional Use Permit, PLN2019-00226 (Project) in December 2019 to replace 518 old generation wind turbines to install up to 36 new turbines with a maximum production capacity of 80 (MW), and more completely described in Resolution Z-21-14 that accompanies this Resolution; and

WHEREAS, the Project is part of an overall program to repower the entire portion of the Altamont Pass Wind Resource Area (APWRA) that is within Alameda County, by replacing older generation turbines with newer, larger turbines that serve to improve turbine efficiency and reduce operating costs, but which also have the potential benefit of substantially reducing avian mortality, especially for raptor species, that was a documented characteristic of the older generation turbines; and

WHEREAS, the repowering of the APWRA (hereinafter referring only to the Alameda County portion thereof) was the subject of a Program Environmental Impact Report (PEIR) which the East County Board of Zoning Adjustments (“Board of Zoning Adjustments” or “Board”) certified by adoption of Resolution Z-14-40 on November 12, 2014 as being in compliance with the California Environmental Quality Act (CEQA); and

WHEREAS, the PEIR evaluated two repowering alternatives for a maximum capacity of either 417 megawatts (MW) or 450 MW of combined nameplate capacity of new turbines within the APWRA, in order to serve the objective of increasing the output of clean energy and meeting state energy portfolio goals, in recognition that the APWRA has been the site of privately-owned wind energy projects in operation since the 1980s, after the State of California designated the area for production of renewable energy, while further recognizing that within the APWRA the number of MWs generally has a direct and proportional relationship to the mortality of protected avian and bat species; and

WHEREAS, the Board of Zoning Adjustments previously approved in September 2003 the Diablo Winds repowering project that began operations in 2004 and represents 20.5 MW of capacity, based on a prior Program EIR for Repowering the APWRA certified in 1998; and

WHEREAS, the existence of the Diablo Winds project represented a baseline condition for the 2014 PEIR and not a potential new project to be evaluated in the PEIR, because the PEIR was an evaluation of all current and future applications (submitted since the Notice of Preparation for the PEIR was circulated in 2010) for repowering a maximum of either 417 or 450 MW of combined new repowering development; and

WHEREAS, the PEIR further included two specific projects in its analysis which represented partial repowering of the APWRA, known as Golden Hills and Patterson Pass which together represented 108.2 MW of capacity, and which were approved by the Board of Zoning Adjustments at the time of the certification of the PEIR on November 12, 2014, and the PEIR was intended to provide for tiered review of other specific repowering projects that were anticipated to be proposed, consistent with the provisions for program EIRs in Section 15168 of the CEQA Guidelines using checklists to determine if such projects were adequately covered or anticipated in the PEIR; and

WHEREAS, Section 15162 of the CEQA Guidelines provides direction as to the circumstances in which a subsequent EIR shall be prepared including when, based on substantial evidence in light of the whole record, the lead agency determines that substantial changes are proposed in the project or program described and addressed in a prior EIR, or changes in the circumstances under which the project will be undertaken, that together would involve new significant environmental effects or more severe significant effects than previously identified, such that major revisions of the prior EIR are required; and

WHEREAS, the Project has been reviewed in accordance with the provisions of CEQA and it was determined that while the Project's scope was described generally as part of the PEIR, the Project proposes individual turbines with a nameplate capacity from 2.2 MW to 4.2 MW, and therefore with 40 percent more MW yield per turbine than the 3.0 MW turbines used in the PEIR to estimate environmental impacts of a typical individual future repowering project, and physically increased dimensions of roughly 9% longer rotor blades, 9% additional total rotor diameter, and a resulting 19% expansion of rotor swept area, such that the potential or likely effect would be increased avian and bat mortality on a per turbine basis, which supports the County's decision to prepare a subsequent EIR; and

WHEREAS, the Project is proposed in the context of new information including additional monitoring reports from similar repowering projects in both Alameda and Contra Costa Counties and further information regarding bat mortality, that combined with the physically larger and greater MW output together support the County's decision to prepare a subsequent EIR; and

WHEREAS, in the time since the Golden Hills project was approved in November 2014 for 88.4 MW and 52 turbines, it was constructed in 2015 with a capacity of approximately 85.9 MW (2.5 less MW and 48 turbines), and the Patterson Pass project, approved for up to 12 turbines with a capacity of 19.8 MW has not been constructed but remains an approved project; and

WHEREAS, in the time since the PEIR was certified and on the basis of analyses using environmental checklists pursuant to CEQA (Section 15168), the Board of Zoning Adjustments has approved three more repowering projects amounting to an additional 365 MW

RESOLUTION NO. Z-21-13

CERTIFYING FINAL SUBSEQUENT EIR FOR THE MULQUEENEY RANCH WIND
REPOWERING PROJECT – PLN2019-00226

APRIL 22, 2021

PAGE 3 of 6

of capacity, including the Golden Hills North project (40.8 MW), the Summit Wind project (54 MW), and the Sand Hill Wind Repowering project (50 MW); and

WHEREAS, in the time since the Golden Hills North project was approved in November 2015 for 40.8 MW and 24 turbines, it was constructed in 2016 instead with a name-plate capacity of 46 MW (5.2 more MW and 20 turbines with a capacity of 2.3 MW each); and

WHEREAS, in the time since the Summit Wind project was approved in January 2016 for 54 MW and up to 27 turbines, its owners have begun construction of 23 turbine sites only and propose to use turbines rated with a capacity of 2.5 MW each such that capacity would be increased to 57.5 MW if approved by the Board of Zoning Adjustments as a modified Conditional Use Permit (CUP); and

WHEREAS, the City of Santa Clara, which has jurisdiction over a single wind energy project site known as Rooney Ranch within the APWRA, approved in June 2019 the application of sPower for its repowering project of 25.1 MW of capacity on Rooney Ranch using an environmental checklist tiering from the PEIR in accord with Section 15168 of the CEQA Guidelines; and

WHEREAS, due to the changes in approved and constructed repowering projects as described hereinabove, the total number of MW currently in operation or approved for construction in the APWRA, including the Diablo Wind project, is 285 MW; and

WHEREAS, combined with the approved 80 MW approved for the Mulqueeny Ranch Project, the total number of MW of currently operating, constructed approved and proposed repowered wind energy projects in the APWRA would amount to 365 MW; and

WHEREAS, a Notice of Preparation (NOP) of a Subsequent Environmental Impact Report (DSEIR) was issued on April 6, 2020 soliciting public input regarding the environmental analysis of the repowering Project; and

WHEREAS the Draft Mulqueeny Ranch Project Subsequent Environmental Impact Report (DSEIR) was prepared and circulated for public comment between November 6, 2020 and December 21, 2020, and then extended for comment through January 8, 2021; and

WHEREAS the DSEIR describes the effects of the Project on the environment at a detailed level, identifies mitigation measures applicable to the Project and previously identified in the PEIR which would reduce each significant impact to the greatest extent possible or feasible, in most cases to a level that is less than significant but in other cases without reducing it to a less than significant level, including adverse impacts on protected avian and bat species including golden eagle, red-tailed hawk, American kestrel, burrowing owl and other focal raptor species; and

WHEREAS, a Notice of Availability (NOA) of the DSEIR was prepared on November 6, 2020 and copies of the DSEIR provided to the state Office of Planning and Research – State Clearinghouse (SCH) for distribution to state Responsible Agencies, and was also provided to or made available to other interested agencies, organizations and area property owners and residents to solicit comment on the DSEIR during a 45-day comment period ending on December 21, 2020 that was extended for another eighteen (18) days to January 8, 2021 at 5:00 p.m., and the DSEIR was made available at the offices of the Alameda County Planning Department at 224 West Winton Avenue, Hayward, California, 94544, and made available on the Planning Department’s public website on November 6, 2020; and

WHEREAS, a virtual public hearing to take verbal comment on the DSEIR was held on Tuesday, the 8th day of December, 2020 at the hour of 1:30 p.m. by way of video conference, where no comments were made; and

WHEREAS seven letters of comment on the DSEIR were received by the County including six received before January 8, 2021, and the seventh letter received on January 14, 2021, raising numerous substantial issues such as the cumulative impact analysis in the SEIR of Project effects on avian and bat species, the “micro-siting” of individual turbines, and including a request to analyze additional Project alternatives and mitigation measures; and

WHEREAS, in accordance with the CEQA Guidelines Section 15132, the Final Subsequent EIR (FSEIR) document was prepared which includes the full text of the DSEIR, as revised by the lead agency in response to public comments or to otherwise improve the draft, all comments received on the DSEIR, a list of persons, organizations and agencies commenting on the SEIR, and responses to each comment, and said FSEIR was provided on April 9, 2021 to interested agencies, organizations and persons who commented on the SEIR, and made available on the County’s public website; and

WHEREAS, it satisfactorily appears from the record that proper notice of said public hearings were given in all respects as required by law; and

WHEREAS, this Board, as the decision making-body for the certification of this FSEIR, did hold a virtual public hearing regarding the FSEIR at the hour of 1:30 p.m. on Thursday, the 22nd day of April 2021 by way of video conference; and

WHEREAS, the FSEIR did not include any additional significant new information or identify any new significant environmental impacts, a substantial increase in the severity of an environmental impact, or any other factors under CEQA Guidelines 15088.5 that would require recirculation of the SEIR; and

NOW, THEREFORE, BE IT RESOLVED that this Board certifies that the Final Subsequent EIR for the Mulqueeneey Ranch Wind Repowering Project has been completed in compliance with CEQA; and

RESOLUTION NO. Z-21-13

CERTIFYING FINAL SUBSEQUENT EIR FOR THE MULQUEENEY RANCH WIND
REPOWERING PROJECT – PLN2019-00226

APRIL 22, 2021

PAGE 5 of 6

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 and the Final Subsequent EIR prior to adopting this Resolution and considering approval of the Project.
2. The Board certifies that the above recitals are true and correct.
3. The Board certifies that the Final Subsequent EIR reflects the County's independent judgment and analysis and has been completed in compliance with CEQA.
4. Notice of the Board's hearings on the Draft Subsequent EIR and Final Subsequent EIR have been given as required by law and the actions were conducted pursuant to the State Planning and Zoning Law, CEQA, the State CEQA Guidelines and the County's CEQA Guidelines.
5. The Board is a non-elected decision-making body within the local lead agency, and the certification of the Final Subsequent EIR may be appealed to the Board of Supervisors of the County of Alameda.
6. All individuals, groups and agencies desiring to comment were given adequate opportunity to submit oral and written comments on the Final Subsequent EIR which met or exceeded the requirements of State Planning and Zoning Law and CEQA.
7. All comments submitted during the public review and comment period on the Draft Subsequent EIR were responded to adequately in the Final Subsequent EIR.
8. No new comments or information has been submitted during the hearing on the Final Program EIR that would substantially change the analysis or conclusions of the Final Subsequent EIR.

**EAST COUNTY BOARD OF ZONING ADJUSTMENTS
ALAMEDA COUNTY PLANNING DEPARTMENT**