

**RESOLUTION NO. Z-15-04 OF
THE EAST COUNTY BOARD OF ZONING ADJUSTMENTS
ADOPTED AT THE HEARING OF FEBRUARY 2, 2015
CONCERNING PLN2014-00028**

WHEREAS, ALTAMONT WINDS INC. AND WINDWORKS INC. have filed an application to extend 16 conditional use permits originally approved by Resolution R-2005-453 of the Alameda County Board of Supervisors on September 22, 2005, and by Resolutions Z-06-03 and Z-06-04 of the East County Board of Zoning Adjustments on January 12, 2006, and as modified by the Board of Zoning Adjustments by Resolution Z-13-36 on July 18, 2013 for the maintenance and continued operations of existing wind turbines in the Altamont Pass Wind Resources Area (APWRA) of Alameda County; and

WHEREAS, at the request of the Alameda County Waste Management Authority, the owner of parcels to which Conditional Use Permits C-8216 and C-8243 apply, respectively the subject of Resolutions Z-06-03 and Z-06-04 of the EBZA, these two Permits were withdrawn from the application by the applicant prior to the hearing and confirmed at the hearing, further identified as follows:

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

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

WHEREAS, the application thereby applies to the following fourteen (14) CUPs:

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-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; and

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

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 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, 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 (hereinafter the “Permit Extensions”); 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, allowing 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 its sixteen (16) use permits 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) was required by 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 its permits 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 Applicant attended the hearings on December 18, 2014 and February 2, 2015 during which it presented evidence to the East County Board of Zoning Adjustments in support of its application, including presentations on February 2, 2015 by its President, Senior Vice President, Project Engineer and Legal Counsel and submission of evidence regarding the Applicant's description of the project's benefits, such as green energy and jobs; and

WHEREAS, members of the public, including representatives of some property owners, provided both verbal and written comments at the hearings on December 18, 2014 and February 2, 2015 expressing both support for and opposition to the request for the permit modifications; and

WHEREAS, the Planning Department submitted separate Staff Reports to the Board for its December 18, 2014 and February 2, 2015 hearings, summarizing the facts and circumstances of the request to extend the Conditional Use Permits for three years and the SEIR evaluation of the requested extensions; and

WHEREAS, it satisfactorily appears from affidavits on file that proper notice of said public hearings 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 EIR, that the Final EIR 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, the East County Board of Zoning Adjustments did hear and consider all said reports, recommendations and testimony as hereinabove set forth;

NOW THEREFORE BE IT RESOLVED, that this East County Board of Zoning Adjustments 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 Zoning Adjustments; and
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; and
3. Based on testimony received, and the evidence before the Board, 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 has 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

BE IT FURTHER RESOLVED that the Board of Zoning Adjustments does hereby deny the application to amend the subject 14 Conditional Use Permits as approved by Resolutions R-2005-453, R-2007-111 and Z-13-36, held in separate files in the offices of the Community Development Agency, Planning Department, 224 West Winton, Rm. 111, Hayward, CA, 94544), and that the Board of Zoning Adjustments takes no action on the 2 Permits withdrawn from the application by the applicant (the subject of Resolutions Z-06-03 and Z-06-04), and therefore the subject 16 Conditional Use Permits remain subject to the conditions of approval of Resolution Z-13-36.

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