

**RESOLUTION NO. Z-13-35 OF  
THE EAST COUNTY BOARD OF ZONING ADJUSTMENTS  
ADOPTED AT THE HEARING OF JUL 7 18, 2013  
CONCERNING PLN2011-00102**

**CERTIFYING ENVIRONMENTAL IMPACT REPORT, ADOPTING FINDINGS,  
ADOPTING MITIGATION MONITORING AND REPORTING PROGRAM, AND  
ADOPTING STATEMENT OF OVERRIDING CONSIDERATIONS, ALL IN  
COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.**

**WHEREAS**, ALTAMONT WINDS INC. AND WINDWORKS INC. have filed an application (PLN2011-00102) to amend the conditions on 14 Conditional Use Permits (CUPs) approved by Resolution R-2005-453 of the Alameda County Board of Supervisors, and 2 CUPs by Resolutions Z-06-03 and Z-06-04 of the East County Board of Zoning Adjustments, for the maintenance and continued operations of existing wind turbines in the Altamont Pass Wind Resources Area (APWRA) of Alameda County, said Conditional Use Permits identified as follows:

**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.

**WHEREAS**, on September 22, 2005 the Alameda County Board of Supervisors approved Resolution Number R-2005-453 to conditionally approve a total of 29 conditional use permits (CUPs) for the maintenance and continued operations of existing wind turbines, including one permit held by WindWorks, Inc. (as an operating partner of Altamont Winds, Inc.) (**C-8191**), and 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

**WHEREAS**, on January 12, 2006 the East County Board of Zoning Adjustments adopted Resolutions Z-06-03 and Z-06-04, respectively approving two CUPs 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**, Condition 8 of Resolution R-2005-453, Resolution Z-06-03 and Resolution Z-06-04 each require the permittee sponsor the preparation of an Environmental Impact Report (EIR) for the purpose of evaluating the environmental impacts of a repowering/turbine replacement program and the continued operation of existing turbine facilities (and progressive removal under the repowering program) through the remaining life of the CUPs; and

**WHEREAS**, Condition 24 of Resolution R-2005-453, Resolution Z-06-03 and Resolution Z-06-04 each require the Planning Director to set the CUPs for review after the third and eighth year anniversary of their approvals (2008 and 2013 respectively) for the purpose of modifying any conditions imposed therein or to add conditions that may be required to guarantee the continuance of the affirmative findings contained in Resolution R-2005-453 and

**WHEREAS**, on January 11, 2007 the Alameda County Board of Supervisors adopted Resolution R 2007-111, which authorized the County’s participation in a Settlement Agreement with three Settling Companies and amended the CUP by replacing Exhibit G (Avian Wildlife Protection Program and Schedule) of the prior Resolution R-2005-453, with Exhibit G-1 for the turbines beneficially owned by the Settling Companies, and Exhibit G-2 for turbines

beneficially owned by the Non-Settling Company (Altamont Winds, Inc.), Exhibit G-2 being for all intents and purposes identical to the original Exhibit G; and

**WHEREAS**, Altamont Winds, Inc. (AWI) applied in 2011 to modify its sixteen (16) use permits by eliminating selected requirements of Exhibit G of Resolution R-2005-453 (and 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 to repower or permanently shut down an additional fifty (50) percent of operating turbines by March 2018 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 Alameda County Planning Department as the lead agency for consideration of said application to modify the CUPs determined that the proposed modifications would result in potentially significant adverse environmental impacts, and that under Condition 8 of the applicable CUPs that AWI is required to sponsor the preparation of an EIR, and therefore required AWI to fund the preparation of an EIR to evaluate the proposed modifications, the ongoing operation of the turbines through the life of the CUPs (expiring on September 22, 2018), and decommissioning activities associated with the required removals of turbines and related infrastructure; and

**WHEREAS**, a Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) was issued on May 31, 2012, soliciting public input regarding the environmental analysis of the project (the proposed permit modifications), and a public scoping meeting was held on June 21, 2012; and

**WHEREAS**, the DEIR was completed on March 6, 2013 and identified significant and unavoidable adverse impacts, directly or through habitat modifications, on avian wildlife species protected by a wide range of federal and state laws including the Migratory Bird Treaty Act (MBTA), and identified potentially significant adverse impacts on terrestrial wildlife species and on area residents due to noise that could be reduced to less than significant levels with the implementation of mitigation measures identified in the DEIR; and

**WHEREAS**, a Notice of Availability (NOA) of the DEIR was issued on March 6, 2013 and copies of the DEIR 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 DEIR during a 45-day comment period ending on April 19, 2013 at 5:00 p.m., and the DEIR 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 March 7, 2013, and at the Livermore Public Library, 1188 South Livermore Ave, Livermore, California, 94550; and

**WHEREAS**, a public hearing to take verbal comment on the DEIR was held on Thursday, March 28, 2013, at the hour of 1:30 p.m. at a meeting of the East County Board of Zoning Adjustments in the City of Pleasanton Council Chambers, 200 Old Bernal Avenue, Pleasanton, California, 94566; and

**WHEREAS**, a public hearing to provide an informational update regarding the methodology used in the DEIR to estimate the comparative adverse impacts of the project and its alternatives, was held on Thursday, June 27, 2013, at the hour of 1:30 p.m. at a meeting of the East County Board of Zoning Adjustments in the City of Pleasanton Council Chambers, 200 Old Bernal Avenue, Pleasanton, California, 94566; and

**WHEREAS**, in accordance with the CEQA Guidelines Section 15132 a Final EIR (FEIR) document was prepared which incorporates the DEIR by reference with limited changes to the DEIR (errata), all comments received on the DEIR, a list of persons, organizations and agencies commenting on the DEIR, and responses to each comment, and said FEIR was provided on July 3, 2013 to the Office of Planning and Research – State Clearinghouse for distribution to state Responsible Agencies, and the FEIR was provided by the Planning Department to other interested agencies, organizations and persons who commented on the DEIR, and made available on the County’s public website on July 8, 2012; 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**, this East County Board of Zoning Adjustments (“Board”), as the decision making-body for the proposed permit modifications, did hold a public hearing regarding the FEIR and the proposed permit modifications and Eighth-Year Review of the Conditional Use Permits at the hour of 12:00 p.m. (noon) on Thursday, the eighteenth day of July, 2013 in the City of Pleasanton Council Chambers, 200 Old Bernal Avenue, Pleasanton, California; and

**WHEREAS**, the FEIR did not identify any new significant environmental effects or significant new information as defined in CEQA Guidelines 15162 requiring recirculation of the Final EIR; and

**WHEREAS**, the Planning Department submitted a Staff Report to the Board summarizing the facts and circumstances of the permit modifications, the eighth-year review of the subject Conditional Use Permits, and the preparation of the DEIR and FEIR in compliance with Sections 15089 and 15132 of the CEQA Guidelines, and asserts that the FEIR has been completed in compliance with CEQA, and that although mitigation measures are identified in the FEIR that are reasonably expected to avoid, minimize or reduce the adverse environmental impacts of the project on terrestrial species and noise disturbance of area residents to a less than significant level, 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**, in compliance with Section 15091 of the CEQA Guidelines the Planning Department has prepared Written Findings of Significant Effects, attached herein as Exhibit A, which makes written findings for each of the significant effects of the project, accompanied by a brief explanation of the rationale for each finding, supported by substantial evidence in the record, that changes or alterations have been required in or incorporated into the project, including by identified mitigation measures which would avoid or substantially lessen some but not all identified significant environmental effects, and furthermore that certain mitigation measures or project alternatives identified in the final EIR are infeasible due to specified economic, legal, social, technological, or other considerations; and

**WHEREAS**, further in compliance with Section 15091 of the CEQA Guidelines the Planning Department has prepared a Mitigation Monitoring and Reporting Program, attached herein as Exhibit B, which is required to be implemented by the Permittee and by the County as a condition of approval of the project and that are fully enforceable through permit conditions, agreements, or other measures; and

**WHEREAS**, in compliance with Section 15093 of the CEQA Guidelines the Planning Department has prepared a Statement of Overriding Considerations, attached herein as Exhibit C, which states specific reasons, supported by substantial evidence in the record, why the Planning Department and the Board would approve the project although the significant adverse environmental effects on special-status avian species would not be avoided or substantially lessened by the identified mitigation measures; and

**NOW, THEREFORE, BE IT RESOLVED** that this Board certifies that the Final EIR for Modifications to the Conditional Use Permits (2005) for Altamont Winds, Inc., 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 and the Final EIR prior to adopting this Resolution and considering approval of the project.

2. The Board certifies that the above recitals, attached exhibits and the Final EIR are true and correct.
3. The Board certifies that the Final EIR reflects the County's independent judgment and analysis.
4. Notice of the Board's hearings on the proposed project, the Draft and Final EIRs 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 a non-elected decision-making body within a local lead agency, and that the certification of the Final EIR may be appealed to the Alameda County Board of Supervisors.
6. All individuals, groups and agencies desiring to comment were given adequate opportunity to submit oral and written comments on the permit modifications, the DEIR 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 DEIR were responded to adequately in the Final EIR.
8. No new comments or information has been submitted during the hearing on the Final EIR that would change the analysis or conclusions of the Final EIR.
9. The Board adopts the Written Findings of Significant Effects contained in Exhibit A of this Resolution, the Mitigation Monitoring and Reporting Program contained in Exhibit B of this Resolution; and the Statement of Overriding Considerations contained in Exhibit C of this Resolution, which Exhibits are incorporated herein as if fully set forth.

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