
Approved as to Form
DONNA R. ZIEGLER, County Counsel
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**THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA,
STATE OF CALIFORNIA**

**THE FOLLOWING RESOLUTION WAS ADOPTED MAY 5, 2015:
NUMBER R-2015-177**

**RESOLUTION APPROVING AN EXTENSION OF 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 ALTAMONT WINDS, INC. AND GRANTING
THE APPEAL OF ALTAMONT WINDS, INC. ("AWI"), OF THE EAST COUNTY
BOARD OF ZONING ADJUSTMENTS DECISION ON FEBRUARY 2, 2015 TO DENY
APPLICATION PLN2014-00028, 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 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, due to changed circumstances facing the Applicant including uncertainties about the requirements of the California Independent Service Operators (CAISO) for transmission and interconnection studies, difficulties in securing power purchase agreements, uncertainties regarding the extension of the federal renewable energy production tax credit into and beyond 2015, and the opportunity to exchange turbine assets with other operators so as to eliminate the potential for continued operations and production from comparable facilities to obstruct or delay repowering by other operators, the Applicant determined that continued operation of its wind turbine assets through the end of 2018 was necessary in order to achieve repowering in an economically practical manner, and filed the subject application in February 2014 requesting extension of 16 permits under which it operates its wind turbine assets through the end of 2018; and

WHEREAS, the continued operation of wind turbine assets by the Applicant through the end of 2018 was one of the alternatives considered in the 2013 FEIR (Alternative 3), for which the Board of Zoning Adjustments made findings in July 2013 that it would: a) serve the project objectives of producing renewable energy; b) substantially exceed (or extend) the lifetime MW capacity of the project; c) would result in substantially greater avian mortality in spite of inclusion of the winter season shut down; and d) very likely obstruct the County and the Scientific Review Committee's objectives for repowering, because repowering was anticipated to be well under way in 2016, when all of AWI's turbines would still be in place under Alternative 3 (and presumably occupying areas otherwise suited for repowering); and

WHEREAS, the Board of Zoning Adjustments further determined in July 2013 when it made its findings of the significant effects of the year 2011 permit modifications project and its alternatives that Alternative 3, with continued operations through 2018, was intended to identify the comparative impacts of maintaining wind farm operations without any phased decommissioning and to show certain air quality and climate change benefits, and represented the maximum proportional adverse impacts on protected avian species when compared to the No Project Alternative, three additional years of turbine operations resulting in substantial additional impacts of generating noise disturbances to nearby residents, and would better serve the project objectives of renewable energy than other alternatives including the project, and for the overall purpose of meeting the project objectives, which include accommodating repowering by NextEra

Energy Resources on properties shared with AWI and minimizing significant impacts on special status avian wildlife, was considered infeasible; and

WHEREAS, in order to address changed circumstances and to evaluate if continued operations through 2018 would be feasible or could be mitigated by other means including mitigation strategies anticipated to be adopted for the APWRA Repowering Program EIR, while focusing evaluation on continued operations only and not the effects of decommissioning addressed in the 2013 EIR, 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 determined that, based on the evidence in the record, it could not make the findings necessary to adopt a

Statement of Overriding Considerations identifying economic, legal, social, technological or other benefits of the project that would outweigh its unavoidable adverse environmental risks; 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, after taking public comments from the public, including those of the Applicant and Appellant Altamont Winds, Inc. and the second Appellant, Audubon California and its regional affiliates, the Board of Supervisors discussed the appeals, identified specific considerations and findings, and on March 24, 2015 voted by three in favor and two opposed to adopt a motion to overturn the decision of the EBZA and extend the Conditional Use Permits through October 31, 2018, and to direct staff to return at a subsequent Planning meeting of the Board of Supervisors with final revisions of the draft resolutions and exhibits, including Findings of Overriding Considerations, that would be consistent with the statements and findings of the Board Members in support of the permit extensions; and

WHEREAS, on May 5, 2015 the Board of Supervisors held a hearing to consider the revised draft resolutions and exhibits, at which time the Board took public testimony from the Appellants; 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 May 5, 2015 to certify the Supplemental EIR and thereby deny the appeal by Audubon California of the decision of the EBZA to certify the SEIR; 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 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 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 that 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. That this Board of Supervisors hereby finds that the requested extension of the Conditional Use Permits will:
 - a. Promote repowering in the APWRA by allowing AWI the additional time it needs to generate funds to finance the repowering project and to secure rights to sell power to CAISO or PG&E;
 - b. Maintain a diversity of operators in the APWRA by maintaining a small, local business presence participating in the APWRA in the decades after repowering;

- c. Promote small businesses in Alameda County that are contributing to clean energy production for future potential purchase by the county's proposed Community Choice Aggregation program or another green energy consumer;
- d. Provide the benefits of ongoing employment and stability to AWI's approximately 40 employees and their families;
- e. Provide opportunities for landowners leasing their land to AWI to receive income and economic development opportunities for green energy production;
- f. Contribute to reductions in the air toxins linked to asthma, hospitalizations, cancer and other health conditions;
- g. Contribute to the implementation of AB 32 and its comprehensive approach to reduce greenhouse gas emissions, which includes: job growth and local economic benefits in California; public health benefits for California residents, particularly in disadvantaged communities; innovation in technology in energy, air, water and resource management practices; and regional and international collaboration to adopt similar greenhouse gas emissions policies;
- h. Promote California's efforts under AB 32 to reduce greenhouse gas emissions in a manner that: minimizes costs and maximizes benefits for California's economy; maximizes additional environmental and economic co-benefits for California; and considers overall societal benefits, including reductions in other air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health; and provides opportunities for small businesses to participate in and benefit from statewide efforts to reduce greenhouse gas emissions; Promote the AB 32 climate change scoping plan strategies to address climate change and achieve a cleaner, healthier and more sustainable future for all Californians;
- i. Advance the goals of the County's Community Climate Action Plan to reduce greenhouse gas emissions and increase the use and production of renewable energy;
- j. Provide an equitable balance for the public good between environmental and economic development priorities;
- k. Recognize the economic, social and climate benefits of continued wind energy production;
- l. Advance progress at an appropriate pace towards repowering that does not sacrifice retention of small businesses in Alameda County;
- m. Recognize that considerable questions remain about the causes of avian mortality other than what is attributed to the Applicant's wind turbine operations.

3. That under the circumstances, which have changed since 2013, the extension of operations through 2018 is a feasible and appropriate step toward repowering in the APWRA, in that:
 - a. Whereas in 2013 the applicant and the County were jointly confident that repowering was feasible in 2016. At that time, the cessation of AWI's operations in November 2015 was found to promote repowering whereas continued operations through 2018 might obstruct repowering. The alternative of extending operations through 2018 was thus unnecessary and deemed infeasible. In substantial part, the infeasibility determination was due to the concern that continued operations of some of AWI's turbines could physically obstruct repowering activities planned by NextEra Energy Resources on shared properties south of I-580. However, the recently completed asset exchange has eliminated the potential for such an obstruction;
 - b. Although extending operations through 2018 was previously considered an infeasible alternative because it would not minimize avian mortality, the applicant has provided evidence to demonstrate that it cannot cease its existing operations and repower as early as had been anticipated at the time of the 2013 permit modifications. In particular, this is because repowering cannot occur without electrical transmission and interconnection rights to sell power on the open market or to PG&E secured from CAISO. Until early 2014, CAISO had not informed AWI of the two-year study process required that, while now underway, would not be completed until April 2016, only after which can AWI initiate the 1½-year process of actual repowering including the permitting process and procuring and installing the new wind turbines. While the extension is expected to increase avian mortality in the short-term, it is expected to reduce avian mortality in the long-term after repowering is completed by AWI;
 - c. AWI's current financial constraints require it to maintain wind energy production and related income until repowering is feasible under transmission and interconnection rights to be approved by CAISO; and
 - d. Although the extension will result in significant and unavoidable environmental impacts, the extension will ultimately promote repowering in the APRWA in an appropriate manner that balances the negative environmental impacts with the economic, social and local, region-wide and statewide environmental benefits of the project.
4. That the Statement of Overriding Considerations attached herein as Exhibit C meets the requirements of Section 15093 of the CEQA Guidelines in that it identifies specific economic, legal, social, technological or other benefits of the project that outweigh its unavoidable adverse environmental risks, which benefits are supported by substantial evidence in the record; and
5. That based on testimony received, and the evidence before it, the economic, social and local, region-wide and statewide environmental benefits of the proposal to extend for

three years the existing CUPs is determined to outweigh the potential impacts on biological resources, as further specified in the Statement of Overriding Considerations (Exhibit C); and

6. That Mitigation Measure BIO-17 should 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; the fatality rate based on reporting years 2005 to 2012 (0.080) will not be used because it includes data from years before the winter seasonal shut down was implemented and therefore is not considered to be as accurate for projecting future mortality; and the fatality rate based on reporting years 2008 to 2012 (0.075) is not selected based on evidence presented that there are substantial questions about whether this figure reflects the full range of sources and contributors to avian mortality that have not been fully researched or estimated and that such “background mortality,” while difficult to quantify; and
7. That Mitigation Measure BIO-17 should be implemented using the actual costs of power pole retrofits and allowing AWI to contract directly with PG&E to directly pay for power pole retrofits; and
8. That the optional Mitigation Measure BIO-17a should be amended to provide for more time to prepare and study strategies to implement the alternatives included therein, and to thereby not go into effect until the CUP’s effective date of November 1, 2015; and
9. That the Findings of Significant Impacts of the Project adopted for the 2013 Environmental Impact Report, *Modifications to Existing (Year 2005) Conditional Use Permits – Altamont Winds, Inc. (AWI)*, are incorporated herein by reference and as modified by the Findings of Significant Impacts of the Project adopted for the 2015 Supplemental Environmental Impact Report, *Altamont Winds, Inc. 86 MW Altamont Wind Farms, 2018 CUP Extension*.
10. That the County recognizes that there will continue to be avian mortality caused by these older generation turbines that is estimated to be approximately twice as high as mortality caused by newer turbines producing the same amount of energy. However, after considering the benefits of continuing the operation of an existing green energy source and the social and economic development benefits of having a local operator continue to produce energy and not experience an interruption of production or lay off workers, these social, economic and environmental benefits of allowing the project to continue outweigh the detriment of a short-term persistence of higher avian mortality.
11. That comments were received suggesting that another wind developer could acquire AWI’s assets and repower and operate AWI’s wind farm if AWI went out of business as a result of the permit extension being denied, thus eliminating the concerns about negative effects on economic development or loss of a green energy source. The Board has considered this suggestion, but finds that such a change in operations is speculative

and cannot be relied upon to promote economic development or continued production of green energy. The Board finds that business bankruptcies do not necessarily lead to smooth business transitions and instead, that there are numerous examples of business bankruptcies that have delayed development opportunities in the Bay Area. The Board finds that the potential immediate and long-term social and economic burdens upon East Bay businesses and working families that would be expected if AWI's wind farm ceased operations permanently or temporarily during a change of ownership outweigh the possible but speculative benefits of another wind operator immediately stepping in for AWI.

12. That for the foregoing reasons, based on the testimony and evidence, the County extends the permit through 2018 in order to allow the Permittee to amass the capital over a three year period to repower its turbines. At the present time, while not foregoing appropriate review of future applications, the Board does not intend to extend the permit beyond 2018 and finds, at the present, that the aforementioned benefits of extending the permit only support extending the permit for three years.

BE IT FURTHER RESOLVED that the Alameda County Board of Supervisors does hereby adopt the Written Findings of Significant Effects attached hereto as Exhibit A, the Mitigation Monitoring and Reporting Program attached hereto as Exhibit B and the Statement of Overriding Considerations attached hereto as Exhibit C; and

BE IT FURTHER RESOLVED that the Alameda County Board of Supervisors does hereby 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 through 12:01 a.m. of 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. By October 31, ~~2013~~ 2015, 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 (~~14~~ 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~~ HRT turbine sites shall be fully decommissioned (cleared of equipment and foundations) at the time other turbines owned by the Permittee are fully decommissioned.
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, as well as all applicable measures identified in the Mitigation Monitoring and Reporting Program previously adopted under Resolution Z-13-36 of the East County Board of Zoning Adjustments for the 2013 Modifications to the CUPs.
3. Repowering Progress Reporting. Because the County is extending the permit to realize the benefits of long term green energy production, it is critical that the Permittee use the additional time and financial resources provided for in this extension to achieve repowering. The Permittee shall submit a progress report to the Planning Director on an annual basis, beginning on October 15, 2015, and the Planning Director shall in turn report to the Board of Supervisors. The report shall provide a detailed assessment of the Permittee's accomplishments, including supporting documentation, and demonstrate progress toward repowering in the APWRA. At a minimum, the report shall include the following:

 - a. Permittee's Business Plan or Program to complete repowering (including construction) of the Permittee's existing turbines by 2019. The Plan shall identify objectives, goals, major benchmarks, tasks, resources, budget, and schedule, including those tasks Permittee outlined at the March 24, 2015 hearing (new land leases; over 20 permits and studies from local state federal agencies; CAISO transmission and interconnection studies; wind studies; project engineering/design; power purchase agreements; financing; wind turbine procurement; construction). Any significant changes to these shall be explained in subsequent reports.
 - b. Documentation of efforts to apply and post security for interconnection transmission or interconnection rights with California Independent System Operator (CAISO) and/or Pacific Gas and Electric (PG&E). It is anticipated that an

executed Generation Interconnection Agreement before March 2018 would allow the Permittee to commercially operate the repowered project by December 2018.

- c. Documentation of efforts to secure power purchase agreements (PPAs) for the Permittee's repowering project, including but not limited to the Public Utilities Commission approval of the PPA(s).
- d. Documentation of efforts to procure wind turbines and related wind project equipment for the Permittee's repowered facilities in the APWRA.
- e. Subsequent to the completion of the repowering project CEQA document, documentation of permit applications and agency coordination with the Army Corp of Engineers, California Department of Fish and Wildlife, and the California Regional Water Quality Control Board.
- f. The status of repowering relative to each of the potential obstacles outlined as "Circumstances Outside of AWI's Control" in the FSEIR.

If the progress report does not demonstrate that Permittee is diligently pursuing repowering, as measured against the Permittee's Business Plan or Program and other benchmarks identified above, this permit may be revoked or reviewed and modified by the Board. Based on its review, the Board may consider and impose additional or modified conditions to ensure that substantial progress towards repowering continues. The Planning Director may make minor modifications to the required components of the annual report by adding to or modifying Condition 3.a. through f. above. Any condition modified or added by the Board or Planning Director shall have the same force and effect as if originally imposed.

4. Expiration: These permits shall expire on October 31, 2018 one month after their 13th (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 elected and appointed officials, agents, officers and employees from any claim, action or proceeding against Alameda County, and/or its agents, elected and appointed officials, 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 or otherwise arising out of Permittee's exercise of these Conditional Use Permits. 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, and agrees to comply with all applicable regulations and to apply for all permits necessary to ensure compliance, including, but not limited to, preparing and developing an Eagle Conservation Plan and applying for an Eagle Take Permit, as recommended by the U.S. Fish and Wildlife Service. Permittee shall develop and submit an Eagle Conservation Plan for current operations by November 30, 2015 to the U.S. Fish and Wildlife Service. Other applicable requirements include but are not limited to, those imposed by 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 | |

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. This permit is subject to review and revocation pursuant to Chapter 17.54 of the Zoning Ordinance for violation of any of the above.

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. 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 **5th** day of **May, 2015** to wit:

AYES: Supervisors Miley, Valle & President Haggerty – 3

NOES: Supervisors Carson & Chan – 2

EXCUSED: None



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



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: 
Deputy

File No: 29572

Agenda No: 5

Document No: R-2015-177

Exhibit A

Written Findings of Significant Effects

In accordance with California Public Resources Code §21081 and CEQA Guidelines Section 15091 and 15163, the following findings are made and supporting facts provided for each significant environmental effect that has been identified in the 2013 Final EIR (2013 EIR) as revised by the Final Supplemental Environmental Impact Report (SEIR) and for which changes to the project and its conditions of approval are required (including adoption of mitigation measures) to avoid or substantially reduce the magnitude of the effect, as identified in the SEIR. The findings described below are organized by resource issue, in the same order as the effects are discussed in the SEIR. The County's findings regarding the project alternatives follow the individual effect findings. The findings reference the Final SEIR (part of the record upon which the Board bases its decision) and mitigation measures in support of the findings. The *Written Findings of Significant Effects*, adopted as Exhibit A under Resolution Z-13-36 of the East County Board of Zoning Adjustments on July 18, 2013 for the Modifications to Existing (Year 2005) Conditional Use Permits – Altamont Winds Inc., are incorporated herein by reference as they apply to the current application to extend the same use permits to 2018 that is the subject of these Findings. For specific resource mitigation measures, the section and page number in the Final SEIR where the full text of the mitigation measure is provided is noted in each finding.

Record of Proceedings and Custodian of Record

The record upon which all findings and determinations related to the approval of the project are based includes the following:

- The 2013 Final EIR, for Modifications to Existing (Year 2005) Conditional Use Permits – Altamont Winds Inc.
- The SEIR and all documents referenced in or relied upon by the SEIR
- All information (including written evidence and testimony) provided by County staff to the Board relating to the SEIR, the approvals, and the project
- All information (including written evidence and testimony) presented to the Board by the environmental consultants who prepared the SEIR or incorporated into reports presented to the Board
- All information (including written evidence and testimony) presented to the County from other public agencies related to the project or the SEIR
- All applications, letters, testimony and presentations relating to the project
- All information (including written evidence and testimony) presented at any County hearing related to the project and the SEIR
- All County-adopted or County-prepared land use plans, ordinances, including without limitation general plans, specific plans, and ordinances, together with environmental review documents, findings, mitigation monitoring programs, and other documents relevant to land use within the area
- The Mitigation Monitoring and Reporting Program for the project

- All other documents composing the record pursuant to Public Resources Code Section 21167.6(e)

The custodian of the documents and other materials that constitute the record of the proceedings upon which the County's decisions are based is Sandra Rivera, Assistant Planning Director, or her designee. Such documents and other material are located at 224 Winton Avenue, Room 111, Hayward, California, 94544.

Consideration and Certification of the SEIR

In accordance with CEQA, the Board of Supervisors certified that the SEIR has been completed in compliance with CEQA. The Board has independently reviewed the record, the 2013 EIR and the SEIR prior to certifying the SEIR and approving the project. By these findings, the Board confirms, ratifies and adopts the findings and conclusions of the SEIR as supplemented and modified by these findings. The SEIR and these findings represent the independent judgment and analysis of the County and the Board. The Board recognizes the SEIR may contain clerical errors. The Board reviewed the entirety of the 2013 EIR as modified by the SEIR and bases its determination on the substance of the information it contains. The Board of Supervisors certifies that the SEIR is adequate to support the approval of the action that is the subject of the Draft Resolution to which these CEQA findings are attached.

The Board of Supervisors certifies that the SEIR is adequate to support approval of the project described in the SEIR, each component and phase of the project described in the SEIR, any variant of the project described in the SEIR, any minor modifications to the project or variants of the project described in the SEIR, and the components of the project.

Absence of Significant New Information in the Final SEIR

The Board of Supervisors recognizes that the Final SEIR incorporates information obtained and produced after the draft SEIR was completed, and that the SEIR contains additions, clarifications, and modifications. The Board of Supervisors has reviewed and considered the Final SEIR and all of this information. The Final SEIR does not add significant new information to the draft SEIR that would require recirculation of the SEIR under CEQA. The new information added to the SEIR does not involve a new significant environmental impact, a substantial increase in the severity of an environmental impact, or a feasible mitigation measure or alternative considerably different from others previously analyzed that the project sponsor declines to adopt and that would clearly lessen the significant environmental impacts of the project. No information indicates that the draft SEIR was inadequate or conclusory or that the public was deprived of a meaningful opportunity to review and comment on the draft SEIR. Thus, recirculation of the SEIR is not required. The Board of Supervisors finds that the changes and modifications made to the SEIR after the draft SEIR was circulated for public review and comment do not individually or collectively constitute significant new information within the meaning of Public Resources Code Section 21092.1 or Section 15088.5 of the State CEQA Guidelines.

Severability

If any term, provision, or portion of these Findings or the application of these Findings to a particular situation is held by a court of competent jurisdiction to be invalid, void or unenforceable,

the remaining provisions of these Findings, or their application to other actions related to the project, shall continue in full force and effect unless amended or modified by the County.

Findings and Recommendations Regarding Significant and Unavoidable Impacts

Biological Resources

Impact BIO-1: Potential to cause a substantial adverse effect, either directly or through habitat modifications, on special-status avian species

Potential Impact: The potential impacts related to special-status avian fatalities are discussed beginning at page 30 of the draft SEIR and is further clarified in Appendix A, *Comment Letters and Response to Comments*, of the Final SEIR. The project would result in increased avian fatalities associated with the additional operating term of the wind turbines.

Mitigation Measure(s): The following mitigation measure(s), discussed in the draft SEIR at pages 37 through 40 are hereby adopted and will be implemented as provided in the Mitigation and Monitoring Reporting Program:

MM BIO-16: Implement Seasonal Shutdowns to Reduce Avian Fatalities

MM BIO-17: Mitigate for the Loss of Individual Golden Eagles by Retrofitting Electrical Facilities

MM BIO-17a: Compensate for the Loss of Special-Status Species, Including Golden Eagles, by Contributing to Conservation Efforts

Findings: Based on the SEIR and the entire record before the County, the County finds that:

Effects of Mitigation: Implementation of the mitigations recommended by Mitigation Measures BIO-16, BIO-17 and BIO-17a will reduce the effects of the proposed project on avian special-status species but will not mitigate this impact to a less-than-significant level. The project applicant will be required to implement seasonal shutdowns, from November 1 to February 15, on all turbines for the remaining operational period. The project applicant also will be required to compensate for impacts to raptors, including golden eagles, as indicated in BIO-17 and BIO-17a. The mitigation method in BIO-17 of retrofitting hazardous electrical poles within 140 miles of the proposed project, the area typically defined by the USFWS as the "local population," and must occur in an area with eagles at risk from electrocutions as determined through coordination with USFWS, reduces the risk of electrocution to birds (to include eagles, other raptors, and special status avian species). Additionally, mitigation measures in BIO-17a can be implemented in lieu of or in conjunction with BIO-17. BIO-17a provides the option of an Eagle Conservation Plan and Bird and Bat Conservation Strategy or contribution to regional conservation raptor habitat. If the project proponent chooses to implement BIO-17a, they will be required to submit for County approval a Special-Status Species Mitigation Plan outlining the estimated number of special-status species fatalities based on the type or types of compensation options to be implemented. The County Planning Director, in consultation with the Technical Advisory Committee, will consider, based on the Resource Equivalency Analysis, whether the proposed Special-Status Species Mitigation Plan is adequate, including consideration of whether each Special-Status Species Mitigation Plan incorporates a landscape-scale approach such that the conservation efforts achieve the greatest possible benefits. Compensation measures as

detailed in an approved Special-Status Species Mitigation Plan must be implemented within 60 days of the use permit's effective operational date, of February 15, 2016, or no later than April 16, 2016.

Remaining Impacts: Remaining impacts related to avian special-status species will be significant and unavoidable.

Overriding Considerations: As more fully explained in the Statement of Overriding Considerations contained in Exhibit C to the Resolution to which these CEQA Findings are attached, the County finds that there are environmental, economic, or other benefits of the approved project that override the remaining significant and unavoidable impacts from the project related to avian special-status species.

Findings and Recommendations Regarding Growth-Inducing Impacts

CEQA Section 21100(b)(5) and Section 15126.2(d) of the State CEQA Guidelines states that an EIR should discuss a project's growth-inducing impacts, which include "...the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment." Growth can be induced in a number of ways, including through elimination of obstacles to growth, through the stimulation of economic activity within the region, or through precedent-setting action.

The Project's growth inducing impacts are discussed in the 2013 Final EIR at page 5-8. The project would not induce growth or result in secondary growth-inducing impacts. The project would not result in new employment opportunities, and therefore would not induce a demand for new housing and services. The nature of the facilities is such that there would be no direct customers and no incentive for other residences or businesses to locate nearby.

EXHIBIT B FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT

MITIGATION MONITORING AND REPORTING PROGRAM

Introduction

Section 21081.6 of the California Environmental Quality Act (CEQA) and Section 15097 of the State CEQA Guidelines require a lead agency that adopts an environmental impact report (EIR) to establish a program to monitor and report on the adopted mitigation measures in order to ensure that approved mitigation measures are implemented subsequent to project approval. Specifically, the lead agency must adopt a reporting or monitoring program for mitigation measures incorporated into a project or imposed as conditions of approval. The program must be designed to ensure compliance during project implementation. As stated in Public Resources Code Section 21081.6(a)(1):

The public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment. The reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the project at the request of a responsible agency or a public agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the lead agency or a responsible agency, prepare and submit a proposed reporting or monitoring program.

This mitigation monitoring and reporting program (MMRP) is designed to meet that requirement. As lead agency for this project, Alameda County will use this MMRP to ensure compliance with mitigation measures associated with implementation of the proposed conditional use permit modifications. Under each identified resource, the MMRP provides the adverse impact(s), its corresponding mitigation measure(s), and the implementation and monitoring requirements, defined as follows.

- **Impact:** Identifies the impact number and statement as shown in the FSEIR.
- **Proposed Mitigation Measure(s):** Provides full text of the mitigation measure as shown in the FSEIR.
- **Timing:** Defines the phase of the project when a specific mitigation action will be taken.
- **Implementing Party(s):** Designates the party or parties responsible for implementing the mitigation measure.
- **Monitoring:** Identifies the party responsible for review of the mitigation measure's implementation, and the action and criteria necessary for ensuring implementation.

Mitigation is required to address significant or potentially significant impact(s) on the following resources specific to the FSEIR.

- Biological Resources

A sample mitigation monitoring compliance form is provided at the end of this document. For detailed information regarding environmental resource impact methodology and analysis, please see the 2013 FEIR, DSEIR and FSEIR.

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FINAL SUPPLEMENTAL MITIGATION MONITORING AND REPORTING PRORAM

Impact	Proposed Mitigation Measure	Timing	Implementation	Monitoring
<p>Impact BIO-1: Potential to cause a substantial adverse effect, either directly or through habitat modifications, on a special-status species.</p>	<p>BIO-16: Implement Seasonal Shutdowns to Reduce Avian Fatalities In order to reduce the potential impacts of the proposed project on avian species (to include raptors and special status species), AWI will implement seasonal shutdowns on all turbines for the remaining operational period. Turbines will be turned off on November 1 each year and will remain off through 12:01 a.m. on February 15 of the following year. No operational modifications will occur during the period of February 15 through October 31. AWI will notify County CDA each year when turbines have been shut down, and again when they have resumed operating.</p>	<p>November 1 to February 14 of each year</p>	<p>Project Applicant</p>	<p>Reviewing Party County of Alameda, SRC</p> <p>Criteria Verify that seasonal shutdowns have been implemented</p> <p>Monitoring Action Verify each year between November 1 and February 14</p>

Impact	Proposed Mitigation Measure	Timing	Implementation	Monitoring
	<p>BIO-17: Mitigate for the Loss of Individual Golden Eagles, Raptors, and Special Status Avian Species by Retrofitting Electrical Facilities</p> <p>AWI will mitigate for the proposed project's additional contribution to golden eagle mortality by retrofitting hazardous electrical poles in an onsite location (if any hazardous poles are located onsite), or in an offsite location. This mitigation measure will also benefit mortality reduction for other raptors and special status avian species. The mitigation must occur within 140 miles of the proposed project, the area typically defined by the USFWS as the "local population." The proposed project, with implementation of mitigation measure BIO-16, is projected to result in the fatality of approximately eleven eagles (cumulatively, and statistically, 3.7 per year or 11.1) over the three years of the project, compared to the No Project Alternative) (2015 Final SEIR, Tables 3-2 and 3--3). Based on current published draft guidance from the USFWS (2012), and using a general example, a ratio of 29 utility pole retrofits for each eagle is suggested by the USFWS. AWI will therefore retrofit 322 utility poles as mitigation for the expected level of eagle fatality from the proposed project (i.e., 11.1 times 29=321.9, rounded to 322). AWI may contract directly with an electrical utility to fund this mitigation based on the actual costs incurred by the utility; however, a written agreement and evidence of the completion of the retrofits must be provided to the County CDA. The mitigation may be implemented over the three-year permit extension, with one-third of the retrofits completed per year, assuming maximum operation of the 85.8 MWs of installed operating capacity. Beginning in 2016, AWI shall submit a report to the Planning Director no later than December 15 of each year, documenting the retrofits completed in that year, based on that year's installed capacity, such that 29 power pole retrofits shall be completed for each golden eagle fatality predicted based on the installed capacity.</p>	<p>An average of 108 retrofits to be completed per year, assuming full operation of the 85.8 MW of installed capacity in each year of the permit.</p> <p>Annual reports submitted to the Planning Director by December 15 of each year.</p>	<p>Project Applicant, through agreements with a utility provider, and reported to the Planning Director</p>	<p>Reviewing Party County of Alameda</p> <p>Criteria Retrofit of 29 power poles per predicted golden eagle fatality, and meeting APLIC / USFWS standards</p> <p>Monitoring Action Planning Director to evaluate if retrofitting of electrical poles has been completed</p>

Impact	Proposed Mitigation Measure	Timing	Implementation	Monitoring
	<p>BIO-17a: Compensate for the loss of special-status species, including golden eagles, by contributing to conservation efforts</p> <p>The Secretary of the Interior issued Order 3330 on October 31, 2013, outlining a new approach to mitigation policies and practices of the Department of the Interior. This approach recognizes that certain strategies aimed at some species can provide substantial benefit to others and to the ecological landscape as a whole. The landscape-scale approach to mitigation and conservation efforts is now central to the Department's mitigation strategy. Although the Order was intended for use by federal agencies and as such is not directly applicable to the County, it is evident that such an approach would likely have the greatest mitigation benefits, especially when considering ongoing and long-term impacts from wind energy projects.</p> <p>With these considerations in mind, the County has outlined some options that are currently available to compensate for impacts on raptors including special-status species. The options discussed below are currently considered acceptable approaches to compensation for impacts on raptors, in lieu of or in conjunction with Mitigation Measure 17. Although not every option is appropriate for all species, it is hoped that as time proceeds, a more comprehensive landscape-level approach to mitigation will be adopted to benefit a broader suite of species than might benefit from more species-specific measures. The County recognizes that the science of raptor conservation and the understanding of wind-wildlife impacts are continuing to evolve and that the suite of available compensation options may consequently change over the life of a project.</p> <p>To promote the conservation of raptors, the project proponent may compensate for special-status species raptor fatalities estimated within their project area. The project proponent shall submit for County approval a Special-Status Species Mitigation Plan outlining the estimated number of special-status species fatalities based on the type or types of compensation options to be implemented. The Project proponent will use the Special-Status Species Mitigation Plan to craft an appropriate strategy which may use one or more of the options presented below, as supported by a Resource Equivalency Analysis (REA) or similar type of compensation assessment acceptable to the County that demonstrates the efficacy of proposed mitigation for impacts on special-status species.</p> <p>REA is an approach to estimate quantitatively the amount of compensatory mitigation that is needed to mitigate impacts on raptors from windfarm operations. The USFWS uses REA to evaluate the mitigation requirements for golden eagles (USFWS, 2013), but it may also be useful in evaluating the mitigation needs of other species.</p>	<p>Draft Special-Status Species Mitigation Plan to be submitted within 60 days of the use permit's effective date, of November 1, 2015 (i.e., by December 31, 2015).</p> <p>Compensation measures as detailed in an approved Special-Status Species Mitigation Plan must be implemented within 60 days of the use permit's effective operational date, of February 15, 2016 (i.e., no later than April 16, 2016)</p>	<p>Project Applicant</p>	<p>Reviewing Party The County Planning Director, in consultation with the TAC.</p> <p>Criteria The County Planning Director, in consultation with the TAC, will consider, based on the REA, whether the proposed Special-Status Species Mitigation Plan is adequate. USFWS will evaluate any draft eagle take permit application, and the Planning Director and TAC will evaluate efforts towards regional conservation of raptor habitat.</p> <p>Monitoring Action Planning Director and TAC to evaluate implementation of the Special-Status Species Mitigation Plan</p>

Impact	Proposed Mitigation Measure	Timing	Implementation	Monitoring
	<p>The County Planning Director, in consultation with the APWRA Technical Advisory Committee (TAC), will consider, based on the REA, whether the proposed Special-Status Species Mitigation Plan is adequate, including consideration of whether each Special-Status Species Mitigation Plan incorporates a landscape-scale approach such that the conservation efforts achieve the greatest possible benefits. Compensation measures as detailed in an approved Special-Status Species Mitigation Plan must be implemented within 60 days of the use permit's effective operational date, of February 15, 2016 (i.e., no later than April 16, 2016). Special-Status Species Mitigation Plans may be revised—and will be reviewed by the County.</p> <ul style="list-style-type: none"> • Measures outlined in an approved Eagle Conservation Plan and Bird and Bat Conservation Strategy. The Project proponent may elect to apply for programmatic eagle take permits from USFWS. The programmatic eagle take permit process currently involves preparation of an Eagle Conservation Plan (ECP) and a Bird and Bat Conservation Strategy (BBCS). The ECP specifies avoidance and minimization measures, advanced conservation practices, and compensatory mitigation for eagles—conditions that meet USFWS's criteria for issuance of a permit. The BBCS outlines measures being implemented by the applicant to avoid and minimize impacts on migratory birds, including raptors. If programmatic eagle take permits are obtained by the project proponent, those permit terms, including the measures outlined in the approved ECP and BBCS, may constitute an appropriate conservation measure for estimated take of golden eagles and other raptors, including special-status species, provided such terms are deemed by the County to be comparable to or more protective of raptors than the other options listed herein. • Contribute to regional conservation of raptor habitat. The project proponent may address regional conservation of raptor habitat by funding the acquisition of conservation easements within the APWRA or on lands in the same eco-region outside the APWRA, subject to County approval, for the purpose of long-term regional conservation of raptor habitat. Lands proposed for conservation must be well-managed grazing lands similar to those on which the projects have been developed. The project proponent will fund the regional conservation and improvement of lands (through habitat enhancement, lead abatement activities, elimination of rodenticides, and/or other measures) using a number of acres equivalent to the conservation benefit, as determined through a project-specific REA. The conservation easements will be held by an organization whose mission is to purchase and/or otherwise conserve lands, such as The Trust for Public Lands, The Nature Conservancy, California Rangeland Trust, or the East Bay Regional Parks District. The project proponent will obtain approval from the County regarding the amount of conserved lands, any enhancements proposed to increase raptor habitat value, and the entity holding the lands and/or conservation easement. 			

**ALTAMONT WINDS INC.
PERMIT MODIFICATION PROJECT
MITIGATION MEASURE MONITORING COMPLIANCE FORM**

Reporting Period:

**Pre-construction
reclamation** **Decommissioning/Reclamation** **Post-**

Report Date: _____

Mitigation Measure:

Has the mitigation measure been implemented?

Yes **No**

Notes:

Is further action or monitoring required?

Yes **No**

If yes, describe:

Is consultation with outside agencies required?

Yes **No**

If yes, identify agency: _____

Has consultation with outside agency been completed?

Yes **No**

Monitoring verified by: _____ **Date:** _____

Exhibit C

Statement of Overriding Considerations

The Board of Supervisors adopts this Statement of Overriding Considerations pursuant CEQA Sections 21002, 21002.1, and 21081 and Section 15093 of the CEQA Guidelines. In approving a three-year extension of the subject Conditional Use Permits for Altamont Winds, Inc. (AWI), the Board of Supervisors finds that approval is warranted despite the project's unavoidable environmental risks due to the overriding considerations described herein, including economic and social benefits, as well as local, region-wide and statewide environmental benefits.

The potential environmental impacts of the project have been evaluated in the 2013 Final EIR (2013 EIR) as revised by the Final Supplemental EIR (SEIR). As indicated in the 2013 EIR, the SEIR and the Written Findings of Significant Effects (Exhibit A, above), the project are likely to result in the occurrence of significant environmental effects which cannot be avoided. These significant effects include:

Impact BIO-1: Potential to cause a substantial adverse effect, either directly or through habitat modifications, on special-status avian species

Mitigation measures have been incorporated into the project, including the winter seasonal shut down, power pole retrofits and/or other compensatory mitigation, to substantially lessen the significant environmental effects of the project. Further, as required by CEQA Section 21081(b) and CEQA Guidelines Section 15093, the Board of Supervisors finds that the unavoidable significant effects listed above are outweighed by specific findings that the project, as mitigated by the measures identified in the SEIR and adopted as Exhibit B, above, would provide overriding economic, social and region-wide and statewide environmental benefits. Specifically, the project will provide the benefits described in more detail below.

Economic Benefits

The project will maintain the electrical production from the AWI wind farm, which has been operating for over two decades. The production will be the same as has been in place since the beginning of 2013, or a maximum of 85.8 MW (90% of full operations consisting of 828 turbines), and continue to have that capacity through October 31, 2018. In contrast, the existing (No Project Alternative) conditions of approval would end electrical output which would cause a decrease in the economically beneficial use of existing wind farm capacity to produce electricity that is both renewable and without adverse air quality impacts.

The ability of AWI to continue operating at its current, 90% capacity through 2018 would also serve to maintain existing jobs. Testimony has been provided that AWI is a small, closely held company with few investors and limited financial resources, relative to its competitors in the APWRA and that it cannot commence all of the pre-requisites to repowering, estimated to cost millions of dollars, without the income generated from operating its existing wind farm. AWI has provided testimony that most if not all of its approximately 45 employees would be laid off or terminated if the extension were not granted. Testimony was also presented that the effects of the Great Recession are still causing financial distress to unemployed people and that the unemployment of 45 additional workers would cause further economic harm. Furthermore, AWI reports that its extension would

generate an estimated \$100 million of economic activity including portions of property taxes, income for property owners used in part for charitable contributions, employee salaries, and other operations and maintenance support expenses. Although speculative remarks were made on the subject, it has not been demonstrated that if the CUPs expired and AWI were to cease operating its wind assets and dismiss the majority of its local employees, another wind operator would be willing and able to take over and repower AWI's wind farm assets in less time than currently projected by AWI (two to three years), or necessarily retain or re-hire employees that AWI may be required to dismiss under such circumstances. See also the discussion of related social benefits below.

Testimony has also been presented that AWI leases land for its turbines and pays rent to local landowners. This extension will allow this economically beneficial relationship to continue for 3 additional years, and potentially longer, with AWI's active pursuit of repowering during the 3-year extension.

The economic benefits of the project also include the continuation of a viable local business enterprise, including tax revenue from the production of electricity. AWI has stated that, absent circumstances outside of its control, this extension will enable AWI to repower and continue to operate in the APWRA with a repowered wind project for future decades. Were AWI to cease its current operations in 2015, testimony has been provided that AWI would not be able to fund a repowering project and could not provide further economic benefits to its employees or the community.

Social Benefits

The project will also provide the social benefits of maintaining the stability of families, including families with children, and support small, local businesses. The County considers that the unemployment of a family member can cause distress to families and children. Granting this short-term extension of an existing project provides an equitable balance for the public good between environmental and continued economic opportunities. Testimony has been presented that the small, primarily local business would be unable to continue participating in the local economy in the long-term without this short-term extension. AWI presented testimony that the company needs additional time to fund and to complete an interconnection study with CAISO and to secure rights to sell power on the open market or to PG&E, among other repowering tasks. Supporting small, local, and emerging business is an important component of economic development within the County. The extension would also maintain a diversity of operators in the APWRA and in the renewable energy industry overall by assisting a small, local business during a complex and costly repowering process. The extension would also reflect the County's support for small businesses in Alameda County that are contributing to clean energy production for future potential purchase by the County's proposed Community Choice Aggregation program or another green energy consumer. The County is committed to repowering in the APWRA, but finds that progress toward repowering should proceed at an appropriate pace that does not sacrifice retention of small businesses in Alameda County.

Some comments have suggested that another wind company could acquire AWI's assets, repower the wind farm and operate it in a manner that would result in a lower avian mortality than AWI's current operations, thus reducing negative environmental and economic effects and preventing the loss of a green energy source. The Board has considered this suggestion, but finds that such a

change in operations is speculative and cannot be relied upon to promote economic development or continued production of green energy. Business bankruptcies do not necessarily lead to smooth business transitions. There are numerous examples of business bankruptcies that have delayed development opportunities in the Bay Area, such as Oak Knoll Hospital. There would be both immediate and long-term social and economic burdens upon East Bay businesses and working families if AWI's wind farm ceased operations permanently or temporarily during a change of ownership and these burdens outweigh the possible but speculative benefits of another wind operator stepping in for AWI.

Environmental Benefits

The project will also assist California in meeting its legislated Renewable Portfolio Standard criteria for the generation of renewable electric energy in the state – 33% from renewable energy sources, such as wind, by 2020, both by maintaining renewable energy output through 2018, and by enabling and accelerating the repowering process between 2018 and 2020. The project and related repowering will also assist California in meeting its legislated Global Warming Solutions Act criteria that require reductions in carbon dioxide and other greenhouse gas emissions to 1990 levels by 2020, which in turn represent benefits in the region. There are both gas and coal-fired power plants in the Bay Area and Central Valley region (e.g., Pittsburg, Antioch, Stockton, and in Hayward) that would in part serve to replace renewable electrical energy production capacity that would be eliminated if the project were not approved, that would in turn result in higher levels of greenhouse gas and other air pollutants. The project would reduce the County's and the State's reliance on sources emitting those pollutants by maintaining this renewable, local source of energy. The project will directly contribute to the implementation of AB32 and its comprehensive approach to reduce greenhouse gas emissions and more specifically, will promote these efforts in a manner that minimizes costs and maximizes benefits for California's economy, maximizes additional environmental and economic co-benefits for California, considers overall societal benefits, including reductions in other air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health, and provides opportunities for small businesses to participate in and benefit from statewide efforts to reduce greenhouse gas emissions. The project will also promote the AB32 climate change scoping plan strategies to address climate change and achieve the cleaner, healthier and more sustainable future for all Californians and advance the goals of the County's Community Climate Action Plan to reduce greenhouse gas emissions and increase the use and production of renewable energy.

The County is committed to repowering in the APWRA as a means to maintain and improve the efficiency of the production of renewable, local energy. However, AWI has testified that circumstances have changed since it sought the 2013 permit modifications, and that under current circumstances, including its current financial state and the need to complete an interconnection study with CAISO, its repowering efforts have been delayed. AWI submitted a project-specific repowering application to the County CDA on March 31, 2014, including an affidavit affirming site control for the proposed repowered wind farm. The CUP extension and eventual permanent shutdown of all old generation turbines by the end of October 2018 and required removal by 2020 will further assist in these repowering efforts. Without the extension, AWI would have no operations and would not have the capability to repower, as it would not have the financial means to do so. In February 2015, AWI recently completed an asset exchange with Green Ridge Power, which served to geographically consolidate AWI's assets. This asset exchange is a step toward repowering, as these assets needed to be disentangled prior to repowering.

Furthermore, the County recognizes the merits of the research paper prepared by McCubbin and Sovacool for Altamont Winds, Inc., titled Health, Wildlife and Climate Benefits of the 580 MW Altamont Wind Farm, which provides detailed documentation of atmospheric and air quality benefits of wind energy production, with human health, wildlife health and other measured ecological advantages. Notably, the report concludes that wind power contributes to reductions in the air toxins linked to asthma, hospitalizations, cancer and other health conditions. The report has also been considered by the County in favoring the project proposal, although its direct application to the analysis of biological resources in the APWRA for the purposes of CEQA is limited. Furthermore, the Board of Supervisors finds that the mitigation measures to be implemented will contribute substantially to the reduction of avian mortality and provide for appropriate compensation, recognized by the U.S. Fish and Wildlife Service, by improving power pole safety for golden eagles and other large raptors. The Board also received testimony from the Applicant indicating that there are substantial questions about the full range of sources and contributors to avian mortality that have not been fully researched or estimated.

Summary

The County is obligated by Section 15093 of the CEQA Guidelines to balance the competing interests of identified project benefits against the unavoidable environmental risks when determining whether to approve a project. "If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered 'acceptable.'" The County finds that the proposed project, with all of the mitigation measures and conditions of approval proposed for the project, would best balance the most economically efficient use of AWI's wind farm facilities through October 2018, while also reducing the unavoidable impacts on protected or special-status avian wildlife species, including golden eagles and other raptors. The Board finds that the adverse environmental impacts of the project are acceptable, in that they are outweighed by the benefits of the project based on the information available to it and the reasons set forth above, each of which is a separate and independent basis for this finding.