

**RESOLUTION NO. Z-15-03 OF
THE EAST COUNTY BOARD OF ZONING ADJUSTMENTS
ADOPTED AT THE HEARING OF FEBRUARY 2, 2015
CONCERNING PLN2014-00028**

CERTIFYING SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT

WHEREAS, ALTAMONT WINDS INC. and WINDWORKS INC. (AWI) have filed an application (PLN2014-00028) to modify and extend 16 Conditional Use Permits (CUPs) applicable to AWI's windfarm operations in the Altamont Pass Wind Resources Area (APWRA) of Alameda County; and

WHEREAS, AWI's application proposes modifications to 14 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 (EBZA or Board), which 16 permits were in turn modified by EBZA Resolution No. Z-13-36, for the maintenance and continued operations of existing wind turbines; and

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and C-8243 apply, respectively the subject of Resolutions Z-06-03 and Z-06-04 of the EBZA, these two Permits were withdrawn from the application by the applicant prior to and confirmed at the hearing, further identified as follows:

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

C-8243, Altamont Infrastructure Co./Alameda County Waste Management Authority: APNs: 099A-1770-002-01, 099A-1770-002-02, 099A-1770-002-03, 099A-1780-001-04, 099A-1790-003-00 and 099A-1810-001-00; and

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

C-8036, Altamont Infrastructure Company/Frick & Costa, APN: 099B-5680-015-00;

C-8037, Altamont Infrastructure Company/Pombo, APNs: 099B-6300-002-01, 099B 6300-002-02, 099B-6325-002-03, 099B-6325-002-04 and 099B-6425-001-06;

C-8134, Altamont Infrastructure Company/Rooney, APN: 099B-6125-002-00;

C-8137, Altamont Infrastructure Company/Mulqueeney, APNs: 099A-1800-002-03, 99A-1800-002-04, 99B-7890-002-04, 99B-7890-002-05, 99B-7900-001-05, 99B 7900-001-07, 99B-7910-001-01, 99B 7925-002-04, 99B-7925-002-05, 99B 7975-001-00, 99B-7980-001-00, 99B 7985-001-03, 99B-7985-001-04, 99B 7985-001-05, 99B-7985-001-06 and 99B 8050-001-00;

C-8191, WindWorks Inc./Mulqueeney, APN: 099B-7910-001-01;

C-8232, Altamont Infrastructure Company/Guichard (formerly Egan), APN: 099B 6125-003-00;

C-8233, Altamont Infrastructure Company/Elliott, APN: 099B-6125-004-00;

C-8235, Altamont Infrastructure Company/Corbett, APNs: 099A-1785-001-14 and 099B-5650-001-04; and

C-8236, Altamont Infrastructure Company/Dunton, APN: 099B-5680-001-00;

C-8237, Altamont Infrastructure Company/DeVincenzi (formerly Valhalla Enterprises), APNs: 099B 5610 001-00 and 099B-6075-003-00;

C 8238, Altamont Infrastructure Company/Ralph Properties II, APNs: 099B 7375 001-07, 099B-7300-001-05 and 099B-6325-001-03;

C-8241, Altamont Infrastructure Company/Walker Family Trust, APNs: 099B 6100 002-10, 099B-6100-002-11, 099B-6100-003-10, 099B 6100 003 11, and 099B-6100-003-15;

C-8242, Altamont Infrastructure Company/Marie Gomes Farms, APNs: 099B 6150 002-07, 099B-6150-003-00 and 099B-6150-004-10; and

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

WHEREAS, on September 22, 2005 the Alameda County Board of Supervisors approved Resolution Number R-2005-453 to conditionally approve a total of 29 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 13 permits held by Altamont Infrastructure Company LLC (a management company which does not own individual turbines) on behalf of AWI and three other companies (SeaWest Power Resources, LLC, now Ogin; Altamont Power, LLC, a subsidiary of FPL Group, Inc., now NextEra Energy Resources; and enXco., Inc., now EDF Renewable Energy, 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 EBZA 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 to 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, 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 CUPs 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 (AWI), Exhibit G-2 being essentially identical to the original Exhibit G; and

WHEREAS, AWI applied in 2011 to modify the 16 CUPs applicable to its operations by eliminating certain 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, or, October 2010 to September 2018) and requiring termination of the CUPs on December 31, 2015, and specifically requesting the following modifications:

- 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; and

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, 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, the Alameda County Planning Department as the lead agency pursuant to CEQA prepared an EIR evaluating the proposed modifications, which EIR was certified by the EBZA on July 18, 2013 by Resolution Z-13-35; and

WHEREAS, the EBZA approved, in part, the requested modifications in Resolution Z-13-36, approving the removal of phased decommissioning requirement, retaining the winter seasonal shutdown requirement, and moving the expiration date of the permits from September 2018 to October 2015; and

WHEREAS, the EBZA's decision to certify the 2013 EIR and to approve the modifications as specified was not appealed to the Alameda County Board of Supervisors or otherwise challenged or appealed; and

WHEREAS, in January 2014, AWI submitted an application to extend the 16 permits previously modified by Resolution Z-13-36, specifically, requesting that the expiration date be changed from October 2015 to October 2018 on the condition that AWI demonstrate its efforts to repower with proposed progress milestones; and

WHEREAS, the Planning Department, as lead agency pursuant to CEQA, determined that the proposed project changes would likely increase the severity of impacts identified in the 2013 EIR, in particular, that an additional 3 years of operation without the former condition of phased decommissioning would cause substantial increases in projected avian mortality; and

WHEREAS, the Planning Department determined that a Supplement to the 2013 EIR should be prepared to address important revisions that would need to be made to the 2013 EIR to address the proposed project changes, in particular, to provide more detailed analysis of the scenario presented as Alternative 3 in the 2013 EIR, which addressed operations to 2018; and

WHEREAS, a Notice of Preparation (NOP) of a Draft Supplemental Environmental Impact Report (Draft SEIR) was issued on September 15, 2014, soliciting public input regarding the environmental analysis of the project (the proposed permit modifications) and comment letters were received thereafter regarding the scope of the Draft SEIR; and

WHEREAS, the Draft SEIR was completed on November 18, 2014 and identified significant and unavoidable adverse impacts on biological resources, in particular, an increase in avian mortality; and

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

WHEREAS, a public hearing to take verbal comment on the Draft SEIR was held on December 18, 2014, 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 SEIR (Final SEIR) document was prepared which includes a full revision of the Draft SEIR, with a markup version of the document as appendix for reference, all comments received on the Draft SEIR, a list of persons, organizations and agencies commenting on the Draft SEIR, and responses to each comment, and said Final SEIR was provided on January 23, 2015 to the Office of Planning and Research – State Clearinghouse for distribution to state Responsible Agencies, and the Final SEIR was provided by the Planning Department to other interested agencies, organizations and persons who commented on the Draft SEIR, and made available on the County’s public website on January 23, 2015; and

WHEREAS, 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 Board, as the decision making-body for the proposed permit modifications, held a public hearing and received public comments regarding the Final SEIR at the hour of 1:30 p.m. on Monday, February 2, 2015 in the City of Pleasanton Council Chambers, 200 Old Bernal Avenue, Pleasanton, California; and

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

WHEREAS, the Planning Department submitted a Staff Report to the Board summarizing the facts and circumstances of the proposed permit modifications and the preparation of the SEIR in compliance with Sections 15089 and 15132 of the CEQA Guidelines, and asserts that the Final SEIR has been completed in compliance with CEQA, and that the impact of the project on protected avian wildlife species will remain significant and unavoidable, or in the case of cumulative impacts, cumulatively considerable; and

NOW, THEREFORE, BE IT RESOLVED that this Board certifies that the Final SEIR for the proposed modifications to the 16 Conditional Use Permits identified above, including those Permits that were subsequently withdrawn, has been completed in compliance with CEQA; and

BE IT FURTHER RESOLVED as follows:

1. The Board certifies that it has been presented with all of the information described in the above recitals and has reviewed and considered this information, the 2013 EIR and the Final SEIR prior to adopting this Resolution and considering approval of the project.
2. The Board certifies that the above recitals and the Final SEIR are true and correct.

3. The Board certifies that the Final SEIR reflects the County's independent judgment and analysis.
4. Notice of the Board's hearings on the Draft and Final SEIRs has been given as required by law and the actions were conducted pursuant to the Planning and Zoning Law, CEQA, the State CEQA Guidelines and the County's CEQA Guidelines.
5. The Board is a non-elected decision-making body within a local lead agency, and that the certification of the Final SEIR 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 Draft SEIR and to the degree permitted by the CEQA Guidelines also the Final EIR, which met or exceeded the requirements of the Planning and Zoning Law and CEQA.
7. All comments submitted during the public review and comment period on the Draft SEIR were responded to adequately in the Final SEIR.
8. No new comments or information has been submitted during or prior to the hearing on the Final SEIR that would change the analysis or conclusions of the Final SEIR or require recirculation of the Final SEIR.

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