



REVISED

ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
P L A N N I N G D E P A R T M E N T

Agenda Item _____ March 24, 2015

Chris Bazar
Agency Director

March 18, 2015

Albert Lopez
Planning Director

Honorable Board of Supervisors
County of Alameda
Oakland, CA 94612

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West Winton Ave
Room 111

Dear Board Members:

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SUBJECT: PUBLIC HEARING OF APPEALS BY: 1) ALTAMONT WINDS INC. FROM THE DECISION OF THE EAST COUNTY BOARD OF ZONING ADJUSTMENTS (EBZA) TO DENY THE MODIFICATION OF CONDITIONAL USE PERMITS (CUPs) UNDER PLANNING APPLICATION PLN2014-00028; AND 2) AUDUBON CALIFORNIA FROM THE DECISION OF THE EBZA TO CERTIFY THE SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT (SEIR) FOR PLANNING APPLICATION PLN2014-00028

RECOMMENDATION:

- A. That the Board of Supervisors hold a public hearing, and uphold the decisions of the East County Board of Zoning Adjustments to certify the Supplemental Environmental Impact Report (SEIR), and its decision to deny the application of Altamont Winds, Inc. (President, Rick Koebbe, Tracy, California) to modify existing Conditional Use Permits (CUPs, the subject of Planning application PLN2014-00028) applicable to its wind energy turbine assets in the Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), specifically to extend said permits for three years, from their current expiration date of October 31, 2015, to October 31, 2018; and
- B. If your Board finds that circumstances warrant it, approve the extension for a period to be determined, while the Appellant obtains entitlements and funding and completes other steps necessary to initiate repowering/replacement of their wind turbines and facilities, and make specific decisions recommended by staff in the Board letter provided for the Board hearing previously scheduled on March 10, 2015; and
- C. Adopt resolutions affirming your actions.

DISCUSSION/SUMMARY:

Altamont Winds, Inc. (AWI, one of the Appellants) has operated wind turbine assets with a rated capacity of at least 86 megawatts (MW) in the Altamont Pass area under 16 Conditional Use Permits (CUPs) assigned to separate parcels and property owners, and held either by AWI's affiliate Windworks, Inc., or by Altamont Infrastructure Company LLC (a management company serving AWI and other wind energy operators but which does not own turbines). These CUPs were approved in 2005 and 2006 with the condition that set percentages of the turbines be permanently shut down in phases, in anticipation of repowering (replacing the existing turbines with current generation turbines): 10 percent in 2009; 25 percent more in 2013; and another 50 percent in 2015, before expiring completely in 2018. As required in 2009, AWI shut down 10 percent of its turbines, and currently operates approximately 828 turbines with a combined existing generation capacity of 85.8 megawatts (MW). Under modifications approved by the East County Board of Zoning Adjustments in 2013, the shutdowns required in 2013 and 2015 were eliminated and the expiration was moved up to October 31, 2015. In early 2014, AWI requested the CUPs be modified again to extend operations until October 2018, on the grounds that it must continue to operate its existing turbines to accomplish repowering, and that repowering in 2016 is not feasible.

The 2005-2006 CUPs also required AWI to prepare an environmental impact report (EIR) to

address repowering and ongoing operations in 2008, particularly due to recognized and ongoing avian mortality related to wind turbine operations. The EIR requirement was held in abeyance while the County pursued options for mitigating avian mortality with state and federal agencies between 2007 and 2010, together with other wind energy operators in the Altamont Pass area. This process led ultimately to the preparation in 2013 and 2014 of a Program EIR for repowering the Altamont Pass area, but for which AWI did not yet have a project proposal. When AWI requested in 2013 to modify its CUP conditions, the County required the EIR to be prepared to address decommissioning impacts, ongoing operations and proposed modifications, with one alternative being the continued operation of turbines through 2018. The EIR was certified in July 2013, and to more fully evaluate the proposed extension to 2018, a Supplemental EIR was prepared in 2014. Staff recommended a partial extension to mid-2017, or restricted operations through 2018, as well as other conditions of approval and mitigation measures defined in the SEIR.

On February 2, 2015 the EBZA voted to certify the Supplemental EIR by a vote of two in favor and one opposed, and then voted to deny the application by a vote of three in favor and none opposed. Audubon California appealed the certification of the SEIR and AWI appealed the denial of the application.


On February 23, 2015, a proposed asset exchange was completed between AWI and Green Ridge Power (GRP, a subsidiary of NextEra Energy Resources, or NEER), which was intended to disentangle assets held by AWI and GRP on common properties located south of I-580, and which was also necessary to enable NEER to proceed with its repowering project south of I-580 (Golden Hills I). The asset exchange transferred approximately 295 turbines owned by GRP north of I-580 to AWI, for 295 turbines previously owned and operated by AWI south of I-580. As a result, AWI has now withdrawn from its application all of the CUPs (six) that apply to parcels south of I-580, and will operate turbines under two additional CUPs previously held only by GRP. There are now 12 CUPs proposed to be extended under common conditions of approval, all located north of I-580.

Separate Board letters were provided previously related to each of the two appeals, by AWI and by Audubon California, respectively, for a previously planned hearing of the appeals on March 10, 2015. Your Board requested the hearing be continued to allow for further discussions between the affected parties, which took place on Thursday March 12, 2015. Despite the additional discussions, the parties were unable to find common ground on the core issues. Your Board is now requested to hold a public hearing to consider the testimony of the Appellants and obtain public comment, and take an action regarding the appeals.

FINANCING:

The financial impact to the County as a result of this action is limited to administrative costs, which are included in the approved FY 14/15 Community Development Budget. There is no increase in net County cost as a result of this action.

Very truly yours,


Chris Bazar, Director
Community Development Agency

cc: Susan Muranishi, County Administrator
Steven Manning, Auditor-Controller
Donna Ziegler, County Counsel
Richard Conway, County Administrator's Office
Brian Washington, Office of the County Counsel
U.B. Singh, CDA Finance Director
Altamont Winds, Inc.
Audubon California
East County Board of Zoning Adjustments



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

Chris Bazar
Agency Director

Agenda Item: 5a March 10, 2015

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March 2, 2015

Honorable Board of Supervisors
County of Alameda
1221 Oak Street, Suite 536
Oakland, CA 94612

Dear Board Members:

SUBJECT: Appeal by Altamont Winds Inc. from the decision of the East County Board of Zoning Adjustments (EBZA) to deny Conditional Use Permit, PLN2014-00028, application of Altamont Winds Inc. for modifications to existing conditional use permits (extension to October 31, 2018, of permits currently set to expire on October 31, 2015), for 828 turbines owned and operated by Altamont Winds Inc. located throughout the approximately 14,436-acre Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), with a rated capacity of approximately 85.8 megawatts (MW), bearing numerous Assessor's Parcel Numbers and different owners as shown in the attachments.

RECOMMENDATION:

East County Board of Zoning Adjustments (EBZA): On February 2, 2015 the EBZA denied the application by a vote of three in favor and none opposed.

Planning Department Recommendation: Staff recommends that the Board of Supervisors uphold the decision of the EBZA to deny the application, unless circumstances warrant a short-term extension for 12 to 18 months, or less, while the Appellant obtains entitlements and funding to initiate repowering/replacement of their wind turbines and facilities.

SUMMARY:

Proposal: To extend 16 conditional use permits (CUPs) for three (3) years, through October 31, 2018, under specified conditions, beyond their current expiration date of October 31, 2015, for operation of an estimated 828 existing utility-scale wind turbines with a combined existing (current) generation capacity of 85.8 megawatts (MW).

General Plan and Zoning: The APWRA is subject to the East County Area Plan (ECAP), within which it is designated Large Parcel Agriculture (LPA), permitting, among other uses, "windfarms and related facilities" The zoning designation of the APWRA is a combination of A-BE 160 and A-BE-320 (Agriculture, Minimum Building Site Area 160 and 320 acres, respectively), which allows windfarms (privately-owned wind electric generators) as conditional uses.

CEQA Status: A Draft Supplemental Environmental Impact Report (DSEIR) was prepared and circulated for public comment between November 17, 2014 and January 12, 2015, as a supplement to the EIR certified by the East County Board of Zoning Adjustments in July of 2013 that addressed a previous request for permit modifications. The 2013 EIR evaluated the currently

proposed CUP extensions as one of three alternatives, but in limited detail. The SEIR was determined to be necessary in order to provide a more detailed level of analysis, incorporate new information, add options for mitigation, provide for appropriate public review, and provide the basis for new CEQA findings regarding operations through October of 2018.

Other Background: The history of the subject CUPs, from the approvals by the Board of Supervisors in 2005, to the amendments in 2007 based on the Settlement Agreement (to which the Appellant was not a Settling Party), and the modifications approved for AWI in 2013, is described in the attached staff reports to the EBZA for their hearings and in the SEIR. However, to summarize some key points:

- The CUPs as they were approved in 2005 (with no changes for AWI's turbines under the Settlement Agreement in 2007) were modified in July of 2013 based on AWI's request to eliminate the original requirements for phased decommissioning and for the CUPs to expire on and all operations to cease after October 31, 2015. The approval relied substantially on the 2013 EIR.
- Without the 2013 approval, 25 percent of AWI's original 920 turbines (230 turbines) would have been required to have been permanently shut down after October 31, 2013, and another 460 turbines shut down after October 31, 2015, leaving only 15 percent (about 126 turbines) to operate through September 30, 2018.
- Two CUPs (C-8216 and C-8243) applied to AWI turbines on properties owned by the Alameda County Waste Management Authority (ACWMA); at the hearing on February 2, 2015, AWI withdrew those CUPs in anticipation of a planned asset exchange of AWI's turbine and infrastructure assets held under these and other CUPs (approximately 300 turbines) with the turbine assets held by Green Ridge Power, LLC (GRP) under two other CUPs (C-8231 and C-8239). On February 23, 2015, the asset exchange was executed between AWI and GRP, such that AWI now owns the wind energy turbines held under C-8231 and C-8239 under the same conditions of approval as applicable to its other CUPs. The asset exchange served to end all AWI operations south of I-580 while allowing AWI to maintain its MWs of installed capacity, and served to 'disentangle' operations on numerous parcels, in which both AWI and GRP operated turbines on the same parcel subject to an individual common CUP.

East County Board of Zoning Adjustments Hearing: On February 2, 2015 the EBZA considered certification of the SEIR, and subsequently the proposal, and after certifying the SEIR, voted to deny the proposed extension. The two CUPs for AWI wind turbines operating on ACWMA properties (C-8216 and C-8243) were withdrawn prior to the hearing and confirmed at the hearing.

Appeal: AWI appealed the decision by the EBZA in a letter dated February 12, 2015, to request the Board of Supervisors extend the CUPs through October 31, 2018 for the following reasons, briefly stated:

1. Climate and environmental benefits to Alameda County and the environment as a whole;
2. Substantial economic benefits to the County;
3. The extensions would serve the CEQA goals of reducing environmental damage;
4. The mitigation measures proposed in the SEIR - which AWI is committed to implementing - would provide a level of mitigation in excess of the impacts directly attributable to AWI's turbines; and
5. There is overwhelming evidence in the record to support the adoption of a Statement of Overriding Considerations in support of the proposed extensions, which the EBZA failed to recognize.

The broad argument of the appeal, summarized in its introduction to the 13-page appeal letter is that AWI is a small, Alameda County-based company, that provides clean renewable energy to California and helps meet state and county renewable energy portfolio and greenhouse gas reduction goals. AWI's letter asserts that the denial by the EBZA was due only to its failure to adequately consider the social, economic and environmental benefits of AWI's wind farms. The letter was accompanied by several exhibits, including proposed changes to the draft Resolution and exhibits submitted to the EBZA for their consideration on February 2, 2015 (proposed Findings, Mitigation Monitoring and Reporting Program and Statement of Overriding Considerations), documentation of past power pole retrofits and costs, an amended version of the Planning Department's staff report to the EBZA, and a biography regarding the effects of rodenticide on raptor species. The appeal letter also requests various identified changes to the draft Resolution, Exhibits and proposed conditions of approval that Planning staff submitted to the EBZA.

Discussion. The appeal letter follows the outline as shown above, and is largely consistent with previous comments submitted by AWI and included in the SEIR and materials provided to the EBZA for its hearing. Some key points in the letter are summarized as follows, each of which is followed by a brief response by Planning staff in *italics*.

- AWI's operations reduce or offset greenhouse gases (GHGs), particulates and toxic air pollutants that would otherwise occur, with a resulting benefit to human and wildlife health including birds, and contribute to the County's adopted Community Climate Action Plan (CCAP). Various studies are cited that indicate specific quantitative health benefits related to respiratory, cardiovascular and cancer diseases, asthma and overall health costs from the operation of wind turbines in the APWRA, and a specific, extrapolated estimate of 31 premature bird deaths avoided per month of operation, and 950 bird deaths avoided during the three-year CUP extension period.

The operation of AWI's turbines through the end of 2018 were noted in the comparison in the 2013 EIR among the alternatives, as having the lowest possible GHG impacts and greatest offsets of GHGs and other air pollutants, and was cited by the EBZA in 2013 when it adopted the Statement of Overriding Considerations in support of the 2013 modifications. The County considered the concept of recognizing offset or reduced air pollution and toxins from AWI's operations as a form of avian mortality mitigation for the preparation of the 2013 EIR, but determined that, firstly, the studies promoting such a concept had not been peer-reviewed by appropriate and recognized scientific journals at the time, and secondly, it is not accepted or advisable CEQA practice to attribute to the wind farm operator a measurable mitigating effect of enhanced local avian habitat or safety from reductions in air pollutants measurable only at a regional basis.

The 2013 EIR acknowledges the specific benefits of renewable energy and the project itself in broad terms, and these and related benefits, including those cited in the McCubbin and Sovacool research noted in the appeal letter, are incorporated into the currently proposed Statement of Overriding Considerations. The air quality analysis of the project recognizes that wind turbine operations generally offset GHG emissions by replacing electricity that would otherwise be produced by conventional nonrenewable sources, such as coal or natural gas power plants. (p. 3.1-16, 2013 DEIR), and that operations through 2018 would have the greatest level of GHG offsets (p. 4-20, Table 4-3). However, such offsets are abstractly-defined for the purpose of defining air quality impacts on a region, so the benefit of GHGs and reduced air pollution and toxins on avian wildlife can in effect only be recognized on an abstract level, which is the purpose of the Statement of Overriding Considerations. CEQA does not enable the project's global and regional benefits to air quality and greenhouse gas emissions to "offset" Project-specific impacts on avian mortality, especially if it were to suggest that the impact on avian mortality was thereby avoided or substantially reduced or mitigated.

The EBZA considered the evidence before it when it determined that the Statement of Overriding Considerations, and other evidence presented by the Applicant at or before the hearing or otherwise in the record, did not provide substantial, compelling evidence that its various benefits would outweigh the unavoidable adverse impacts on avian wildlife. For comparison with the extrapolated estimates of 950 bird deaths over three years, the SEIR projected the CUP extensions would result in between 221.6 and 344.8 deaths of just the four focal species over those three years (which represent less 20 percent of all birds in the APWRA), and the 2013 EIR projected a range of 2,820 to 3,078 total avian fatalities from operations over about five years, or about 1,692 to 1,847 in three years.

- AWI's wind farm operations have economic benefits in the form of property taxes paid to the state and County, land owner income (some of which is passed on as charitable contributions), payroll for wind farm employees, and other businesses that support operations and maintenance.

The economic benefits were noted in the proposed Statement of Overriding Considerations; however, the EBZA judged that those economic benefits were too narrow to outweigh the environmental risks of the proposed CUP extensions, based on the record before it and the testimony received.

- Citing the opening sections of the CEQA Statutes that its purpose and goal is to avoid environmental harm and promote environmental health, the Appellant contends that the CUP extensions would serve that goal, because AWI's wind farm operations will reduce GHG emissions, consistent with the state's policies to take all appropriate actions to reduce GHGs.

Planning staff acknowledges that GHG emissions are among the most critical environmental factors in the state. The 2013 EIR recognized that the extension to 2018 would provide substantially more GHG offsets – an estimated 257,633 metric tons of CO₂ equivalents over the roughly five year period of 2014 to 2018, compared to 104,783 metric tons under the current permits for only the years 2014 to 2015. However, the EBZA did not find that substantial evidence had been presented that denial of the CUP extensions would necessarily result in replacement of the wind energy with a non-renewable energy plant, or preclude in any way repowering of the subject wind farm facilities as anticipated under the existing CUPs, and the CUP conditions prior to 2013.

- The analysis in the SEIR of the impacts of AWI's turbines on avian mortality does not recognize other factors that, together with the proposed mitigation measures (power pole retrofits and winter season shutdowns), should be acknowledged. These include the benefit of reduced GHG and air pollutant emissions and background mortality of birds (especially the four focal species) not caused by turbine operations but from the use of rodenticides by the state Department of Water Resources (DWR) for its two aqueducts, that, while uncalculated, are most likely a substantial cause of raptor mortality. Other unidentified background mortality of some species, and the removal of 21 High Risk Turbines operated by AWI, are also unrecognized in the SEIR or in the staff analysis. Although the Appellant does not challenge the adequacy of the SEIR, it asserts that the decision on the CUP extensions should recognize that the mitigation measures AWI will implement under the SEIR will overcompensate for AWI's actual or "net" impact.

The Altamont Pass Scientific Review Committee (SRC) commissioned a background mortality study to investigate the causes of avian mortality during the seasonal shutdown and during other times of the year for the 2014-2015 bird year, with a focus on smaller birds such as burrowing owls and American kestrels as 'indicator' species. The results of the study will be available in May or June of 2015. The use of rodenticides by DWR is outside the County's jurisdiction to regulate; however, the SRC has discussed their use, with the California Department of Fish and Wildlife (CDFW) and the U.S. Fish and Wildlife Service (USFWS) participating. A subsequent study of the specific effects of rodenticides on avian mortality in the APWRA was considered, but would require additional funding.

- There is sufficient, “overwhelming” evidence in the record to support the Statement of Overriding Considerations (SOC), showing the economic, social or other benefits of the project, that would enable the CUP extensions to be approved, although the EBZA chose not to adopt it.

Planning staff agree that the County has the discretion to weigh other considerations outside the identification of impacts in the SEIR in acting to approve or deny a proposed project. The EBZA determined that the SOC and the record did not provide compelling evidence of the project's benefits that outweighed the unavoidable adverse impacts on the environment. The rationale provided by the Applicant to the EBZA that the CUPs were necessary and that repowering the assets in 2015 was not at all possible, appeared to show that AWI was unable to prepare effectively for repowering when it had known for nearly ten years that the CUPs required repowering (with reduction to only 15 percent of its operations in the years 2015 to 2018 in the case of the CUPs prior to 2013, or after the modifications in 2013, expiration of the CUPs at the end of 2015).

Furthermore, the EBZA considered the numerous arguments made against approval of the CUPs by California Audubon and others who spoke at the public hearings, as well as comments submitted on the Draft SEIR and subsequently by the U.S. Fish and Wildlife Service, the state Attorney General and others that are attached, including comments reflected in the expanded version of the hearing minutes.

The appeal letter also discusses conditions of approval and mitigation measures that Planning staff proposed to require had the EBZA approved the extensions, including a reduction in operating capacity by 50 percent, options to select a specific golden eagle fatality rate based on different sets of monitoring years, a minor correction regarding the date of turbine startup after each annual winter season shutdown, power pole retrofit strategy and cost options, and the timing of requirements under Mitigation Measure BIO-17a. **Attachment A** to this letter discusses these concerns.

CONCLUSION:

Staff recommends that the Board of Supervisors uphold the decision of the EBZA to deny the application, unless it determines that circumstances, including the Statement of Overriding Considerations, warrant a short-term extension for 12 to 18 months, or less, while the Appellant obtains entitlements and funding to initiate repowering/replacement of their wind turbines and facilities. A Draft Resolution is included in the Board package for consideration.

The complete record is attached.

Very truly yours,



Chris Bazar, Director
Community Development Agency

Attachments

cc: Altamont Winds, Inc.
Audubon California
East County Board of Zoning Adjustments

ATTACHMENT A

To the Letter to the Board of Supervisors from the Community Development Agency Director Appeal by Altamont Winds Inc. from the decision of the East County Board of Zoning Adjustments to deny Conditional Use Permit, PLN2014-00028 (Extension of existing CUPs to October 31, 2018)

DISCUSSION OF APPELLANT'S REQUESTED CHANGES TO DRAFT RESOLUTION AND CONDITIONS

Should the Board determine that circumstances warrant a short-term extension of the CUPs, the following issues should be addressed, as referenced in the Appellant's appeal letter:

- 6.1 *Request to include environmental, societal, economic, and climate benefits of wind power when adopting the Statement of Overriding Considerations.* The Appellant states in the appeal letter that the requested project extension would offset or avoid 609 million pounds of CO₂ equivalents (i.e., greenhouse gases or GHGs), including toxic and other forms of air pollution that adversely impact both human and avian health. An amount of \$103 million in direct and indirect economic benefits of the project was also reiterated in the appeal letter. The Appellant did not propose any specific changes to the Statement of Overriding Considerations, although some specific statements or information provided in the appeal letter could be considered for inclusion, such as the specific number of GHG offsets or dollar amount of economic activity associated with the project.
- 6.2 *Request to extend to October 31, 2018 for 100 % of capacity, not 50% as proposed.* The same basic points raised by the Appellant regarding the denial of the project are applied to Planning staff's recommendation to the EBZA that it allow 50 percent capacity of operation through 2018. Planning staff consider the partial operation of the wind turbine facilities, either at full capacity for 18 months or another iteration extended over a longer period, as a means of providing a substantial period of opportunity for the Applicant to focus on repowering its turbine assets as quickly as possible and provide a guarantee to the public that the additional and continuing adverse impacts on protected avian species will be reduced in the near future, while retaining in the near-term the provision of renewable energy and maintenance of the jobs and other economic benefits attributable to the Applicant's wind turbine operations. As provided for in the Board letter recommendation, the Board may choose to allow for a shorter time period for the CUP extensions of simply 12 to 18 months while the Appellant obtains entitlements and funding to initiate repowering/replacement of their wind turbines and facilities.
- 6.3 *Request to correct the startup date for each winter season shutdown.* The Appellant asserts that Mitigation Measure BIO-16 appears to establish a date of February 16 as the end of the winter season shutdown, when it has normally been considered to end on February 14, allowing turbines to resume operation at 12:01 a.m. on February 15. Some other minor edits of the Mitigation Monitoring and Reporting Program (Exhibit B of the Draft Resolution) were also shown. Planning staff agree with these changes, or as discussed below (see item 6.5).
- 6.4 *Request to use a golden eagle fatality rate of 0.061 per year per MW per year to calculate the number of power poles retrofits that may be required under Mitigation Measure BIO-17, as indicated in the SEIR, not 0.075 as proposed by County staff in its report to the EBZA.* The Appellant does not address Staff's reasoning for suggesting to the EBZA that it may consider using the higher rate of 0.075, which was because it represents the most number of monitoring years, 2008 to 2012, in which the winter season shutdown was fully implemented under its current scheduling. Instead, the Appellant considers all of the rates to be inaccurate in that they do not account for background avian mortality, adjustments for removal of High Risk Turbines, or for the climate and other air quality

benefits of wind energy. The appeal letter simply states that it will recognize the rate used in the SEIR as the basis for its calculation that, based on an estimate of 11.1 statistically projected golden eagle fatalities, and the USFWS-based program under which 29 power pole retrofits should be required per projected golden eagle fatality, 322 power pole retrofits would be required under Mitigation Measure BIO-17. To comply with CEQA, however, mitigation measures and determinations of impact must be based on substantial evidence, and adjustments to the fatality rates as suggested in the appeal letter would require extensive, additional research to determine their effect on golden eagle fatality rates. The Board may wish to consider the same choices as presented to the EBZA for a lower, mid-range, or higher rate; all are supported by substantial evidence, but it is typical CEQA practice to utilize the worst-case, most conservative interpretations of impacts on the environment and natural resources.

- 6.5 *Request to use actual PG&E power pole retrofit costs for implementation of Mitigation Measure BIO-17.* The Appellant asks that the use of the USFWS estimate of retrofit costs of \$7,500 be adjusted to the latest PG&E costs for each power pole. Planning staff has no objection to the proposed language added to Mitigation Measure BIO-17 regarding costs; however, it appears that the Applicant misconstrued the requirements of the measure, which are focused on completing the power pole retrofits. One of two *options* is for contributions to be made to a third party mitigation account based on the USFWS estimate of retrofits, but direct contracting with the utility (PG&E) is also acceptable. It should be emphasized that Mitigation Measure BIO-17 was “carried over” *verbatim* from the 2013 EIR, and includes the 2013 estimation that, combined with the winter season shutdown, the project would result in approximately one golden eagle fatality and therefore require 29 power pole retrofits, which *does not apply to the current project*. The current CUP extension request is projected to result in, statistically, at least 11.1 golden eagle fatalities over three years. As a result, Mitigation Measure BIO-17 should actually be revised more substantially than proposed by the Appellant, and should reflect the golden eagle fatality rate chosen by the Board. However, as with the original Mitigation Measure BIO-17, the Applicant may continue to contract directly with the utility provider if it chooses or if the power pole retrofit costs are in fact lower. The measure’s most specific requirement is that the completion of the retrofits be documented and reported to the Planning Director.
- 6.6 *Request to allow the Applicant to manage power pole retrofit funds.* The appeal letter expresses concern with the Staff recommendation that “the applicant should make a deposit of adequate trust funds prior to the start of each operational year (February 15th of each year, starting in 2016) that are dedicated to implementing Mitigation Measure BIO-17 and/or BIO-17a” (Staff Report to EBZA February 2, 2015, page 12), and the implication that the County would serve as an intermediary to pay for mitigation or otherwise administrate the funds for power pole retrofits. The Appellant also is under the mistaken impression that the County would require a deposit of approximately \$2.5 million to the County based on the USFWS estimate of \$7,500 per power pole to be retrofitted. As indicated above, the Applicant would be allowed to directly contract with PG&E as a utility provider for the power pole retrofits, and has no requirement that the power pole retrofit mitigation be calculated on any specific cost basis. Planning staff also agree with the Appellant’s proposal for quarterly progress reports on the implementation of power pole retrofits; however, the intent of the Staff recommendation for a trust account was for the Applicant to demonstrate that it has set aside specific funds for implementation of Mitigation Measure BIO-17 and/or BIO-17a, not to deposit any funds with the County itself. The Appellant has proposed deleting a proposed requirement of the amended Avian Wildlife Protection Program and Schedule (AWPPS, Years Eleven Through Thirteen, No. 4) for “a deposit to a trust account of adequate funds prior to the start of each operational year (February 15th of each year, starting in 2016)...” Planning staff disagree that the

paragraph should be wholly deleted, although as discussed below (see 6.7), the timing of the requirements for Mitigation Measure 17a could be considered for changes. The purpose of paragraph No. 4 of the AWPPS is to provide for appropriate accountability of the project to demonstrate to the County the applicant's ability to fund the required mitigation measures. The funding of the trust account may be based on the actual costs incurred by PG&E for the previously completed power pole retrofits. Lastly, paragraph No. 4 of the AWPPS has been modified in the attached Draft Resolution to clarify that the number of power pole retrofits will be based on the number of MWs of operating capacity active in each calendar year, as adjusted by paragraph No. 2 of the proposed AWPPS (limiting the total output over three years to no more than 91.2 MWs, or 50 percent of its existing installed capacity).

6.7 *Request for additional time to analyze and implement the optional Mitigation Measure BIO-17a.*

The Appellant indicates they object to the timing proposed by Planning Staff as shown in the Mitigation Monitoring and Reporting Program for Mitigation Measure BIO-17a, which specifies that "Compensation measures, as detailed in an approved Special-Status Species Mitigation Plan must be implemented within 60 days of the permit approval." Instead, the Appellant proposes that such a Mitigation Plan be required within 60 days of the permit extension's "effective date" of February 15, 2016, due to the expectation that a Resource Equivalency Analysis (REA), the first step towards developing a Special-Status Species Mitigation Plan (SSSMP) will itself require some number of months to prepare. Planning staff, in recognition that no REA has been completed to date by any wind operator, acknowledge the likelihood that preparing an REA and subsequently an SSSMP may require a longer lead time. However, given that there are an estimated 11 months until the "effective date" of operations to commence under the CUP extensions in 2016, it is proposed that the "effective date" be recognized as November 1, 2015, the day after which the current CUPs expire, and the CUP extensions would be in effect, even though the winter season shutdown would commence on the same day. This would require the applicant – *if* it is proposing to supplement Mitigation Measure BIO-17 with BIO-17a – to complete its REA and obtain approval of its SSSMP by December 31, 2015, or approximately 9-½ months from the current hearing.

Summary. Based on the above discussion, the Board of Supervisors has the following options, and may consider Planning staff's recommendations in parentheses and *italics*:

- Approve extension of the CUPs as requested for three years without any percentage limit on total MWs of production in that period (favored by the Appellant), limit the MWs of production to 50 percent over three years, or extend the CUPs only for 18 months, 12 months, or a shorter period of time (*staff: either deny the CUP extensions consistent with the EBZA action, or extend for 12 months or less, with required progress reports on repowering activities*).
- Include specific quantities of GHG offsets and/or direct and indirect economic benefits of the project in the Statement of Overriding Considerations, or leave the Statement as it is (*staff: no opinion*).
- Agree or disagree with interpretation that the winter season shutdown ceases at 12:01 a.m. on February 15 of each year (*staff: agree*).
- Accept as the golden eagle fatality rate the rate based on the three Avian Monitoring Report years of 2008 to 2010, of 0.061 eagles per year per MW of installed and operating capacity (as favored by the Appellant), or the rate based on the Monitoring Report years 2008 to 2012 (0.075 per MW per year), or the worst-case rate used in the 2013 EIR, based on Monitoring Report years 2005 to 2010 (0.085 per MW per year) (*staff: Monitoring Report years 2008 to 2012, or 0.075 per MW per year*).

ATTACHMENT A – Changes to Draft Resolution and Conditions
March 10, 2015, Board Letter
PLN2014-00028 – Appeal of Altamont Winds, Inc.

- Agree to amend Mitigation Measure BIO-17 to clarify that the costs of power pole retrofits will be based on the latest PG&E cost estimates or actual costs as documented by PG&E or the contracted utility provider, and to clarify that the CUP extensions would require the number of required power pole retrofits to be determined based on the golden eagle fatality rate adopted by the Board of Supervisors, or reject any such amendment (*staff: agree*).
- Agree also to amend Mitigation Measure BIO-17 to provide quarterly or semi-annually (twice yearly) progress reports on completion of power pole retrofits, and that the number of power pole retrofits to be required be based on the number of MWs of installed capacity otherwise approved by the Board, or reject such amendment (*staff: agree*).
- Delete paragraph number 4 of the amended Avian Wildlife Protection Program and Schedule, Years Eleven Through Thirteen (as requested by the Appellant) that requires deposits of adequate funds to a trust account for funding of the upcoming year's power pole retrofits or other compensatory mitigation that may be proposed under Mitigation Measure BIO-17a, or reject such amendment (*staff: reject such deletion*).
- Adopt the Resolution with a determination that the effective date of the CUP extensions would be November 1, 2015, or reject such amendment (*staff: adopt such resolution, unless the EBZA's action is upheld*).

REEL

IMAGE

Approved as to Form
DONNA R. ZIEGLER, County Counsel

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

On motion of Supervisor _____

Seconded by Supervisor _____

and approved by the following vote:

Ayes: Supervisors

Noes:

Excused or Absent:

**THE FOLLOWING RESOLUTION WAS ADOPTED MARCH 10, 2015:
NUMBER R-2015-_____**

**RESOLUTION DENYING IN PART AND GRANTING IN PART 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, A REQUEST TO EXTEND 16 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 THE APPELLANT ALTAMONT WINDS, INC.
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/Mulqueeney, APNs: 099A-1800-002-03, 99A-1800-002-04, 99B-7890-002-04, 99B-7890-002-05, 99B-7900-001-05, 99B 7900-001-07, 99B-7910-001-01, 99B 7925-002-04, 99B-7925-002-05, 99B 7975-001-00, 99B-7980-001-00, 99B 7985-001-03, 99B-7985-001-04, 99B 7985-001-05, 99B-7985-001-06 and 99B 8050-001-00;

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

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

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

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

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

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

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

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

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

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

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

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

Additionally, under an asset exchange proposed in 2014 between AWI and Green Ridge Power LLC ("GRP"), in which all wind turbines and supporting infrastructure assets owned by AWI and associated with two Conditional Use Permits listed above, C-8216 and C-8243, held by Altamont Infrastructure Company on behalf of AWI, on land owned by Alameda County Waste Management Authority ("ACWMA"), would be transferred to GRP in exchange for wind turbines and supporting infrastructure owned by GRP, associated with the following two Conditional Use Permits held by Altamont Infrastructure Company on behalf of Green Ridge Power, LLC:

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, Altamont Winds Inc. and Windworks Inc. filed the subject application in early 2014 requesting extension of 16 permits under which it operated its wind turbine assets through the end of 2018, which was one of the alternatives considered in the 2013 FEIR (Alternative 3), but for which the Board made findings in July 2013 to reject as infeasible and as likely to result in the next highest level of avian mortality after the proposal to operate without the winter season shutdown, and in order to address continued operations only and not the effects of decommissioning addressed in the 2013 EIR, provide the basis for findings in support of operations through 2018, incorporate new mitigation options and provide for adequate public review, the County required the preparation of a Supplemental Environmental Impact Report (SEIR); and

WHEREAS, a Draft SEIR was completed on November 17, 2014, which made the same findings as the original 2013 EIR of significant adverse impacts, either directly or through habitat modifications, on special-status avian species, and identified the same mitigation measures applicable to ongoing operations as the 2013 EIR but also identified a new Mitigation Measure 17a to provide optional strategies to mitigate impacts on special-status avian species; and

WHEREAS, the East County Board of Zoning Adjustments held a public hearing on said application at the hour of 1:30 p.m. on the 18th day of December, 2014 for the purpose of

receiving comments on the Draft SEIR, and again at 1:30 p.m. on the 2nd day of February, 2015 for the purpose of receiving comments on the project proposal, in the City of Pleasanton Council Chambers, 200 Old Bernal Avenue, Pleasanton, California; and

WHEREAS, the 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 found the following with respect to the requested Conditional Use Permit extensions:

1. That the recitals above were accurate and thereby adopted as findings of the Board of Zoning Adjustments;
2. The proposed Statement of Overriding Considerations does not meet the requirements of Section 15093 of the CEQA Guidelines in that it does not identify economic, legal, social, technological or other benefits of the project that outweigh its unavoidable adverse environmental risks, or that are supported by substantial evidence in the record;
3. Based on testimony received, and the evidence before it, that the economic benefit of the proposal to extend for three years the existing CUPs does not exceed the value of impacts on biological resources; and
4. No substantial evidence had been presented that no repowering project, which was the principal intent of the prior Resolution Z-13-36, or that no other wind power project, will move forward should the application be denied, nor has substantial evidence been provided that there would be a loss of jobs as a result of disapproval of the application sufficient to outweigh the unavoidable adverse environmental risks of the project; and

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.

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-8243 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 23, 2015 Altamont Winds, Inc. and Green Ridge Power LLC completed the proposed asset exchange, which included, in part, the transfer of wind turbines and supporting infrastructure associated with two Conditional Use Permits held by Altamont Infrastructure Company on behalf of Altamont Winds, Inc., C-8216 and C-8243, approved respectively in 2006 by the East County Board of Zoning Adjustments' Resolutions Z-06-03 and Z-06-04, on land owned by Alameda County Waste Management Authority ("ACWMA"), to Green Ridge Power LLC in exchange for wind turbines and supporting infrastructure associated with two other Conditional Use Permits held by Altamont Infrastructure Company on behalf of Green Ridge Power, LLC, C-8231 and C-8239, such that this permit modification applies to C-8231 and C-8239 and not to C-8216 and C-8243, and, accordingly, Altamont Winds, Inc. has all the privileges and responsibilities for managing the wind energy assets of under the same conditions of approval as all other Conditional Use Permits subject to this resolution; and

WHEREAS, this Board of Supervisors held a hearing on the appeal on March 10, 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, 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-XX on March , 2015 to certify that the Final SEIR has been completed in compliance with CEQA, that the Final SEIR was presented to the Board and the Board reviewed and considered the information contained in the Final SEIR, and that the Final SEIR reflects the independent judgment of the Board; and

WHEREAS, the Board has considered Exhibit A (Written Findings of Significant Effects), Exhibit B (Mitigation Monitoring and Reporting Program) and Exhibit C (Statement of Overriding Considerations) of this Resolution, each of which are required by State and Local CEQA Guidelines; and

WHEREAS, 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 eliminated or 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 which 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. The Board shall require Mitigation Measure 17 to 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;

OR 2. The Board shall require Mitigation Measure 17 to be implemented on the basis of the average golden eagle fatality rate (0.075) obtained from the Avian Monitoring Reports results for the bird years 2008 to 2012, in recognition that such a rate represents the largest number of years (i.e., more supporting data) during which time the winter season shutdown was in effect;

OR 2. The Board shall require Mitigation Measure 17 to be implemented on the basis of the average golden eagle fatality rates (0.085) obtained from the Avian Monitoring Reports results for the bird years 2005 to 2010, in recognition that such a rate represents the worst-case rate and the worst-case rate available in 2013 used to calculate Mitigation Measure 17 under the 2013 EIR;

BE IT FURTHER RESOLVED that the Alameda County Board of Supervisors does hereby amend 16 subject Conditional Use Permits approved by Board of Supervisors' Resolutions R-2005-453 and R-2007-111, and as amended by the Board of Zoning Adjustments; Resolution Z-13-36, held in separate files in the offices of the Community Development Agency, Planning Department, 224 West Winton, Rm. 111, Hayward, CA, 94544), subject to the following amended 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 to 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. Beginning on February 15, 2016, the Permittee shall be limited to operate its wind energy turbine facilities to have an installed total operating capacity of 91.2 MW over three years, either by operating all facilities until June 22, 2017 (i.e., a total of 12-¾ months), or by shutting down 50% of its turbines through October 31, 2018, or in other stages such that the three-year installed or operating capacity may not be greater than 91.2 MWs. The Permittee shall submit its plans to the

Planning Director to operate a set number of turbines for a set number of months prior to each February 15 of the years 2016 to 2018, and cease operating all turbines after the installed and operating capacity in these three years reaches 91.2 MWs based on the number and months of operations reported in said plans.

3. By October 31, ~~2015~~ 2013, 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.
4. Unless the Permittee chooses to apply for an eagle take permit as described in Mitigation Measure BIO-17a (and submits a complete draft Eagle Conservation Plan and meets other USFWS requirements for an ETP) within six months of approval of the CUP modifications, the Permittee shall make a deposit to a trust account of adequate funds prior to the start of each operational year (February 15th of each year, starting in 2016), that are dedicated to implementing Mitigation Measure BIO-17 and/or BIO-17a. Such deposits for the use of power pole retrofits, or contributions to regional conservation of raptor habitat may be adjusted (supplemented with additional funds or refunded) at the end of each operational year (2016 to 2018) based on actual expenditures and power pole retrofits completed.
5. 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 Resolution ~~Z-13-35~~ this Resolution.
6. Indemnity: The Permittee shall defend, indemnify and hold harmless Alameda County and its agents, officers and employees from any claim, action or proceeding against Alameda County, and/or its agents, 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. 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.

7. Repowering Progress Reporting. The Permittee shall submit a report semi-annually (twice yearly) to the Board of Zoning Adjustments describing, relative to each of the potential obstacles to repowering outlined as "Circumstances Outside of AWT's Control" in the FSEIR.
8. 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.

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 COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

Chris Bazar
Agency Director

Agenda Item: 56 March 10, 2015

Albert Lopez
Planning Director

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February 27, 2015

Honorable Board of Supervisors
County of Alameda
1221 Oak Street, Suite 536
Oakland, CA 94612

Dear Board Members:

SUBJECT: Appeal by Audubon California from the decision of the East County Board of Zoning Adjustments (EBZA) to certify the Supplemental Environmental Impact Report (SEIR) for Conditional Use Permit, PLN2014-00028, application of Altamont Winds Inc. for modifications to existing conditional use permits (extension to October 31, 2018, of permits currently set to expire on October 31, 2015), for 828 turbines owned and operated by Altamont Winds Inc. located throughout the approximately 14,436-acre Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), with a rated capacity of approximately 85.8 megawatts (MW), bearing numerous Assessor's Parcel Numbers and different owners as shown in the attachments.

RECOMMENDATION:

East County Board of Zoning Adjustments (EBZA): On February 2, 2015 the EBZA certified the Supplemental Environmental Impact Report (SEIR), by a vote of two in favor and one opposed.

Planning Department Recommendation: Staff recommends that the Board of Supervisors uphold the certification of the SEIR by the EBZA.

SUMMARY:

Proposal: To extend 16 conditional use permits (CUPs) for three (3) years, through October 31, 2018, under specified conditions, beyond their current expiration date of October 31, 2015, for operation of an estimated 828 existing utility-scale wind turbines with a combined existing (current) generation capacity of 85.8 megawatts (MW).

General Plan and Zoning: The APWRA is subject to the East County Area Plan (ECAP), within which it is designated Large Parcel Agriculture (LPA), permitting among other uses, "windfarms and related facilities" The zoning designation of the APWRA is a combination of A-BE 160 and A-BE-320 (Agriculture, Minimum Building Site Area 160 and 320 acres, respectively), which allows windfarms (privately-owned wind electric generators) as conditional uses.

Background, Including CEQA Status: The Board of Supervisors approved 29 CUPs in 2005, of which 14 contained turbines owned or beneficially-owned by AWI or its affiliate WindWorks, Inc., subject to various and numerous conditions, including phased decommissioning requirements in expectation of repowering (replacing the older turbines with fewer, larger and more efficient turbines), with 10 percent of its 920 turbines removed by 2009 (92 turbines), an

Board of Supervisors

Appeal of Audubon California and Regional Affiliates, of the Certification of the Supplemental EIR for Altamont Winds Inc. Application PLN2014-00028, for Permit Modifications (Extension to 2018)

March 10, 2014

Page 2

additional 25 percent removed by September 30, 2013 (230 more), another 50 percent of the original turbine number (for a cumulative total of 85 percent or 782 turbines) by September 30, 2015, and the remaining 15 percent of turbines (138) by September 30, 2018. Another two CUPs (C-8216 and C-8243) for AWI turbines on properties owned by the Alameda County Waste Management Authority (ACWMA), were approved in early 2006 subject to the same conditions.¹ After litigation by a coalition of environmental organizations in 2006, a Settlement Agreement was approved in 2007 by the Board of Supervisors and three wind energy companies, that required greater commitments to repowering and cessation of most of their operations after 2015, but also eliminated their decommissioning requirements. AWI was not one of the Settling Parties, and under modifications approved by the Board of Supervisors to implement the Settlement Agreement (Resolution R-2007-111) AWI therefore remained subject to the 2005 CUP requirements for phased decommissioning. As required in late 2009, AWI shut down and discontinued operation of 92 turbines, thereby resulting in the current operation of 828 turbines, with a rated or nameplate capacity of 85.8 MW.

In July 2011, AWI applied for modifications to its CUPs to eliminate its requirements for phased decommissioning and proposed to eliminate the winter season shutdown. To be consistent with the aspect of the Settlement Agreement that required the other three operators to cease operations after 2015, AWI also proposed to cease operations of its turbines on October 31, 2015. An EIR was prepared to evaluate these CUP modification proposals, ongoing operations and future decommissioning impacts associated with repowering (required by the Board's Resolutions in 2005 and 2007), including three alternatives: No Project; permanent shutdown as proposed in 2015 with retention of the winter season shutdown (applicable to all other alternatives); termination on October 31, 2016; and termination on October 1, 2018 (consistent with expiration date of the CUPs as approved in 2005 and amended in 2007). Only the No Project alternative would continue the phased decommissioning requirement. The EBZA held a public hearing and certified the Final EIR (FEIR) on July 18, 2013, and approved the modifications, with continued winter seasonal shutdown, and some other conditions.

The 2013 EIR and the decision by the EBZA to approve the request by AWI was in large part based on a comparison of the 2011 proposal and four alternatives, including the No Project Alternative, using total MWs of installed capacity, over the five-year period of October 2013 through 2018, as a common metric that could also be linked *generally*² and proportionally to anticipated levels of avian mortality, including the fatality of the four focal raptor species that have been a major focus of Avian Mortality Reporting since 2006. The Supplemental EIR, prepared in 2014 and made final in 2015 with its certification by the EBZA on February 2, 2015, used the same metric – total installed capacity – to estimate the level of avian mortality likely to result from the proposed CUP extensions through 2018.

In 2014, AWI applied for new modifications to its CUPs, to allow implementation of Alternative 3 as described in the prior 2013 EIR, that provided for operation through October 1, 2018 (and requested operation through October 31, 2018, the last day prior to the winter season shutdown as scheduled since November 1, 2008). The County determined that a Supplemental Environmental Impact Report (SEIR) would be required to address continued operations only and not the effects of decommissioning addressed

¹ Distinguished in this case because the CUPs on properties owned by the Waste Management Authority were withdrawn from the application at the hearing and all of AWI's assets under those CUPs were conveyed to Green Ridge Power LLC as part of an asset exchange completed on February 23, 2015.

² Mortality rates for the 2013 proposed project, without a winter season shutdown, were deemed to be under-estimated, because mortality rates were derived from years in which the winter season shutdown was at least partly in effect, and it is well-established that use and migration by most avian species increases substantially in the winter.

in the 2013 EIR; provide the basis for findings related to operations through 2018; incorporate new mitigation options; and provide for appropriate public review.

East County Board of Zoning Adjustments Hearing: On February 2, 2015 the EBZA held a hearing to consider the SEIR, and after deliberation, voted to certify the SEIR with two votes in favor and one opposed. The Members voting in favor had achieved consensus that the SEIR provided them with sufficient information to make a decision about the proposed project, and that it was complete and complied with CEQA requirements. The vote against certification appeared to be based on the perception by the dissenting Board Member that substantial additional testimony had been submitted at the hearing, such that he could not support the required finding that no new comments or information had been submitted that would change the analysis or conclusions of the Final SEIR (Finding # 8). He supported all other findings made for certification.

Appeal: Audubon California and a number of regional chapters of the Audubon Society appealed the decision by the EBZA on February 2, 2015 to certify the SEIR. The appeal letter asserts in eight bullet point paragraphs that the SEIR does not meet the requirements of CEQA, and is inadequate in the following respects:

1. It relies on an incorrect baseline, that results in underestimation of bird mortality due to the project;
2. It underestimates bird mortality due to a flawed analysis method;
3. The SEIR does not acknowledge that the golden eagle population has an overall mortality rate of 12 percent per year, whereas the U.S. Fish and Wildlife Service (USFWS) has indicated that a mortality rate in excess of 5 percent per year is not sustainable;
4. It does not adequately identify and assess all of the significant impacts attributable to the project;
5. It does not adequately assess cumulative impacts;
6. It fails to adequately identify potential and feasible mitigation measures to address project impacts;
7. It defers and/or inadequately describes the identified mitigation measures, such that the public and decision-makers could not effectively assess their adequacy; and
8. It did not recognize additional project impacts, including the potential delay of repowering of the APWRA, disruption of monitoring efforts, and its conflict with the rationale used for approval of the 2013 modifications.

Discussion. The appeal essentially reiterates the same comments that were submitted to the County on the Draft SEIR, and does not raise issues that were not addressed in the Response to Comments Section of the Final SEIR. With respect to the first comment (# 1 above), the Appellant had previously expressed objection to using the baseline used in the 2013 EIR, that the baseline instead should be conditions without any turbines operating in the period 2016 to 2018, consistent with the approval in 2013 to terminate all turbine operations after October 31, 2015. As stated in the Final SEIR/Response to Comments (Master Response 2), the SEIR is a *Supplement* to the 2013 FEIR, and as such the baseline used in the SEIR is primarily the same baseline as described in the 2013 FEIR. Although a different baseline would be appropriate for a new EIR, it is not advisable CEQA practice to consider a different baseline for a *Supplemental EIR*.

It should be recognized that the 2013 baseline represented continued but very limited operation of AWI's turbines through 2018, with phased decommissioning (460 turbines operating during 2014 and 2015,

which would have been reduced to 138 operating during the years 2016 to 2018). Consistent with the 2013 EIR, the SEIR simply compares the proposed permit extension across the MWs of installed nameplate capacity that would be operated *over the total remaining months and years of each alternative* across the five years between October 2013 and October 2018, and also enables comparison between the 2013 approved CUP modifications – the baseline the Appellant requests – and the proposed CUP extension.

The statement that the SEIR employs a flawed analysis of projected bird mortality is based on an apparent mis-understanding, addressed in Master Response 2 of the Final SEIR, that the rates were based on only a portion (0.708) of a “MW-year” that is defined in the annual APWRA-wide Avian Mortality Monitoring Reports, and that the analysis reflects a “subtraction” of the projected bird mortality. In fact, as stated above, the analysis simply added up the installed capacity that could operate over the five-year period, as shown in Table 3-2 in the Final SEIR, with MWs ranging from 116.5 MWs under the prior CUPs as approved in 2005, to 128.7 MWs in the years 2014 to 2015 for the current CUPs, to 311 MWs under the proposed CUP extensions. No “subtraction” was made, and the method is fundamentally sound and consistent with the 2013 certified EIR.

With respect to the third statement by the Appellants, regarding the golden eagle mortality rate, the FSEIR, in Master Response 5 (Cumulative Impacts discussion), acknowledges the proposed CUP extensions would have significant, cumulative and unavoidable adverse impacts on the broad ecological character of the APWRA, including a number of golden eagle fatalities that would be severe through the life of the CUP extensions. However, it was pointed out in the Final SEIR and it remains appropriate CEQA practice to avoid adding a substantially different baseline model of analysis to the SEIR – which is a *Supplement* to the prior 2013 EIR.

The fourth and fifth specific comments made by the Appellant generally reiterate the view that the SEIR was incomplete in identifying the impacts of the CUP extensions, to which County staff can only repeat that the SEIR does recognize the significant, cumulative and unavoidable adverse impacts, and that furthermore, additional analysis would not result in a different determination. The subsequent criticism that the mitigation measures identified in the SEIR are inadequate or infeasible refers to prior comments by the Appellants (on the Draft SEIR) that greater certainty and accountability is required to support the proposed Mitigation Measures. In recognition of this criticism, Mitigation Measure BIO-17a was modified for the SEIR to require greater accountability, if the Applicant did not choose power pole retrofits (Mitigation Measure BIO-17) as the only means of mitigation its avian impacts. In addition, BIO-17a is an additional measure unique to the SEIR (i.e., not in the 2013 EIR) that was added in recognition that the impacts of the CUP extensions would be more severe and substantially greater than the “baseline” effects of the current CUPs. Mitigation Measure BIO-17a would enable the Applicant to mitigate avian mortality through certain conservation options, that could involve either applying for an eagle take permit from the USFWS, or completing a Resource Equivalency Analysis (REA) that would identify appropriate avian habitat conservation strategies including contributions to regional raptor habitat conservation. The Final SEIR specifies that if the Applicant opts to use BIO-17a, the REA must be completed and approved within six months by the USFWS and the County.

The final point raised by the Appellants is that the SEIR does not address the potential impacts that the extension could have on repowering by other companies in the APWRA, and conflicts with the rationale

Board of Supervisors

Appeal of Audubon California and Regional Affiliates, of the Certification of the Supplemental EIR for Altamont Winds Inc. Application PLN2014-00028, for Permit Modifications (Extension to 2018)

March 10, 2014

Page 5

used in 2013 to approve the previous use permit modifications. Planning staff do not consider the coordination and sequencing of repowering activities to represent potential environmental impacts. With the transfer of assets, and cessation of operations south of I-580, there would be no delay of repowering of the Golden Hills I project area, which is the only approved repowering project that overlaps with AWI's turbines.

Recommendation: Staff recommends that the Board of Supervisors uphold the certification of the SEIR by the EBZA.

The complete record is attached.

Very truly yours,

A handwritten signature in black ink, appearing to read "Chris Bazar", with a long horizontal flourish extending to the right.

Chris Bazar, Director
Community Development Agency

Attachments

cc: Audubon California
Altamont Winds., Inc.
East County Board of Zoning Adjustments

March __, 2015

Alameda County Board of Supervisors
Alameda County Administration Building
1221 Oak Street; Suite 536
Oakland, California 94612
sent via e-mail to cbs@acgov.org

**Subject: Appeal of East County Board of Zoning Adjustments' Denial of 3 Yr Extension
of Conditional Use Permits
86 MW Altamont wind farms**

Dear Alameda County Board of Supervisors,

I am a landowner in the Altamont Pass Wind Resource Area, currently leasing land to Altamont Winds Inc. (AWI), and I am writing to urge the Board of Supervisors to approve AWI's three year extension, 2016 – 2018, of their Conditional Use Permits.

The rent revenues we receive from the wind farm are an integral part of our family's farming income. We are long-standing residents of Alameda County, and are proud of the role we play in green energy generation in California. If AWI is not granted its CUP extension, it will hurt our ability to operate our farm in the Altamont Pass.

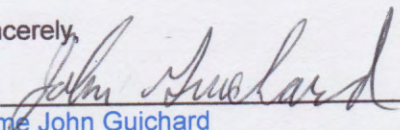
As a landowner, I am dedicated to the responsible ownership and stewardship of my land, and I know that supporting wind power is one way to help ensure the long-lasting economic viability of my land. We strive to participate in this sustainable land management practice, and know that if the effects of climate change are not abated, our land will likely dry up and lose its economic viability.

Extending AWI's wind farm CUPs will keep clean wind power, which displaces harmful greenhouse gas emissions from the environment, as well as, keep toxic emissions out of the air we breathe. As an Alameda County farmer, our family is particularly concerned about the emissions from the nearby natural gas generators that would produce additional electricity if AWI's wind turbines are shut down.

AWI continues to comply with all of the mitigation measures identified in the Environmental Impact Reports, including the winter seasonal shutdown and retrofitting power poles to save birds. These mitigation measures compensate for the environmental impacts by the wind farm, and even compensates for environmental impacts, such as avian background mortality, beyond what's caused by the wind farm.

It's imperative that AWI's application for extending the CUPs is approved. Alameda County continues to be a leader in offering clean wind energy to the people of California. Additionally, supporting the approval of these CUPs is responsive to Governor Brown's environmental goals to achieve 50% of California's energy from renewable sources. It's a critical time in California to continue to expand the availability of renewable energy in the supply market, and extending the CUPs would prove instrumental towards achieving these renewable energy goals.

Sincerely,

by 

name John Guichard

address 12 Dundee ct San Ramon Ca. 94583

email johnguichard@comcast.net

phone number 925-200-0845

Young, Andrew, CDA

From: rodgrobn@clearwire.net
Sent: Saturday, February 28, 2015 1:05 PM
To: Young, Andrew, CDA; Palmeri, Maria, CDA;
Subject: Letter re: Altamont Wind Farm Permits Extension

Ralph F. Pombo
32919 S. Tracy Blvd.
Tracy, CA 95377

February 25, 2015

To Whom it May Concern,

I own 305 acres of grazing land on both sides of Old Altamont Road in Alameda County. This land was one of the very first ranches to experiment with wind turbines in 1987, in the Altamont hills. Because of ranches like mine, that took the risk of allowing the new concept of generating electricity with wind power, the industry has flourished.

This has not been an easy venture as there has been many setbacks over the years. I have suffered several wind company bankruptcies, new firms taking over and gambling that the unknown strangers knew more than the last ones.

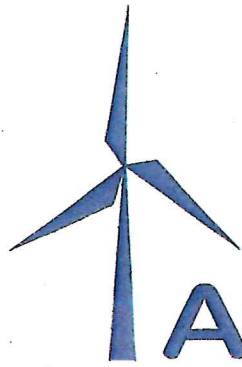
After all the risky years, the venture became somewhat stable, with the wind power companies grossing more than one million wholesale dollars on my property annually. My small percentage allowed me to compensate for the many drought years in the cattle business, helped to pay my ranch mortgages and property taxes. Then came the Alameda County Board of Supervisors decision to have a third of the wind generators removed from my property. I was led to believe that this was just the first step in a repowering of this section of my ranch. Of course that never happened and the results are unpaid property taxes and late ranch mortgage payments.

If the goal is to obtain renewable energy, help the economy with jobs, support local ranchers, strengthen the tax base, repay the many years of trial and error by countless entrepreneurs that are trying to satisfy the needs of the public, there can be only one decision. Promote the clean renewable energy industry. This industry has continuously made many costly modifications to their machinery and methods of operations in order to satisfy some very questionable goals. Let us encourage, not discourage, the expansion of a very promising industry. Most of the revenue generated is spent locally and is a big stimulus to our economy.

My property has produced electrical energy for the past 25 years. Not one iota of the natural resources such as, underground minerals, water, oil or above ground fuel, has been depleted for this venture. Isn't this what every environmental and government agency has asked for and demanded of us?

All of the ranchers in this area are asking you to **PLEASE** approve the Altamont Wind Farm permits extensions.

Ralph F. Pombo



Altamont Winds Inc.

23 February 2015

Alameda County Waste Management Authority
1537 Webster Street
Oakland, CA 94612
sent via e-mail to bmathews@stopwaste.org

Attention: Mr. Brian Mathews, Senior Program Manager

Subject: **NextEra-AWI Wind Turbine Exchange Completion**

Dear Mr. Mathews:

Today, we completed our wind turbine asset exchange with NextEra Energy Resources and its affiliate, Green Ridge Power. Therefore, we no longer operate any wind turbines on land owned by Alameda County Waste Management Authority ("ACWMA").

Because we no longer operate on ACWMA land, the Conditional Use Permits ("CUPs") that we formerly operated under, which concern ACWMA land, have been removed from our permit extension application before Alameda County. The relevant CUPs are identified as follows:

- > C-8216, WindWorks Inc./ACWMA, APN: 099A-1810-001-00;
- > C-8243, Altamont Infrastructure Co./ACWMA: 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.

Therefore, since ACWMA no longer has any interest in our CUP extension application and appeal, we will make this fact known to Alameda County Planning Dept. and the Alameda County Board of Supervisors.

Please contact me if you have any questions.

Sincerely,

Altamont Winds Inc.

Jeremy Liem
Legal Counsel

Judith Hintz
3883 Santa Clara Way
Livermore, CA 94550

February 19, 2015

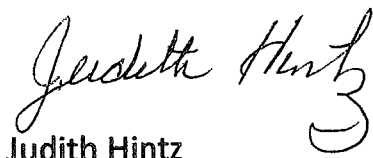
ALAMEDA COUNTY SUPERVISORS
1221 Oak Street, Suite 536
Oakland, CA 94612

My name is Judith Hintz; I am part owner of the Egan Estate Ranch in Altamont. My great grandparents purchased the ranch in 1879, and it remains in the family. I am requesting that the Board of Supervisors for Alameda County approve the three year extension requested by Altamont Winds Inc.

Altamont Winds Inc. continues to work with Alameda County in compliance with the seasonal shutdowns as recommended in the 2013 FEIR CEQA Alternatives. The extension of the CUPs is merely a stop-gap measure until the Altamont Winds Inc. is able to fully execute repowering efforts in the area in question. It is imperative that the application for extending the CUPs is approved. This is a critical time in California to continue to expand the availability of renewable energy in response to Governor Brown's environmental goals to achieve 50% of California's energy from renewable sources. By approving the Conditional Use Permits Alameda County will be supporting these goals.

I urge you to approve the three year extension as requested by Altamont Winds Inc.

Thank you for your consideration.



Judith Hintz

Cc: Altamont Winds Inc.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Office of Law Enforcement
2800 Cottage Way, W-2928
Sacramento, CA 95825



February 19, 2015

Alameda County Board of Supervisors
Alameda County Administration Building
1221 Oak Street; Suite 536
Oakland, California 94612

Dear Board of Supervisors:

This letter is to inform you of the U.S. Fish and Wildlife Service's (Service) position regarding the ongoing unlawful take of golden eagles at Altamont Winds, Inc. (AWI) facilities located in the Altamont Pass Wind Resource Area, further supplementing our December 10, 2014, October 15, 2014, and April 19, 2013, comment letters regarding the *Notice of Availability of a Draft Supplemental EIR for Modifications to Existing Conditional Use Permits – AWI*; the *Notice of Preparation of a Supplemental EIR for Proposed Modifications to Existing Conditional Use Permits – AWI*; and, the *Draft Environmental Impact Report for the Modification to Existing (Year 2005) Conditional Use Permits (Project) for AWI*, respectively.

The Bald and Golden Eagle Protection Act (Eagle Act) prohibits a variety of actions with respect to eagles, including unauthorized "take." In 2009, the Service promulgated a final rule on two new permit regulations that, for the first time, specifically authorize the unintentional take of eagles and eagle nests in certain situations under the Eagle Act (50 CFR 22.26 and 22.27). The Service's regulations (74 Federal Register 46853-46879, September 11, 2009; and, 78 Federal Register 73704-73725, December 9, 2013) allow permits for up to 30 years to take eagles under the Eagle Act where "take is associated with, but not the purpose of the activity, and cannot practicably be avoided." Take of golden eagles can only be authorized where it is compatible with the preservation of the species.

Since January 2010, after issuance of the Service's final rule on the new permit regulations under the Eagle Act, approximately thirty-one (31) unpermitted eagle fatalities have been recorded at AWI facilities in the Altamont Pass Wind Resource Area. Although companies are not legally required to seek or obtain an eagle take permit, the take of an eagle without a permit is a violation of the Eagle Act, and could result in civil or criminal prosecution.

Despite the fact that the new permit regulations have been published for several years, and in the face of AWI's stated commitment to create an Eagle Conservation Plan and apply for an Eagle Take Permit, the Service has yet to receive either. Accordingly, the Service's Office of Law Enforcement is monitoring AWI's ongoing unpermitted eagle take and its associated actions.

The Service continues to recommend that Alameda County deny AWI's requested project modifications to their operational and decommissioning schedule, and instead enforce AWI's current permit requiring removal of its 828 existing wind turbines by October 31, 2015. To do otherwise will likely result in more eagles being killed by AWI's turbines, further increasing AWI's liability and possibly subjecting the County to increased scrutiny for having approved the CUP extension proposal.

Sincerely,



Jill Birchell
Special Agent in Charge
Office of Law Enforcement
U.S. Fish and Wildlife Service

cc:

Tara Mueller, California Attorney General's Office, Deputy Attorney General
Bob Anderson, Department of Justice, Environmental Crimes Division, Senior Trial Attorney
Craig Weightman, California Department of Fish and Wildlife, Environmental Program Manager
Eric Davis, U.S. Fish and Wildlife Service, Migratory Birds and State Programs
Alameda County Community Development Agency



Alameda County Fire Department

Fire Prevention Bureau

Plan Review Comments

399 Elmhurst Street, Room 120 , Hayward, California 94544 (510) 670-5853 Fax (510) 887-5836

2-24-15

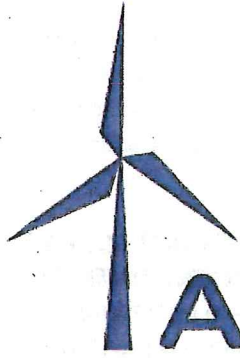
Alameda County
Community Development Agency
Planning Department
224 West Winton Ave., Room 111
Hayward, California 94544

To	Andrew Young	PLN #	14-00028
Address	Goecken Rd		
Job Description	Extend windfarm CUP		
Reviewed By	Scott McMillan	510 670-5877	

Conditions of Approval

The following conditions shall be met prior the issuance of a building permit and fire clearance for occupancy.

1. No Fire Department comments.



Altamont Winds Inc.

12 February 2015

Alameda County Board of Supervisors
Alameda County Administration Building
1221 Oak Street, Suite 536
Oakland, California 94612

**Subject: Appeal of East County Board of Zoning Adjustments'
Denial of Extension of Conditional Use Permits
86 MW Altamont wind farms**

Dear Alameda County Supervisors:

Altamont Winds Inc. ("AWI") submits this appeal of the East County Board of Zoning Adjustments' ("EBZA") denial of our application to extend Conditional Use Permits ("CUPs") C-8036, C-8037, C-8134, C-8137, C-8191, C-8231, C-8232, C-8233, C-8235, C-8236, C-8237, C-8238, C-8239, C-8241, C-8242, and C-8244. AWI is a small Alameda County based company that operates the 86 MW wind farms in the Altamont Pass, which provide clean renewable energy to our fellow Californians, and help the state and county to maintain their renewable energy portfolio standards and greenhouse gas reduction goals. AWI currently operates its wind farms in compliance with the previously mentioned CUPs, and appeals the EBZA's denial of our application to extend the CUPs because the EBZA has failed to adequately consider the social, economic, and environmental benefits from our wind farms.

AWI respectfully requests that the Board of Supervisors extends the CUPs for three years, 2016 through 2018, taking into account the following:

- > Continued operation of AWI's wind farms provides significant climate and environmental benefits to Alameda County and the environment as a whole.
- > Continued operation of AWI's wind farms has significant economic benefits.
- > Extending AWI's conditional use permits through 2018 aligns with CEQA's goals of reducing environmental damage.
- > The mitigation measures proposed in the SEIR will mitigate for avian impacts beyond the impacts directly attributable to AWI's wind farms.
- > There is overwhelming evidence in the administrative record to support adopting a Statement of Overriding Considerations and approve the proposed permit extension.

AWI is fully committed to implementing the mitigation measures identified in the Supplemental Environmental Impact Report ("SEIR"), and believes that the SEIR is sufficient to inform Alameda County of the potential negative environmental effects of the proposed CUP extension. Therefore, AWI agrees with the EBZA's certification of the SEIR, and only appeals the EBZA's denial of the extension of the CUPs.

1. CONTINUED OPERATION OF AWI'S WIND FARMS PROVIDES SIGNIFICANT CLIMATE AND ENVIRONMENTAL BENEFITS TO ALAMEDA COUNTY AND THE ENVIRONMENT AS A WHOLE. The environmental benefits of wind power are well known and well established.

One of the main benefits of wind power is reduced use of fossil fuel-based energy generation, which results in fewer greenhouse gas ("GHG") emissions and less toxic air pollution. Keeping our air clean and clear of GHGs helps to reduce anthropogenic (human caused) impact on climate change, and has countless health benefits to humans and wildlife. By allowing AWI to continue operating its Altamont Pass wind farm through the end of the 2018 wind season (i.e., until October 31, 2018), Alameda County will support clean and renewable energy generation.

1.1 Continued operation of AWI's wind farms aligns with Alameda County's dedication to renewable energy, as described in its Community Climate Action Plan. In 2014, the Board of Supervisors passed the Alameda County Community Climate Action Plan ("CCAP"). One of the six Climate Action Areas identified by the CCAP is "Building Energy," which includes an increased use of renewable energy.¹ As the CCAP states, over 1/3 of the unincorporated county's GHG emissions come from energy consumption in residential, commercial, and industrial buildings.² Alameda County has committed itself to "work to increase the amount of renewable energy within the electricity grid's generation portfolio" in order to reduce these GHG emissions and to achieve the County's goal of an 80% reduction of GHG emissions by 2050.³ In order to achieve the county's GHG reduction target, the CCAP also recognizes the "need to reduce the use of fossil fuel-based energy, through expanding renewable energy generation within the unincorporated county."⁴ As we will show, the continued operation of our wind farms will offset tons of GHGs and particulate matter air pollution. Extending AWI's conditional use permits through the end of the 2018 wind season fits squarely within Alameda County's goals of reduced GHG emissions and reduced reliance on energy from fossil fuels.

1.2 Continued operation of AWI's wind farms has net positive environmental and climate benefits. The net benefit of this wind project to avian species, society, and the environment as a whole is well documented in the administrative record for this project. AWI's wind farms reduce massive amounts of toxic air pollution and climate change-causing greenhouse gases by offsetting the use of fossil fuels to generate electrical power.⁵

Wind energy satisfies the societal need for electrical power at one of the lowest overall impact levels to human and animal health and to the overall environment.⁶ Wind power produces no air

¹ *Alameda County Community Climate Action Plan* p.37 (June 3, 2011).

² *Alameda County Community Climate Action Plan* p.37 (June 3, 2011).

³ *Alameda County Community Climate Action Plan* p.37 (June 3, 2011).

⁴ *Alameda County Community Climate Action Plan* p.38 (June 3, 2011).

⁵ "A significant benefit of wind power compared to natural gas is the almost complete elimination of fossil-fuel-related emissions." Donald McCubbin & Benjamin K. Sovacool, "The Hidden Factors That Make Wind Energy Cheaper than Natural Gas in the United States," *Electricity Journal*, Vol. 24, p.86 (2011).

⁶ Benjamin K. Sovacool, "The avian and wildlife costs of fossil fuels and nuclear power," *Journal of Integrative Environmental Sciences*, Vol.9, p.267 (2012).

or water pollution, and delivers a net **reduction** in such externalities by offsetting toxic pollutants that would otherwise be generated by extracting, transporting, and burning fossil fuels. Compared to other forms of power generation, wind energy has the lowest lifecycle greenhouse gas emissions of **any** electricity source.⁷

In a real and quantifiable way, AWI's wind farms mitigate the negative environmental impacts of electricity generation generally, and in doing so, AWI's operations help to prevent respiratory and cardiovascular disease, cancer, and premature death in humans and animals, including birds.⁸ While certain poorly-sited wind turbines may pose an increased risk to individual birds in some areas of the Altamont Pass, studies have shown that the net benefit provided by wind farms prevent an even larger number of birds from coming into contact with other harmful anthropogenic impacts.

1.2.1 Continued operation of AWI's wind farms has net positive impacts to human and avian health. In support of our CUP extension application, we have referenced a study conducted by Drs. McCubbin and Sovacool in 2011 on the air quality benefits of wind farms in the Altamont Pass Wind Resource Area ("**APWRA**"), and we have entered this study in the administrative record. The study's results have been cited in numerous peer-reviewed journals, including the *Journal of Integrative Environmental Sciences*.⁹ The study estimates that the APWRA's replacement of regional natural gas-fired power generation offset enough air pollution from 1986 to 2006 to prevent over 45,000 premature bird deaths.¹⁰ Extrapolating from these results, **AWI's wind farm prevents 31 premature bird deaths every month.**¹¹ As well, AWI's wind farms, over the past 20 years alone, have **avoided or saved:**

- > 10 premature deaths
- > 7 heart attacks
- > 102 asthma attacks
- > 721 lost work/sick days
- > 4,259 restricted activity days
- > \$78 million in health costs
- > **over 7,000 bird deaths**

Since that study was conducted, AWI's positive effect on the environment has continued to improve, in part due to the implementation of many mitigation measures that were not in effect

⁷ Mark. Z. Jacobson, "Review of Solutions to Global Warming, Air Pollution, and Energy Security," *Energy & Environmental Science* 2 (2009): 148-173.

⁸ Donald McCubbin & Benjamin K Sovacool, *Health, Wildlife, and Climate Benefits of the 580 MW Altamont Wind Farm, Altamont Pass, California*, December 2011 at i.

⁹ Benjamin K. Sovacool, "The Avian and Wildlife Costs of Fossil Fuels and Nuclear Power," *Journal of Integrative Environmental Sciences* 9(4) (December, 2012), pp. 255-278; McCubbin, D and BK Sovacool. "The Hidden Factors That Make Wind Energy Cheaper than Natural Gas in the United States," *Electricity Journal* 24(9) (November, 2011), pp. 84-95; Sovacool, BK. "The Avian Benefits of Wind Energy: A 2009 Update," *Renewable Energy* 49 (January, 2013), pp. 19-24; McCubbin, D and BK Sovacool. "Quantifying the Health and Environmental Benefits of Wind Power to Natural Gas," *Energy Policy* 53 (February, 2013), pp. 429-441.

¹⁰ Donald McCubbin & Benjamin K. Sovacool, *Health, Wildlife and Climate Benefits of the 580 MW Altamont Pass Wind Farms, Altamont Pass, California*, December 2011, at 56.

¹¹ According to McCubbin (Dec. 2011), note 25, the 580 MW APWRA wind farms avoided more than 45,000 avian deaths over 20 years (240 months), which equals 187 avian deaths avoided per month. AWI's portion alone is estimated to avoid approx. 31 bird deaths per month.

before 2006. Assuming the same rates of reduction in air pollution, extending AWI's permit as requested for three years, 2016-2018, can avoid or save nearly:

- > 2 premature deaths
- > 1 heart attack
- > 13 asthma attacks
- > 92 lost work/sick days
- > 543 restricted activity days
- > \$10 million in health costs
- > over 950 bird deaths

These benefits only come as a result of the self-mitigating benefits of wind energy itself. Because the results above do not take into account all of the proposed avian mitigation, continued operation of AWI's wind farm will have significantly greater environmental benefits when those mitigation measures are implemented.

1.2.2 Continued operation of AWI's wind farms contribute to reduced greenhouse gas emissions and reduced air pollution. Over the proposed three year extension of the conditional use permits, AWI's wind farm will offset and avoid a substantial amount of greenhouse gas emissions and particulate matter pollution. Specifically, over the course of the three year extension, AWI's wind farms will offset and avoid:

- > 252,000 lbs. of Nitrous Oxides
- > 2,500 lbs. of Sulphur Dioxide
- > 25,000 lbs. of Particulate Matter
- > 609,000,000 lbs. of Carbon Dioxide¹²

Similarly, when operation of our wind farms was considered as an alternative in the 2013 EIR, the County noted that continued operation of our wind farms through the end of the 2018 wind season would have the greatest reduction in GHG emissions compared to all other alternatives considered.¹³

2. CONTINUED OPERATION OF AWI'S WIND FARMS HAS SIGNIFICANT ECONOMIC BENEFITS. Studies by the National Research Energy Laboratory¹⁴ and Illinois State University Center for Renewable Energy¹⁵ have calculated the overall economic benefits of wind power, including both direct and indirect the economic benefits of a wind project. Some of those benefits include:

- > property taxes
- > benefits to land owners
- > payroll for wind plant employees
- > operations and maintenance costs
- > cost of parts and materials involved in operations and maintenance

¹² Donald McCubbin and Benjamin K. Sovacool, *Health, Wildlife and Climate Benefits of the 580 MW Altamont Pass Wind Farms*, Altamont Pass, California, December 2011.

¹³ 2013 FEIR, p.4-12, Table 3.1-12.

¹⁴ E. Lantz, *Economic Development Benefits from Wind Power in Nebraska: A Report for the Nebraska Energy Office*, National Renewable Energy Laboratory (Nov. 2008).

¹⁵ Center for Renewable Energy, Illinois State University, *Economic Impact – Wind Energy Development in Illinois* (Jun. 2012).

- > sales taxes on operations and maintenance parts
- > insurance, auditing, and banking costs
- > permitting costs
- > avoided carbon dioxide emissions
- > health cost savings

The data from these studies shows that over a 20 year period the entire 580 MW wind farms within the APWRA has economic benefits of over \$3.1 billion. More specifically, extending AWI's CUP's for another three years will result in economic benefits of over \$103 million.

2.1 AWI's wind farms provide substantial social and economic benefits to Alameda County. In his comments at the February 2, 2015 hearing before the EBZA, Mr. Jay Dunton, one of AWI's landowners in the Altamont Pass, mentioned that all of the wind rent proceeds he receives from the wind turbines located on his land are donated to charities in Alameda County. Most notably, each year, he gives tens of thousands of dollars to Alameda County hospitals, and has funded two rooms in the Valley Care Medical Center hospital in Pleasanton. At the hearing, Mr. Dunton stated that if AWI's CUP's are not extended, he will not be able to afford to continue to give to the hospital.

Beyond charitable donations, extending AWI's CUPs will allow AWI to continue employing the wind smiths, mechanics, machinists, technicians, and support staff that operate the wind farms. Many of AWI's employees are Alameda County residents whose income and property taxes contribute to the local, state, and national governments. As well, extending the CUPs will complement the green jobs initiative outlined in Alameda County's CCAP. Failing to extend AWI's conditional use permits will force AWI to undergo a large restructuring that will undoubtedly result in severely reduced personnel needs. However, ending current operations in 2018 (as envisioned by AWI's application to extend the CUPs) does not require the personnel reduction that AWI would need if the CUPs expire at the end of the 2015 wind season. AWI is in the process of developing new wind repower projects in the APWRA which will replace the projects that are covered by the CUPs at issue.

Alameda County also stands to benefit from property taxes levied on AWI's wind farm. If AWI's wind farms are forced to shut down, our landowners' properties will be severely devalued. Unlike residential solar systems in California, commercial wind farms are not excluded from property value assessments, which significantly increase the value of land, and thereby, increase the amount of tax levied on the land each year.

3. EXTENDING AWI'S CONDITIONAL USE PERMITS THROUGH 2018 ALIGNS WITH CEQA'S GOALS OF REDUCING ENVIRONMENTAL DAMAGE. One of the overarching goals of the California Environmental Quality Act ("CEQA") is to reduce environmental damage.¹⁶ Although CEQA is an informative document, the purpose of providing agency decision-makers with information on the environmental impacts of a proposed project is to give the public agency the opportunity to make decisions that avoid environmental harm and promote environmental health.¹⁷ As courts have continually held, "the overriding purpose of CEQA is to ensure that agencies regulating activities that may affect the quality of the environment give primary consideration to preventing environmental damage. CEQA is the Legislature's declaration of

¹⁶ CEQA Statute and Guidelines §§ 21000, 21001.

¹⁷ CEQA Statute and Guidelines §§ 21000, 21001.

policy that all necessary action is taken 'to protect, rehabilitate and enhance the environmental quality of the state.'"¹⁸

Similarly, recent environmental review jurisprudence has determined that in many cases, when deciding to approve or deny an applicant's permit, California agencies must consider the effects the proposed project has on GHG emissions in light of California's climate policies.¹⁹ For example, in *Cleveland National Forest Foundation v. San Diego Association of Governments*, (decided in late 2014), the appellate court held that San Diego erred by failing to sufficiently consider the impacts the project would have on greenhouse gas emissions.²⁰ In making that decision, the court indicated that the error was due to a failure to analyze the project's environmental impacts in light of Executive Order S-3-05, which outlines California's GHG reduction goals, and is still in effect today.²¹ Therefore, AWI believes that consideration of the reduction in GHG emissions that would result from the extension of the CUPs is appropriate, and consistent with California's GHG reduction policies.

4. THE MITIGATION MEASURES PROPOSED IN THE SEIR WILL MITIGATE FOR AVIAN IMPACTS BEYOND THE IMPACTS DIRECTLY ATTRIBUTABLE TO AWI'S WIND FARMS.

There are many factors that go into determining the net impacts AWI's wind farms have on avian mortality rates in the APWRA.²² Some of those factors include the previously mentioned reduction in GHG emissions and air pollutants, retrofitting power poles that pose risks to birds, shutting down the wind turbines during migratory periods, background mortality of focal species, and the environmental effects of unassociated projects adjacent to the APWRA. Because the mitigation measures identified within the SEIR are focused on the overall impacts to avian species, including avian impacts not attributable to AWI's wind farm, AWI's mitigation efforts will provide a net environmental benefit to the APWRA.

4.1 Because the SEIR does not fully incorporate background mortality, the proposed mitigation measures are more than sufficient. The focus of the SEIR was to identify the potential environmental impacts of extending the CUPs, and as such, has only identified environmental impacts due to the operation of wind turbines. Without challenging the adequacy of the SEIR to inform Alameda County of the potential negative environmental impacts of the project, AWI notes that background mortality of the focal species was not fully considered. Background mortality is mortality that is not attributable to AWI's projects. Some examples of background mortality include predation of the focal species and poison entering the focal species' food chain. Because AWI is committed to responsible stewardship and an environmentally friendly project, AWI will implement the mitigation as proposed in the SEIR, knowing that such mitigation measures will exceed AWI's impacts to avian species.

4.1.1 The proposed mitigation measures compensate for raptor background mortality.

Because the purpose of the SEIR is to evaluate the environmental effects of the proposed CUP extension itself, it does not take into account the environmental effects of nearby projects, and

¹⁸ *Save our Peninsula Committee v. Monterey County Board of Supervisors*, 87 Cal.App.4th 99, 117 (2001) (citing *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal.3d 376, 390 (1988)).

¹⁹ *Cleveland National Forest Foundation v. San Diego Association of Governments*, 231 Cal.App.4th 1056 (2014).

²⁰ *Cleveland* at 1072.

²¹ *Cleveland* at 1072; Cal. Exec. Order No. S-3-05 (June 1, 2005).

²² FSEIR p.30-40.

does not fully incorporate background mortality of focal species.²³ Although AWI believes that the SEIR has adequately informed Alameda County of the potential environmental impacts, AWI notes that because focal species' background mortality is not incorporated into the SEIR, the mitigation measures proposed by the SEIR are more than sufficient to compensate for the potential impacts AWI's permit extension will have on the local environment.

In 2014, avian fatalities increased even though fewer wind turbines were operating than years prior. AWI, on its own initiative, conducted research into the source of the increased fatalities. AWI was surprised to find that the California Department of Water Resources ("DWR") uses rodenticide poison along the South Bay Aqueduct, the Bethany Reservoir, and the California Aqueduct to control/kill ground squirrel populations. These rodenticide bait stations are at the heart of the APWRA. The rodenticide poison used is an ingested anticoagulant that can have lethal effects on raptors that prey on poisoned squirrels. The connection between rodenticide use and raptor poisoning is well-known, and a recent study into the effects of rodenticide on raptor species concluded that certain anticoagulants are twenty-times more toxic to focal species identified in the SEIR than other non-raptor avian species.²⁴ Many state and local agencies and governments, as well as environmental groups, are aware of the connection between rodenticide and raptor mortality, and have either passed regulations or published documentation aimed at reducing raptor deaths due to secondary poisoning.²⁵

As well, a significant number of the recorded avian fatalities occur during the non-operating season, November 1 to February 15 each year. For some species, more fatalities are recorded during the non-operation season than when the wind turbines are operative. If all avian fatalities were attributable to wind turbine operation, then there should be no fatalities during the non-operating season. Because a significant amount of the recorded fatalities occur during the non-operating season, it's clear that not all avian fatalities are attributable to operating the wind turbines. Because the operating season is more than twice as long as the non-operating season, the fact that there are more fatalities for some species during the non-operating season shows that there is a background mortality that the mitigation measures and SEIR do not analyze, thereby overestimating the avian impacts by wind turbines.

4.2 The removal of high risk turbines will reduce the avian mortality rates, resulting in overall greater benefits for the birds. When calculating avian mortality rates, the documents supporting the SEIR used a model of the APWRA that assumes High Risk Turbines ("HRTs") are installed and operational. HRTs are wind turbines in locations that the Alameda Co. Scientific Review Committee ("SRC") has determined to pose a higher risk to avian species. According to the SRC, when these wind turbines are removed or relocated, they no longer pose a high risk to birds.

Under the HRT analysis system, wind turbines are rated on a scale of 1 to 10 on likelihood of risk to avian species, with 10 being the greatest impact. As a mitigation measure, the SEIR proposes to remove or relocate all wind turbines with a rating of 8.5 or greater, which amounts to 21 HRT wind turbines.

²³ FSEIR p.26-40.

²⁴ Rattner, B. A., Horak, K. E., Warner, S. E., Day, D. D., Meteyer, C. U., Volker, S. F., Eisemann, J. D. and Johnston, J. J. (2011), Acute toxicity, histopathology, and coagulopathy in American kestrels (*Falco sparverius*) following administration of the rodenticide diphacinone. *Environmental Toxicology and Chemistry*, 30: 1213–1222. doi: 10.1002/etc.490.

²⁵ Exhibit B.

In the County's final staff report dated February 2, 2015 related to the SEIR, the County recommends removal of 21 HRT wind turbines. Because these wind turbines are currently operational, any avian impacts caused by such turbines are included in the calculated fatality rates. Yet, the avian mitigation as proposed is calculated as if the HRTs were not removed, thereby, "double dipping" on mitigation requirements.

Assuming that the HRTs have disproportionately higher impacts on birds, and because avian mortality rates in the APWRA are calculated with those HRTs installed, removal or relocation of the HRTs will necessarily reduce the effective avian mortality rates. AWI does not challenge the adequacy of the mitigation or the SEIR, and does not challenge the SEIR's ability to inform decision-makers on the potential environmental impacts of the proposed project. AWI merely points out that because of this difference in calculated and effective mortality rates, the identified mitigation methods in the SEIR are more than sufficient to address the wind farms' avian impacts. Therefore, the lowest fatality rate of 0.061 eagle fatalities per MW per year (as discussed later in this letter) should be used to calculate power pole retrofit mitigation, not the higher rate of 0.075 proposed by the County's final staff report

5. THERE IS OVERWHELMING EVIDENCE IN THE ADMINISTRATIVE RECORD TO SUPPORT ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS AND APPROVE THE PROPOSED PERMIT EXTENSION. Adopting a Statement of Overriding Considerations is appropriate, supported by the record, and well within the County's legal authority. Beyond environmental considerations, CEQA also requires a decision-making agency to consider the social, technological, and statewide and regional benefits of a proposed project.²⁶ A Statement of Overriding Considerations ("SOC") gives a public agency the opportunity to approve a project based on "economic, legal, social, technological, or other benefits" in light of unavoidable environmental effects.²⁷ As previously mentioned, there are an overwhelming number of considerations that support extending AWI's CUPs through the end of the 2018 wind season.

The not-yet-adopted SOC, prepared by the Alameda County planning staff and attached to the staff report, states that the proposed project has many economic and environmental benefits that go beyond those considered in the SEIR.²⁸ As previously noted, continued operation of AWI's wind farms significantly reduces locally produced GHG emissions and toxic air pollution, which has long-lasting environmental, human, and wildlife benefits. Human and avian mortality will be reduced, and a reduction in the negative environmental by-products of conventional energy generation helps to prevent increased climate change due to global warming. Making a decision to continue promoting these benefits is perfectly aligned with Alameda County's Community Climate Action Plan.

Additionally, allowing AWI's wind farms to keep running will employ many Alameda County residents whose income supports the local economy. Income taxes that those residents pay, as well as the various taxes directly associated with the wind farms, help to support the local, state, and national governments.

In order for the County to adopt a SOC, the determination must be supported by "substantial evidence" from anywhere in the administrative record, and is not limited to information contained

²⁶ CEQA Statute and Guidelines § 15903(a).

²⁷ CEQA Statute and Guidelines § 15903(a).

²⁸ Final Supplemental Environmental Impact Report, Exhibit C.

in or referenced by the SEIR.²⁹ Here, there is more than sufficient evidence throughout the entire administrative record to support the County's adoption of a SOC in favor of granting a CUP extension. As explained in throughout this letter, the record contains a wealth of evidence lauding the environmental, economic, and social benefits of continued clean wind power operation.

The "substantial evidence" standard gives public agencies broad discretion when adopting a SOC. This standard is based on the fact that "the agency has the discretion to resolve factual issues and make policy decisions."³⁰ Courts are highly deferential to public agency decisions under this standard and will generally not substitute their judgment for the judgment of the lead agency. In reference to the "substantial evidence" needed to support a SOC, the court in *Uphold Our Heritage v. Town of Woodside* repeatedly stated that it's well within an agency's discretion under CEQA to determine whether "the specific benefits a project offers, outweigh any environmental effect."³¹ This cost-benefit analysis "lies at the core of the lead agency's discretionary responsibility under CEQA and is, for that reason, not lightly to be overturned."³² The net benefit of this wind power project to avian species, as well as the net benefit to the climate and environment as a whole, is well documented.

6. IN CONCLUSION, AWI RESPECTFULLY REQUESTS THAT THE BOARD OF SUPERVISORS EXTENDS THE CUPs ACCORDINGLY. In light of the foregoing, AWI requests that the Board of Supervisors adopts the Statement of Overriding Considerations attached to Alameda County's staff report; approves the application to extend the Conditional Use Permits for three years, 2016 through 2018; and adopts **Exhibit A** to this letter, which includes AWI's modifications to the recommendations found in Alameda County's staff report dated February 2, 2015, the substance of which is explained in the following sections.

6.1 Include the environmental, societal, economic, and climate benefits of wind power when adopting the Statement of Overriding Considerations. As previously discussed at length, extending AWI's CUPs for three years from 2016-2018 has enormous benefits to the climate, society, the economy, and to the environment, which includes offsetting 609 million of pounds of toxic air pollution and greenhouse gas emissions caused by fossil-fuel based electricity generation. Human and avian health reaps significant benefits from clean wind power's displacement of fossil-fuel emissions, including saving human and avian lives. Without considering the self-mitigating climate and environmental benefits of wind power, the avian impacts and related mitigation are over estimated. Climate change is reduced by offsetting greenhouse gas emissions, and the air is cleaner because fewer polluting chemicals and polluting particulate matter are discharged by fossil fuel based electricity generation. AWI's wind farms provide jobs to Alameda County residents, whose income helps to sustain the local, regional, and national economies. The operations and maintenance of AWI's wind farms provide \$103 million in direct and indirect benefits as well. All of these benefits are consistent with Alameda County's Community Climate Action Plan, and AWI respectfully requests that the Board of Supervisors considers these benefits when adopting a Statement of Overriding Considerations to extend the CUPs, attached to this letter as **Exhibit C**.

²⁹ CEQA Statute and Guidelines § 15093(a).

³⁰ *Save Our Peninsula Committee v. Monterey County Board of Supervisors*, 87 Cal.App.4th 99, 117 (2001).

³¹ See 147 Cal.App.4th 587, 603 (2007).

³² 147 Cal.App.4th 587, 603 (2007).

6.2 Extend the CUPs at 100% capacity for three years, 2016-2018 not 50% as proposed by the County staff report. Alameda County's staff report proposes to extend the CUPs on the condition that AWI is only allowed to operate at a total 50% capacity during the three year extension, i.e., operate 50% of its turbines for 3 years or 100% of its turbines for 1.5 years. This proposal ignores the substantial climate benefits that AWI's wind farm provides to the environment, and ignores the detrimental effects from the resulting fossil fueled-electricity generation on human and avian health. Permitting AWI to operate at full capacity for another three years promotes clean energy and all of its accompanying benefits to society, the economy, climate, and the environment. AWI has incorporated these changes into Exhibit A to this letter, and AWI respectfully requests that the Board of Supervisors adopts this change.

6.3 Correct the startup date in BIO-16 to be consistent with the historic operating period, starting up each year on February 15 at 12:01 AM. In order to comply with the Winter Seasonal Shut Down ("WSSD"), AWI shuts down all of its wind turbines on October 31 and resumes operation on February 15 at 12:01 am. However, mitigation measure BIO-16 (the mitigation measure in the SEIR that describes the WSSD) states that the shutdown ends on February 16. AWI has incorporated the change from February 16 to February 15 in Exhibit A to this letter, and AWI respectfully requests that the Board of Supervisors adopts this change.

6.4 Use a Golden Eagle fatality rate of 0.061 to derive the mitigation measures as outlined in the SEIR, not 0.075 as proposed by the County staff report. As previously discussed, the eagle fatality rates shown in the SEIR have not fully considered the following:

- > avian background mortality
- > removal of HRTs
- > the climate and environmental benefits of wind power

Not considering this information over-estimates AWI's impact on avian species, and results in over-mitigating AWI's avian impacts.

Alameda County's SEIR staff report dated February 2, 2015 suggests the consideration of three different fatality rates, 0.061, 0.075, and 0.085 eagle fatalities per MW per year, but recommends the middle value of 0.075. These different fatality rates are derived from different sets of operating years: 2008-2010, 2008-2012, and 2005-2010 respectively. However, none of the data sets fully incorporate background mortality rates, removal of HRTs, and the climate and environmental benefits of wind power. If these factors were included in the fatality rates, the rates would be lower, and would likely show the wind farms' net benefit to golden eagles. In spite of the over-estimation of the fatality rates, AWI is willing to comply with over-mitigation, based on the lower fatality rate of 0.061, resulting in 322 power pole retrofits during the 3-year extension. Adopting the 0.061 fatality rate is shown in AWI's changes to the County staff's draft project resolution, shown in Exhibit A to this letter, and AWI respectfully requests that the Board of Supervisors adopts this change.

6.5 Calculate power pole retrofit costs based on actual PG&E costs, instead of outdated USFWS estimates. In October 2014, AWI paid PG&E to install five power pole retrofits as avian mitigation. Rather than the \$7,500 per power pole retrofit sourced from U.S. Fish and Wildlife Service ("USFWS") guidance estimates, AWI incurred an average cost of \$1,069 per power pole retrofit. The USFWS estimated cost is over seven-times more than the actual PG&E cost. Therefore, the two rates are illustrated as follows:

- > USFWS suggested cost (and proposed by County staff)
= \$7,500/power pole retrofit x 322 poles = \$2.4 million
- > PG&E actual cost = \$1,069/power pole retrofit x 322 poles = \$344,000

When viewed in light of the proposed mitigation, USFWS over estimates power pole retrofitting cost by over \$2 million, which far exceeds any reasonable cost estimate. Such inaccurate and extraneous costs place an undue financial burden on AWI, especially when coupled with the County's staff report suggesting that mitigation funds be deposited well before the retrofits are scheduled. Further, extra and unjustifiable mitigation that cost \$2.4 million makes the project economically infeasible. Forcing AWI to incur millions of dollars in mitigation costs beyond the amount necessary to implement the proposed mitigation is a road block to Alameda County's continued dedication to wind power development. AWI has incorporated these changes to power pole retrofit cost estimates into **Exhibit A** to this letter, and AWI respectfully requests that the Board of Supervisors adopts these changes.

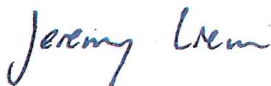
6.6 Allow AWI, not the County, to manage power pole retrofit mitigation funds. Alameda County's SEIR staff report suggests that AWI deposit funds into a trust account to pay for power pole retrofit mitigation. Rather than use the County as an intermediary to pay for the mitigation, AWI will pay these funds directly to PG&E to retrofit the power poles, and provide a report of the completed mitigation to the County. Submitting power pole retrofit funds, as currently calculated, in advance of the work performed places a huge financial burden on AWI, roughly \$2.5 million. Instead of depositing the retrofit funds with the County, AWI proposes submitting quarterly progress reports for the power pole retrofit mitigation. As well, AWI, as a company dedicated to electricity generation, transmission, and facilities management, is better suited than the County to implement, oversee, and verify power pole retrofitting. The above changes have been incorporated into **Exhibit A** to this letter, and AWI respectfully requests that the Board of Supervisors adopts the changes.

6.7 Provide more time to analyze and implement option BIO-17a, a Special-Status Species Mitigation Plan. BIO-17a of the SEIR provides AWI with mitigation alternatives to supplement or replace the power pole retrofit mitigation measures proposed by BIO-17. In order to implement BIO-17a, AWI will have to submit a Special-Status Species Mitigation Plan ("SSSMP") for approval by the County Planning Director. Because the SSSMP requires the development of a Resource Equivalency Analysis ("REA") which itself takes months to develop, a 60 day period following permit approval (as suggested in **Exhibit A** to the staff's report) is insufficient to develop and implement an SSSMP. Instead, AWI proposes to move the start of the 60 day SSSMP implementation period from the permit approval date to the permit effective date, February 15, 2016. These changes are shown in **Exhibit A** to this letter, and AWI respectfully requests that the Board of Supervisors adopts this change.

Thank you for your consideration.

Sincerely,

Altamont Winds Inc.



Jeremy Liem
Legal Counsel

EXHIBIT A

Altamont Winds Inc.'s proposed changes to Alameda County staff report and draft resolutions



02 February 2015

To: The East County Board of Zoning Adjustment

cc: Sandra Rivera, Assistant Planning Director, Alameda Co.

From: Rick Koebbe, President

Subject: Comments to the Alameda Co. FSEIR staff report and related documents
FSEIR permit (3 yr extension) request
86 MW Altamont wind farms

Altamont Winds Inc. (**Applicant**) has the following comments to the Alameda Co. FSEIR staff report and related documents, dated February 2, 2015, as follows:

1. EXHIBIT A, WRITTEN FINDINGS OF SIGNIFICANT EFFECT, page 3. We propose changing the text, as follows (shown in blue-line strikeout/underline):

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 permit ~~approval~~
effectiveness, February 15, 2016.

See attached Exhibit A, showing the entire document, with proposed changes. An explanation is provided below.

1.1 BIO-17a mitigation plan submittal timing is unreasonable. This mitigation plan will require a significant amount of time and effort to complete, probably at least 6 months. It's illogical to require that the applicant provide a plan in 60 days; instead, we propose any mitigation plan is provided 60 days from when the permit approval is implemented, on Feb. 15, 2016.

The remainder of this page left intentionally blank.

2. EXHIBIT B, MITIGATION MONITORING AND REPORTING PROGRAM, page 4. We propose changing the text, as follows (shown in blue-line strikeout/underline):

The changes in the first section below simply clarifies/corrects typos, to be consistent with the related staff report documents.

FINAL SUPPLEMENTAL MITIGATION MONITORING AND REPORTING PROGRAM

ITAL MITIGATION MONITORING AND REPORTING PRORAM

Proposed Mitigation Measure	Timing
<p>BIO-16: Implement Seasonal Shutdowns to Reduce Avian Fatalities</p> <p>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 until February 15 of the following year. No operational modifications will occur during the February 46 <u>15</u> to October 31 period. 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 <u>until</u> February 15 of each year</p>
<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, (together identified as Alternative 1 in the analysis of project alternatives) is projected to result in the fatality of approximately one eagle (cumulatively, and statistically, 0.7–1.0) when compared to the existing avian baseline condition (the No Project Alternative) (2013 FEIR Table 3.2-5). Although the baseline fatality rate is higher, this mitigation measure addresses the impacts of the proposed project (with mitigation), which is approximately one additional eagle fatality. 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 29 utility poles as mitigation for the expected level of eagle fatality from the proposed project. AWI may contract directly with an electrical utility to fund this mitigation; however, a written agreement and evidence of the completion of the retrofits must be provided to the County CDA. USFWS has estimated the cost of retrofits at \$7,500 per pole, and therefore AWI may contribute \$217,500 (\$7,500 x 29 poles) to a third party mitigation account (approved by the County CDA) instead of contracting directly with a utility. <u>However, the cost of retrofits will be adjusted to the latest PG&E cost estimate or actual costs from October 2014, as provided by written documentation from PG&E, at \$1,069 per power pole retrofit.</u> The third party mitigation account holder would have the responsibility of completing the mitigation or contracting for the mitigation to be completed. Evidence of completion of mitigation must be provided to the County CDA within one year of approval of the proposed project.</p>	<p>Prior to decommissioning and reclamation activities; after decommissioning and reclamation activities</p>

See attached Exhibit B, showing the entire document, with proposed changes. An explanation is provided below.

3. STAFF REPORT, pages 12-13. We propose changing the text, as follows (shown in blue-line strikeout/underline):

PLANNING CONSIDERATIONS

Firstly, with respect to the primary request to operate the full 828-turbine, 85.8 MW wind farm for the three years between February 15, 2016 and October 31, 2018, for a cumulative three-year installed capacity of 182.4 MWs, County staff recommend that the use permits be extended ~~but to allow no more than one half of the MWs to be operated within that period, which may be either operated fully until June 22, 2017 (i.e., a total of 12 ¾ months out of the applicant's requested extension to allow 25 ½ months of operation, with winter season shutdown as provided by Mitigation Measure 16), at 50% at 100% capacity for all three years through October 31, 2018, or in other stages such that the three year installed or operating capacity of AWT's entire windfarm operations, with or without an asset exchange, may not be greater than 91.2 MWs, or one half of 182.4 MWs. The result of such a reduction in MWs would proportionally reduce the number of golden eagle, other raptors and avian species fatalities. The East County Board of Zoning Adjustments may specify that the CUPs will expire on June 22, 2017, or another later date if the applicant requests to operate fewer turbines over a longer period of time.~~

~~Planning staff consider this reduced level of operations to be somewhat comparable to, but notably more liberal than reverting back to the original 2005 CUP conditions, in which only 15 percent of the turbines were allowed to be operating between 2016 and 2018. It would provide for a total operational output in MWs from October 2013 to October 2018 of 220.0 MW, when compared to the other alternatives considered in the 2013 FEIR and as represented in Table 3-2 of the FSEIR (page 33). It is moderately more MWs of allowed output than Alternative 2 considered in the 2013 FEIR (30.5 more MW, compared to 189.5 under Alternative 2, which provided for cessation of operations after October 31, 2016).~~

Fourthly, the Board should agree on a fatality rate to be used for projecting the total number of golden eagle fatalities anticipated to result from the project, from among the three principal options: a) 0.061 based on the monitoring years 2008-2010; ~~b) 0.071 based on monitoring years 2008-2012; or c) 0.085 using monitoring years 2005-2010.~~ The fatality rate will then be used to determine the number of power pole retrofits to be required under Mitigation Measure BIO-17 (and as adjusted by half, assuming the first recommendation above is required). Further, this fatality rate shall be adjusted for any clean wind power climate benefits and background mortality, with use of best available information, and implemented under adaptive management techniques.

~~Finally, unless the applicant chooses to apply for an eagle take permit as described in Mitigation Measure BIO-17a (and submits a complete draft Eagle Conservation Plan and meets other USFWS requirements for an ETP) within six months of approval of the CUP modifications, the applicant should make a deposit of adequate trust funds prior to the start of each operational year (February 15th of each year, starting in 2016) that are dedicated to implementing Mitigation Measure BIO-17 and/or BIO-17a. Such deposits~~

for the use of power pole retrofits, or contributions to regional conservation of raptor habitat could be adjusted at the end of each operational year (2016 to 2018) based on actual expenditures and power pole retrofits completed, subject to approval by a Technical Advisory Committee (TAC) as will be structured under the APWRA Repowering Program EIR. However, the TAC is not required to approve accounting refunds from expenditures from power pole retrofits, if any.

Finally, the applicant will provide progress reports, on a semi-annual (twice yearly) basis, regarding the installation of its power pole retrofits (as it did with its power pole retrofits in 2014).

See attached Staff Report, showing the entire document, with proposed changes. An explanation is provided below.

3.1 Extend permits for 3 years. Since we're substantially mitigating the avian issues, we should be able to operate the project for 3 years (100%), until Oct. 31, 2018, as long as we provide the mitigation; not 50% as proposed by the Planning Dept. In addition, such extension is consistent with the County's Staff Report, Statement of Overriding Considerations, Exhibit C.

3.2 Use the lower fatality rate 0.061. We propose using the lower fatality rate of 0.061, because (a) the higher rates do not accurately include significant background mortality, nor any climate benefits (from the displacement of 609 million lbs of greenhouse gases and toxic air pollution) of clean wind power, which saves over 1,000 birds (derived via McCubbin-Sovacool report) and (b) historically inconsistent and varied avian monitoring data sets prior to 2008.

3.3 Applicant does not need to advance funds to the County for power pole retrofits. It's a huge financial burden on the applicant to submit power pole retrofit funds in advance of the actual work, at roughly \$1 million per year. The funds should be efficiently managed and conducted/spent by the applicant, not controlled by the County. County-controlled funds will burden and delay implementation of this mitigation. Instead, we propose quarterly reports to show progress with PG&E. The County cannot implement power pole retrofits any faster than the applicant, under any circumstance. Such funds must be paid from the applicant to PG&E in advance, once they provide an estimate for the work, with any adjustment accounting thereafter.

The remainder of this page left intentionally blank.

4. DRAFT RESOLUTION NO. Z-15-XX, pages 6-8. We propose changing the text, as follows (shown in blue-line strikeout/underline):

2. Beginning on February 15, 2016, the Permittee shall **not** be limited to operate its wind energy turbine facilities to have an installed total operating capacity of 91.2 MW over three years, either by operating all facilities until June 22, 2017 (i.e., a total of 12 ¾ months), or by shutting down 50% of its turbines through October 31, 2018, or in other stages such that the three year installed or operating capacity may not be greater than 91.2 MWs. The Permittee shall submit its plans to the Planning Director to operate a set number of turbines for a set number of months prior to each February 15 of the years 2016 to 2018, and cease operating all turbines after the installed and operating capacity in these three years reaches 91.2 MWs based on the number and months of operations reported in said plans.
4. Unless the Permittee chooses to apply for an eagle take permit as described in Mitigation Measure BIO 17a (and submits a complete draft Eagle Conservation Plan and meets other USFWS requirements for an ETP) within six months of account of adequate funds prior to the start of each operational year (February 15th of each year, starting in 2016), that are dedicated to implementing Mitigation Measure BIO 17 and/or BIO 17a. Such deposits for the use of power pole retrofits, or contributions to regional conservation of raptor habitat may be adjusted (supplemented with additional funds or refunded) at the end of each operational year (2016 to 2018) based on actual expenditures and power pole retrofits completed.

See attached Draft Resolution No. Z-15-XX, showing the entire document, with proposed changes.

These changes are consistent with our comments above.

Exhibit A

Written Findings of Significant Effects

In accordance with State Public Resources Code §21081 and CEQA Guidelines Section 15091, the following findings are made and supporting facts provided for each significant environmental effect that has been identified in the Final Supplemental Environmental Impact Report (final 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 final 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 EBZA bases its decision) and mitigation measures in support of the findings. For specific resource mitigation measures, the section and page number where the full text of the mitigation measure occurs is noted in the 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 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 EBZA relating to the SEIR, the approvals, and the project
- All information (including written evidence and testimony) presented to the EBZA by the environmental consultants who prepared the SEIR or incorporated into reports presented to the EBZA
- 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 EBZA certifies that the SEIR has been completed in compliance with CEQA. The EBZA has independently reviewed the record and the SEIR prior to certifying the SEIR and approving the project. By these findings, the EBZA 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 EBZA. The EBZA recognizes the SEIR may contain clerical errors. The EBZA reviewed the entirety of the SEIR and bases its determination on the substance of the information it contains. The EBZA 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 EBZA 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

The EBZA 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 EBZA 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 EBZA 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 permit [approval effective date, February 15, 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 Significant Irreversible Changes

CEQA Section 21100(b)(2)(B) requires that an EIR identify any significant effect on the environment that would be irreversible if the project were implemented. Section 15126.2(c) of the State CEQA Guidelines characterizes irreversible environmental changes as those involving a large commitment of nonrenewable resources or irreversible damage resulting from environmental accidents.

The project's significant and irreversible changes are discussed in the 2013 Final EIR beginning at page 5-10. The 2013 Final EIR explains that, although the timing of the proposed project operations and decommissioning would differ from the schedule set forth in the existing CUPs, no new construction or physical changes to the environment not previously contemplated in the CUPs are proposed as part of the CUP modifications; therefore no additional nonrenewable resources would be used in project implementation. Further, the 2013 Final EIR notes that wind turbine facilities are considered temporary uses, subject to eventual removal at the end of their useful lifespan or conclusion of use permits, whichever comes first. In addition to the wind farms, the project area is predominantly used for grazing, which could continue unimpeded. The existing wind turbines and associated facilities would therefore not be considered irreversible uses of the project area.

The project is not expected to result in environmental accidents that would cause irreversible damage. Compliance with required plans, such as the Altamont Pass Wind Farms Fire Requirements, would minimize the potential for accidents that could result in environmental damage.

Findings and Recommendations Regarding Growth-Inducing Impacts

Section 15126.2(d) of the State CEQA Guidelines states that an SEIR should discuss "...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. Production of electricity from the project facilities is ongoing and would not create additional availability of energy resources beyond those already permitted for the facilities.

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 PROGRAM

Impact	Proposed Mitigation Measure	Timing	Implementation	Monitoring
Impact BIO-1: Potential to cause a substantial adverse effect, either directly or through habitat modifications, on a special-status species.	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 until February 15 of the following year. No operational modifications will occur during the February 15 to October 31 period. AWI will notify County CDA each year when turbines have been shut down, and again when they have resumed operating.	November 1 to <u>until</u> February 15 of each year	Project Applicant	Reviewing Party County of Alameda, SRC Criteria Verify that seasonal shutdowns have been implemented Monitoring Action Verify each year between November 1 and February 15

	BIO-17: Mitigate for the Loss of Individual Golden Eagles, Raptors, and Special Status Avian Species by Retrofitting Electrical Facilities 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, (together identified as Alternative 1 in the analysis of project alternatives) is projected to result in the fatality of approximately one eagle (cumulatively, and statistically, 0.7-1.0) when compared to the existing avian baseline condition (the No Project Alternative) (2013 FEIR Table 3.2-5). Although the baseline fatality rate is higher, this mitigation measure addresses the impacts of the proposed project (with mitigation), which is approximately one additional eagle fatality. 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 29 utility poles as mitigation for the expected level of eagle fatality from the proposed project. AWI may contract directly with an electrical utility to fund this mitigation; however, a written agreement and evidence of the completion of the retrofits must be provided to the County CDA. USFWS has estimated the cost of retrofits at \$7,500 per pole, and therefore AWI may contribute \$217,500 (\$7,500 x 29 poles) to a third party mitigation account (approved by the County CDA) instead of contracting directly with a utility. <u>However, the cost of retrofits will be adjusted to the latest PG&E cost estimate or actual costs from October 2014, as provided by written documentation from PG&E, at \$1,069 per power pole retrofit.</u> The third party mitigation account holder would have the responsibility of completing the mitigation or contracting for the mitigation to be completed. Evidence of completion of mitigation must be provided to the County CDA within one year of approval of the proposed project.	Prior to decommissioning and reclamation activities; after decommissioning and reclamation activities	Project Applicant	Reviewing Party County of Alameda Criteria Check to ensure retrofitting of electrical poles has been conducted Monitoring Action Require measure as part of issuing grading/building permits. Verify compensation after decommissioning and reclamation activities.
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	<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 using a balanced mix of the options presented below, as well as considering new options suggested by the growing body of knowledge during the course of the project lifespan, 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>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, 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</p>	<p>Compensation measures as detailed in an approved Special-Status Species Mitigation Plan must be implemented within 60 days of the permit approval.</p>	<p>Project Applicant</p>	<p>Reviewing Party</p> <p>The County Planning Director, in consultation with the TAC.</p> <p>Criteria</p> <p>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.</p> <p>Mitigating Action</p> <p>Require measure as part of issuing grading/building permits. Verify compensation after decommissioning and reclamation activities.</p>
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	<p>Special-Status Species Mitigation Plan must be implemented within 60 days of the permit approval. Special-Status Species Mitigation Plans may be revised—and will be reviewed by the County.</p> <ul style="list-style-type: none"> <p>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.</p> <p>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.</p> 		
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EXHIBIT 2.1

PG&E power pole retrofit (PPR) costs

- > Actual PG&E 2014 PPR costs averaged \$1,069/pole
- > total cost to retrofit five (5) power poles: \$5,343
- > PG&E work performed October 15-16, 2014, 3.5 months ago.

> PG&E cost breakdown:

- engineering & administration:	\$74.00
- materials & field construction ("tie-in / meters"):	\$3,913.56
- federal & state income tax charge ("ITCC"):	\$1,355.77
Total	\$5,343.33 ÷ 5 poles = \$1,068.67/pole

The PG&E PPR contract dated September 10, 2014, is shown on the following pages.



September 9, 2014

VILLIAM DAMON
WINDWORKS INC, A ID CORPORATION
15850P JESS RANCH RD
TRACY, CA 95377

RE: Contract ID: 1179257: ALONG PATTERSON PASS

Dear WILLIAM DAMON,

Enclosed are gas and/or electric agreements for your project located at:

PATTERSON PASS & MIDWAY, TRACY, 94550

This letter summarizes the agreements for this project.

	Non-Refundable Payment	Refundable Option*	50% Discount Option*
Relocation / Rearrangement Costs	\$5,343.33	\$0.00	\$0.00
Less Credit (Engineering Advance, etc.)	\$0.00	\$0.00	\$0.00
TOTAL **	\$5,343.33	\$0.00	\$0.00
TOTAL PAYMENT DUE	\$5,343.33	OR	\$5,343.33

* Only applies to Rule 15 Refundable Amounts. Amount shown is less credit for associated Applicant work.

** The Income Tax Component of Contribution (ITCC) is included in the above charges when applicable.

Please sign both copies of the agreement and return one copy of the agreement to the address below along with your payment and retain one copy for your records. If the agreement is not returned to PG&E within 90 days of the date of this letter, the proposed agreement is canceled and PG&E may need to re-estimate the job.

Changes to the agreement, either to any of the terms or to the amount owing, are not permitted, and any change or interlineations voids the agreement. The payment of any amount less than the full amount shown will be deposited by PG&E, but PG&E will not begin any work on this contract until the amount is paid in full. The contract shall be deemed effective the date a fully executed copy is received by PG&E. Please allow 30 days from PG&E's receipt of the Agreement for construction to commence.

PG&E is committed to providing timely and efficient service and we look forward to continuing to work with you on this and future projects.

Should you have any questions regarding these contracts, please contact your project manager Christopher Callas at 209-942-1618 or CRCC@pge.com.

Please send the executed Agreements and payment to:

PG&E CFM/PPC DEPARTMENT
PO BOX 997340
Sacramento, CA 95899-7340

Sincerely,

Candace Briskey

Candace Briskey
Service Planning Supervisor



108888785E

Ref: Contract ID: 1179257: PATTERSON PASS & MIDWAY, TRACY, 94550



**Pacific Gas and Electric Company
Agreement to Perform
Tariff Schedule Related Work**

DISTRIBUTION:
☐ APPLICANT (Original)
☐ DIVISION (Original)
☐ ACCTG. SVCS.

REFERENCES:
 Notification # 108888785
 Contract # 1179257
 ERR-PM # 31099739
 GRR-PM #

WINDWORKS INC, A ID Corporation (Applicant) has requested PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (PG&E), to perform the tariff schedule related work as located and described in paragraph 3 herein. PG&E agrees to perform the requested work and furnish all necessary labor, equipment, materials and related facilities required therefor, subject to the following conditions:

1. Whenever part or all of the requested work is to be furnished or performed upon property other than that of Applicant, Applicant shall first procure from such owners all necessary rights-of-way and/or permits in a form satisfactory to PG&E and without cost to it.
2. Applicant shall indemnify and hold harmless PG&E, its officers, agents and employees, against all loss, damage, expense and liability resulting from injury to or death of any person, including but not limited to, employees of PG&E, Applicant or any third party, or for the loss, destruction or damage to property, including, but not limited to property of PG&E, Applicant or any third party, arising out of or in any way connected with the performance of this agreement, however caused, except to the extent caused by the active negligence or willful misconduct of PG&E, its officers, agents and employees. Applicant will, on PG&E's request, defend any suit asserting a claim covered by this indemnity. Applicant will pay all costs that may be incurred by PG&E in enforcing this indemnity, including reasonable attorneys' fees.
3. The location and requested work are described as follows: (Describe in detail the materials and facilities to be furnished and/or work to be performed by PG&E. If more space is required, use other side and attach any necessary drawings as Exhibits A, B, C, etc):

LOCATION: PATTERSON PASS & MIDWAY TRACY, 94550

DESCRIPTION OF WORK:

		Electric	Gas
Engineering & Administrative Cost		<u>\$74.00</u>	<u>\$0.00</u>
Value of Applicant Design Work	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Additional Applicant Design Plan Checks	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Facilities (Cable, Transformers / Gas Pipe)	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Trench, Conduits & Substructures	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Tie-In / Meters	(+)	<u>\$3,913.56</u>	<u>\$0.00</u>
Trench Permits & Land Rights	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Inspection Fees	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Sub Total	(=)	<u>\$3,987.56</u>	<u>\$0.00</u>
plus ITCC @ <u>34.0%</u> Electric <u>0.0%</u> Gas	(+)	<u>\$1,355.77</u>	<u>\$0.00</u>
plus Non Taxable Work	(+)	<u>\$0.00</u>	<u>\$0.00</u>
D.0405055 Line Extension Costs - Residential	(+)	<u>\$0.00</u>	<u>\$0.00</u>
D.0405055 Line Extension Costs - Non-Residential	(+)	<u>\$0.00</u>	<u>\$0.00</u>
less Value of Relocation Applicant Design Work	(-)	<u>\$0.00</u>	<u>\$0.00</u>
less Work Provide by Applicant	(-)	<u>\$0.00</u>	<u>\$0.00</u>
less Salvage	(-)	<u>\$0.00</u>	<u>\$0.00</u>
Total Payment	(=)	<u>\$5,343.33</u>	<u>\$0.00</u>



108888785E

4. Applicant shall pay to PG&E, promptly upon demand by PG&E, as the complete contract price hereunder, the sum of Five Thousand Three Hundred Forty-Three Dollars And Thirty-Three Cents (\$5,343.33)

Upon completion of requested work, ownership shall vest in: ☒ PG&E ☐ Applicant

Executed this 10th day of September, 2014

WINDWORKS INC, A ID Corporation

Applicant

By:

William L. Damon

WILLIAM DAMON
Print/Type/Name

By:

Candace Briskey

Candace Briskey

Title:

Vice President

Title:

Service Planning Supervisor

Mailing Address: 15850P JESS RANCH RD
TRACY, CA 95377



108886785E

PG&E Agreement to Perform Tariff Schedule Related Work
Contract No. 1179257, ERR-PM No. 31099739, dated September 10, 2014
Retrofit five (5) power poles, Patterson Pass Road and Midway Road, near Tracy, CA

2209

WindWorks Inc.
15850P JESS RANCH ROAD
TRACY, CA 95377

WELLS FARGO BANK, N.A.
92-379-1241

	DATE	AMOUNT
Five Thousand Three Hundred Forty Three and 33/100 dollars	10 September 2014	\$5,343.33

PAY
TO THE
ORDER
OF

Pacific Gas and Electric Company
CFM/PPC Department
PO Box 997340
Sacramento, California 95899-7340

William Z. Dano

⑈002209⑈ ⑆124103799⑆2250002298⑈

WINDWORKS INC.

2209

PG&E Agreement to Perform Tariff Schedule Related Work
Contract No. 1179257, ERR-PM No. 31099739, dated September 10, 2014
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DRAFT MINUTES OF MEETING
EAST COUNTY BOARD OF ZONING ADJUSTMENTS
FEBRUARY 2, 2015
Expanded to Reflect Substantive Content¹ – For Appeal Hearing by the
Alameda County Board of Supervisors

REGULAR MEETING

CALL TO ORDER: *The Chair called the meeting to order at 1:35 p.m.*

MEMBERS PRESENT: Members Larry Gosselin, Chair; Jim Goff, Vice-Chair; and Jon Harvey.

OTHERS PRESENT: Sandra Rivera, Deputy Planning Director; Jana Beatty Weldon, Senior Planner; Andrew Young, Planner; Heather Littlejohn, County Counsel's Office; and Nilma Singh, Recording Secretary.

There were approximately twenty-eight people in the audience.

PLEDGE OF ALLEGIANCE

OPEN FORUM: Open forum is provided for any members of the public wishing to speak on an item not listed on the agenda. Each speaker is limited to three (3) minutes. *No one requested to be heard under open forum.*

NEIGHBORHOOD PRESERVATION AND ZONING ORDINANCE ABATEMENT: *None*

ALCOHOLIC BEVERAGE SALE REGULATION ADMINISTRATIVE HEARING: *None*

APPROVAL OF MINUTES FROM PREVIOUS MEETINGS

1. APPROVAL OF BOARD MINUTES ~ January 22, 2015

Member Goff made the motion to approve the January 22nd Minutes as submitted and Member Harvey seconded. Motion carried unanimously, 3/0.

CONSENT CALENDAR: *No items*

REGULAR CALENDAR:

- 2. ALTAMONT WINDS, INC., MODIFICATIONS TO EXISTING (YEAR 2005, AS MODIFIED IN 2013) CONDITIONAL USE PERMITS, PLN2014-00028 / Final Supplemental Environmental Impact Report (FSEIR) ~ to certify by resolution the FSEIR for item 2.**
Staff Planners: Sandra Rivera and Andrew Young

¹ Complete except as noted parenthetically.

Ms. Rivera introduced the item and Chris Knopp, Project Manager for the SEIR. Mr. Knopp, with a PowerPoint presentation, discussed the following: the purpose of his presentation, the proposed project, the planned asset exchange; the project area, the SEIR process schedule; public comments & responses; and clarifying the mitigation measures and calculation of the numbers involved. (The presentation took approximately 20 minutes and summarized information in the Final SEIR and in the staff report. The PowerPoint presentation is included in the Board package for the appeal).

Member Harvey asked Mr. Knopp about the net [result of the] EIR that would apply to this project change [(permit modifications)]. For the record, and for the audience and for himself, he asked what is the preferred alternative that the EIR recommends. Mr. Knopp replied that the preferred alternative would be the alternative identified in the 2013 FEIR, which was Alternative 3, the permit extension, because it is the project. Member Harvey replied back that that was not how he understood it. Staff member Sandra Rivera asked Member Harvey if he was referring to the Alternatives, or the [alternative] mortality rates [discussed in the Power Point presentation]; Member Harvey replied that it was his understanding that EIR's have three alternatives, typically, and one is the preferred alternative. Member Harvey asked, for this EIR, what is the preferred alternative. Ms. Rivera replied that for this Supplemental EIR, there is only the no project alternative and the project. So, Member Harvey replied, it reverts back to the original EIR; Ms. Rivera affirmed that was correct. Member Harvey continued, asking if that was the phased approach, with shutdown to start in 2015.

Staff Member Andrew Young explained that the preferred alternative defined in the 2013 EIR was the CUPs that were approved in 2013, defined as Alternative 1 [in the 2013 EIR]. The current SEIR does not identify a preferred alternative, separate from the 2013 EIR. He suggested counsel may wish to advise on the adequacy of that, but expressed the opinion that the no project alternative would be the preferred alternative. Of course, he noted, CEQA requires that [in such a case], the lead agency should identify another alternative to the no project alternative. So, based on the SEIR, would be the project. Member Harvey asked if that was as proposed by the applicant, and Mr. Young affirmed that was the case as far as the SEIR is concerned, and that was the reasonable way to apply CEQA in this case. Member Harvey said he would have to ask questions about that later, and the Chair stated he would ask the question in a different way.

The Chair (Member Gosselin), asked for confirmation that the Board is essentially reconsidering something we've considered before. Mr. Young replied in the negative, that the Board's choices were between the proposed project; the no project alternative that is *not* the no-project alternative is the project. The Chair asked for that to be repeated, and Mr. Young stated again that the no project alternative is the preferred alternative; the Chair indicated he understood that supported their decision in July 2013.

Chairman Gosselin said he had a question about the overriding considerations. He said that in the same way that the Board needs to certify the EIR, the Board needs to agree with the overriding considerations. Ms. Rivera indicated that was correct.

The Chair stated that he took note in the Final SEIR/Response to Comments that most of the comment letters were in the form of testimony regarding the project, and not the environmental review. He asked if the Board could consider those as part of the record. Ms. Rivera affirmed that, and indicated that there are two items before the Board, that require two actions, and are therefore separate. However, like other recent wind farm projects before the Board, the discussions could be taken together.

The Chair said he had a question about the time frame, and noted there had been a "hurry up" to schedule this hearing today for the purposes of an appeal. He asked beyond that appeal, what is the purpose of the "hurry up", and if there was another reason. Ms. Rivera said AWI could speak to that more, but her understanding is that there are contracts with PG&E that will expire in March, said they needed to get through the appeal in March in order to determine their next steps.

Member Harvey said he had a follow-up question about overriding considerations, if it was typical that they were qualitative in nature, as they are in this case. The Statement identifies economic benefit, environmental benefit, there's "this and that" benefit, and somehow the Board is meant to weigh that against the [environmental] impacts. He asked if that was done normally in a qualitative way, and not quantified. Ms. Rivera replied that to her understanding, it could be both qualitatively and quantitatively, if the Board chooses. Member Harvey said he appreciated the difficulty staff has had in determining the validity or certainty of numbers that one could produce; however, it appeared the Board has to jump to an individual value judgment vs. another. He asked if that was what the Board was expected to do. Ms. Rivera affirmed that was the case.

The Chair invited staff to continue with the next section of the presentation. Member Goff asked if the Board should take action on the EIR first. Mr. Young said the Board could probably proceed to take comment on, and to take action on the SEIR; Ms. Rivera countered that the Board should receive the entire presentation first.

Mr. Young continued the PowerPoint presentation related to the project, and indicated that these slides reflect the considerations that went into preparation of the staff report. The applicant asserts that the extensions are necessary for various reasons that are not necessarily related to CEQA – financial, tax policy, and other reasons. He indicated the County was under a "spotlight" of attention from the federal [resource agency], the state Attorney General who oppose the approval of any extension. In addition, the state resource agency and the East Bay Regional Park District indicated they would only support approval with conditions requiring an eagle take permit or other strong conservation measures. Audubon California and Save Mount Diablo would also oppose any approval of the extension. There are also comments in the record from John Humphrey representing the Rooney property, Marie Cooley representing Ralph Properties II, and a letter that is in the appendices of the SEIR from Bob Cooper withdrawing his original comments, due to his satisfaction with a site visit, that addressed his concerns with hazardous waste issues. Additionally, with respect to the lands owned by the Waste Management Authority, authorization to [participate] in the application was withdrawn. Information from the applicant indicates that if the asset exchange occurs, that issue will be eliminated. Information now available indicates that asset exchange

will occur prior to any appeal hearing before the Board of Supervisors. So if the BZA takes an action today, it can remove those affected parcels from the resolution.

Lastly, the Board is advised that they may deny the proposed project, which would provide for the permits to expire on October 31 of this year as they are currently permitted. And after the board has certified the EIR, should it choose to do so, then the Board would take comments on the proposed project, deliberate among the board members, and at staff's request, that the Board make a decision on the rate of eagle mortality to be applied for the implementation of Mitigation Measure 17.

Finally, the Board is requested to consider staff's recommendations to modify the project and its conditions. Referring to a slide in the presentation, Mr. Young said it outlined the program that staff has concluded would be not necessarily advisable, but an option for the Board, to cut the MWs and reduce by 50% the output. Staff thinks that this gives the applicant a certain amount of flexibility in how it continues to operate under these amended conditions. That 50% limit could be distributed over all three years, or operated fully in 2016 and reduced thereafter. Another option is to cease all operations in June of 2017; or lastly, 75% in each of the next two years. That phased approach is meant to be similar to going back to the 2005 permit conditions and the phased reductions they required. However it does allow for more MW production than one other alternative.

Mr. Young concluded the presentation with some additional conditions that were recommended, to remove all HRT-rated turbines, consistent with 2013 recommendations to remove selected HRTs, and as recommended by the applicant, to report to the BZA regarding its progress towards repowering. Lastly, the trust fund is proposed if the applicant pursues both Mitigation Measures 17 and 17a, in order to provide financial commitments to implement those measures.

The Chair observed that there appear to be two focuses of the trust fund accounts – avian mortality funds, and all those others land-based resource funds. It just says compensation in the SEIR. He asked if the value of those funds had been determined; Mr. Young replied that the value would rely on preparation of a Resource Equivalency Analysis.

Member Harvey noted that calculating the number of power pole retrofits in the SEIR, would be based on the golden eagle fatality rates. At some number, there may be more retrofitted power poles than the population can even utilize. He wished to know if the staff knew what that number was. He asked if there were 400 golden eagles present in the Altamont Pass area, even during the winter months. Mr. Young replied and said a good question might be if there are enough power poles that golden eagles would land on in the course of three years; it is not necessarily the population of golden eagles relative to the number of power pole retrofits. The number of power poles that could be retrofitted is probably quite vast; if the mitigation can provide for the maximum number of retrofits to make them safe for golden eagles, then it is a worthy pursuit.

Member Harvey asked if, like the HRTs, it would be useful to know where the high-risk or high-opportunity power poles exist. Going from zero to some number there's probably a lot of benefit, but then doubling or tripling the number from there, there might be a

diminishing benefit. He wondered if there was anyone who could speak to that, since what staff has asked the Board to do, is pick a mortality rate, and that is going to drive the number of power pole retrofits, and maybe that money is better spent elsewhere.

Ms. Rivera said it was their understanding that PG&E has identified power poles that are hazardous, in a program, so they understand the priorities for retrofitting power poles. She added that AWI had taken part in that program, based on the 2013 approval and conditions, so they went to PG&E to find power poles that are the project area. That was the priority established in the conditions. She added that she understands there are thousands of power poles to be retrofitted throughout the state, but the priority will be in the Altamont area for this program. Member Harvey asked if this meant these could be power poles outside the project area, and Ms. Rivera agreed that was the case.

Chairman Gosselin asked if, with respect to the power pole retrofits, the board has the authority to remove such requirements, and just leave that to the agencies. He noted there are several options beyond the power pole retrofits, which he recognized were the default "go-to" [strategy], and the information we've received so far indicates the agencies are going with that. He said the Board can continue to allow the agencies to go with that, but do not necessarily have to make it something that the County directs, and asked staff to verify that. Ms. Rivera replied that mitigation measures 17a was created to provide those options. The Chair asked if the Board could eliminate 17, and just go with 17a. Ms. Rivera replied she believed they could.

County Counsel staff Heather Littlejohn stated that the determination that the Board makes on the SEIR can determine what the appropriate mitigation is, and separately, what the appropriate conditions are. The decision needs to be based on substantial evidence that justifies that decision.

The Chair asked if there were additional questions from the board members, and having none, said he wished to discuss how the board would proceed on receiving testimony, and breaking down the various components and our evaluation. He asked if the board would like to break up (or divide) the hearing between the SEIR comments, findings of overriding considerations, and the project itself and modifications. Member Goff agreed to "break it up", and Member Harvey asked for clarification, if the board would be voting separately on the statement of overriding considerations. The Chair replied that it was not something they would vote on separately, but had to consider. He asked staff if that was correct and Mr. Young replied that yes, that was correct. Mr. Young said that CEQA does not call for it to be acted on separately; it is just an exhibit to the second resolution provided in the Board's package. The Chair continued and asked, if the board does not make findings of overriding considerations, that would direct where the Board would go. Mr. Young confirmed that. Member Harvey asked if that would prevent them from certifying the SEIR, and the Chair replied that they would still be able to certify the SEIR, because it provides the environmental review required. Member Harvey then agreed on "breaking up" the discussion.

Ms. Littlejohn stated that because the Supplemental EIR identifies significant environmental impacts that can't be mitigated, the overriding consideration would be

necessary for project approval. Therefore the board can certify the EIR separately, and then when you take up the project decision, is where you would take up the overriding consideration – if the Board does not break it up [into constituent parts].

The Chair said he understood that the Board could start talking about the overriding considerations at the beginning of its deliberations. Member Harvey said he disagreed with Member Goff and thought it should be all taken together. Member Goff clarified that he meant he did not want to hear testimony about the project, when they are trying to make decisions about the SEIR. Member Harvey said he wished to get testimony on everything, before he made a decision on anything. He said if we do it separately this meant each speaker would have to separate their comments about the EIR and then the project. He said he did not expect the Board could have success with them being able to do that, that their comments will be limited to only the EIR or the project, and they'll have to come up twice. The Chair said he would ask each speaker to first address the adequacy of the SEIR, and then ask them to address the project. Member Harvey agreed.

Chairman Gosselin said he wished to bring up something we've been accepting as normal protocol, that typically on these issues, we accept testimony, we ask further questions of staff, have discussion, and then we accept testimony again. He asked the Board if they were all comfortable with that process. And he said the second time we accept testimony, our graciousness is sometimes interpreted by the public as a "free-for-all", and they start directing questions at staff, and talking among themselves. So, he asked, does the Board wish to have staff interact with the second wave of testimony as it is occurring, either by the Board redirecting questions to staff or should the Board [interact(? – audience member coughed over audio)] as well. Members Gough and Harvey agreed, that questions could be directed to staff as needed.

The Chair stated that the first item of business is to read into the record comment letters received. He confirmed with staff that they are now part of the record. He described the first correspondence from Marie Cooley, the managing partner for Ralph Properties II, with comments supporting the project, partly for the economic benefit, and he also supports the mitigation efforts made by AWI. The other communication is from John Humphrey, who represents the Rooney property, with similar comments, about the positive stewardship offered by AWI, as well as to the Rooney property, and asks for support of the CUP application.

Public testimony was called for, and provided direction on speaker cards.

Evelyn Cormier, Audubon Society, Ohlone Chapter, said their chapter covered the APWRA area, and urged the Board not to certify the SEIR and not approve the project. She said they had been involved with the APWRA since 2004. She noted the past extinction of birds as a result of human activity, and cautioned that together with climate change, the wind turbines would have adverse effects on golden eagles. She cited the agreement with other operators to reduce avian fatalities by 50% in the APWRA, and said this project would set that progress back. She said the APWRA needs to move forward with repowering, because some wind power companies have acted responsibly through the repowering process. AWI has repeatedly asked to continue to operate the old

wind turbines, putting off repowering and killing more birds. She said she was there to speak on behalf of the birds, and urged the board to deny the project.

Member Goff asked the speaker to identify inadequacies she saw in the SEIR. She replied that it was that AWI is not being [required] to take down the old turbines and towers that are the main cause of the avian mortality. The new wind turbines have been demonstrated that they are safer for birds. The original turbines are the ones that are the most harmful to birds. She admits when they were first installed she was very excited, but had no idea that those towers would have such effects, especially on golden eagles and other raptors. Ever since then, we have been lamenting about our imperfect knowledge of what was going to happen. And so we have sought remedies ever since then, in trying to protect the birds.

Cindy Margulis, Audubon Society, Golden Gate Chapter, stated that they had significant insight into the EIR, and noted that the applicants themselves recognize that the impacts are significant and unavoidable, but would proceed with this project if it were approved. Those [impacts] could be completely eliminated, she said, by not certifying the EIR, and not proceeding with the project.

The Chair interrupted, and said it appeared that the speaker had found that the EIR had [adequately] represented the impact. The speaker replied back that, no, the EIR does not address all of the impacts. She added that she represents a chapter with thousands of members in Alameda County, and that her organization is extremely opposed to the project, and the EIR proposed for the project. She said her friends from California Audubon would go into the details of the deficiency of the EIR process, but she wished to speak regarding her opposition to, and the history of the project. She said they had been involved for 10 years with operators in the region, working with them to create an ecological, accountable effort in the Altamont so we can have green power there. The scope of the EIR represents a complete step backwards. In 2013, the County recognized this and required that the turbines be shut down after 2015, because the alternative was to do what they're trying again. She said because we know better we can do better. The Board is a committee for the County. The County recognized there was a serious impact to the birds, and we know from the repowering process, that you can get approximately a seven-to-one reduction in terms of the number of turbines in the APWRA and number of blades that pose a danger to birds and bats in the Altamont. You can't get that without repowering, she said. She wished to have the focus on repowering, instead of this time consuming EIR process, that is trying to delay what they're supposed to be doing, according to the settlement. It does not make sense to approve this extension now, and the county is at risk of violating CEQA, because [AWI would be] unjustifiably killing birds at a rate that is not anywhere near the rate that is allowed by the Fish and Wildlife Service for the species that are in question.

In conclusion, she said the Board should recognize that the EIR put before it is inadequate, and that certifying it as an accountable picture of what is going on, is not correct. Such a certification she said would not be doing due diligence [by the BZA]. She added that you absolutely not proceed with the project that the EIR is trying to obfuscate by hiding facts, and being data-deficient, by substituting numbers. If you look

at the numbers that were presented today, you're looking at two or three times the legal allowable limit for bird kills, for golden eagle population. She said it is not acceptable, or what we in 2015 should be doing. Certainly not in Alameda County where she lives, she added, and where her organization is headquartered. She thanked the Board for allowing her to speak, and reminded the Board that in 2013 it made a decision not to allow that alternative, which is what they are proposing again in 2015. That was disallowed. The idea was that repowering would proceed. (the remaining comments repeated her other statements).

Ariana Rickard, Audubon Society, Mt. Diablo Chapter, read her written letter in opposition to the SEIR certification. She commented that Contra Costa County had proceeded with its repowering program, where avian mortality has been significantly reduced. She added that he would be unfair to the other companies that are proceeding with repowering. (the remaining comments repeated other statements made by others).

Laura Cosgrove, Audubon Society, Santa Clara Valley Chapter, also read her written letter in opposition to the certification of the SEIR and the project, focusing on burrowing owl habitat and mortality resulting from turbine operations as a violation of state law. She noted that burrowing owls are a species of special concern in California, and that its population continues to dwindle. The only reason they're not designated as threatened or endangered, is that they have a large population in Southern California. However, the area in Southern California with that population is being intensely developed. Burrowing owls are harmed by old generation wind turbines, such as those used by AWI. They are one of the species that benefits the most from repowering projects. According to the SEIR, the current project will kill at least 77, or up to 242 more burrowing owls. That would be, she said, a huge hit. Each of these killings is a violation of the Migratory Bird Treaty Act, and makes recovery of the burrowing owl population that much harder. (the remaining comments repeated other statements made previously or by others).

Michael Lynes, Director of Public Policy, Audubon California, read comments from his written letter opposing certification, saying that it was fundamentally flawed, and did not adequately address comments Audubon California had submitted on the Draft EIR. First, he wanted to remind the Board why they objected to the EIR – regardless of policy reasons to reject the application altogether, and that the EIR is fundamentally flawed, is that when in 2013 this was looked at before, the County itself deemed it infeasible – this Alternative 3, to continue operating to 2018. The main reason the County stated this was that it puts off repowering. This aspect is not addressed in the staff report, or in the EIR, in its cumulative impact analysis.

From a legal perspective, he believes it represents piecemealing, in that they took one step in 2013, and now they put in place the next step, so each time the Permittee gets a little more, and meanwhile the environment takes a bigger hit. To be frank, if this EIR is certified, and if the project is approved as recommended by staff to go to 50 or 75 percent, he would expect to see another application for another extension in 2016, and 2017 and probably 2018. Why wouldn't the applicant do this, given the history so far.

He wanted to draw attention to an issue raised by the East Bay Regional Park District, and in the state Attorney General's letter also, the baseline. The baseline for this project should be, he said, starting in 2016, there are no operating turbines, so that any impact that occurs above that [should be recognized]. That is not how the project was analyzed in the EIR. We understand the rationale, but we think it is incorrect. It was mentioned before [in our comment letter, based on U.S. Fish and Wildlife Service estimates], that the [rate of eagle] take is about 12 percent [per year], and that if the project were compliant, it would not be over about 5 percent per year. So the effect is very significantly over what the federally recognized rate should be.

Changing to the issue of inadequate mitigation, he said he recognizes that the USFWS considers power pole retrofits as a primary mitigation measure to use for golden eagles. He said he has two major problems with that approach, first that while it could benefit other species such as bald eagles and red-tailed hawk, it does not benefit burrowing owls, which are species of special concern that is on the decline in California.

Next, he said the EIR did not explore other mitigation measures, such as radar, or as the applicant has indicated, controlling rodenticide use. We agree that [rodenticide] is a major problem for raptors, and could be a mitigation measure.

The other measures are open-ended. The [County, in the Final SEIR] did remove some of the more problematic measures – we had a real problem with the \$580 reference, but those that remain, for habitat conservation, while admirable, CEQA requires that for such an open-ended goal, the agency establish parameters in the EIR so that the public and decision-makers can actually buy into that mitigation measure. It is confusing, talking about power pole retrofits, and conservation, and seems to give the illusion that the measures are more robust than they actually are. Under CEQA, they are completely inadequate the way they are written now.

The repowering milestones that are presented are not mitigation measures to be considered. There's no real accountability. He said he wished to remind the Board that in [2005] the company agreed to a 12-year tiered [or phased] process for repowering. This is nine years later. It was known that these limits were coming, and it didn't move, it didn't act. So the idea that there will be new milestones in the next three years while they're working on [repowering] is not persuasive. And regarding the process of getting an eagle take permit, since it is in AWI's response letter, saying that it had a meeting last October, his conversation with a USFWS wildlife biologist said that there had been no progress made since that initial meeting. It appears that the meeting was held solely so that AWI can report that the meeting was held, but no real progress was made. As detailed before, they have met with AWI and promises are made, and nothing comes of it. So we don't believe credence should be given to the idea that somehow the milestones mitigate [for the project].

Finally, regarding cumulative impacts, we pointed out in our letter that the EIR needed a complete evaluation of the impacts on eagles and other avian species, such as burrowing owls, which are on the decline in California. The reason they are not on the endangered species list is that they have a major stronghold in Imperial County, but Imperial County

is going through a major drought, and if they suffer there, than the resident population in Alameda County becomes that much more important.

Also, the EIR does not address how it would adversely affect repowering overall. The County “pretty much promised” in 2013 that those modifications would facilitate repowering, because it would be more efficient, and everyone would be on the same timeline. We can see that that is not what is happening now.

In conclusion, he said he encouraged the Board to look at the other comments received, such as from the Park District, such as on the baseline mortality rates, and from the A.G.’s office, which addressed the problems with the Statement of Overriding Considerations.

Member Gosselin posed a question to Mr. Lynes, which he said he had also asked at the hearing to receive comments on the Draft SEIR, which whether or not there were *any* mitigation measures that would be acceptable to Audubon and allow it to accept approval of the CUP extension. Mr. Lynes replied that he had thought about it, and concluded that it had to be demonstrated to us that there is no significant impact, but the logic of the EIR is that there is a significant and unavoidable impact. So the EIR didn’t get to that level.

Brian Mathews, Alameda County Waste Management Authority, noted that the Authority owns property in the Altamont Hills, stated his opposition to the certification of the SEIR as inadequate for a number of reasons, and that the Board should not certify the SEIR or approve the project. The EIR does not quantify the impact on migrating avian species adequately, or address mitigation measures [to that impact sufficiently]. He said the project proposes to “power up” during the winter shutdown period, which is currently now shut down, and the EIR doesn’t adequately address that. It does not adequately address the No Project Alternative, of repowering. The project has significant and “overriding” impacts. A repowered project has less impacts. The SRC and its avian wildlife specialists have all agreed that repowering is the approach to take. We have been forced to repower for ten years or better, and this is giving AWI another chance to kill birds and [disregard] the public and continue to enhance its revenue. CEQA requires the Board to consider all the impacts; we don’t feel this has been done so far.

The baseline of the EIR should have been based on a repowered baseline. If the Board approves this project, you’ll need legal counsel as to whether it would make the County accomplice in the federal violation of the Migratory Bird Treaty Act.

We’ve heard about the asset swap, for two or three years, and we have to ask, what is the delay? Instead of asking if the swap would impact the project or not, let’s see it done, so you actually know what the project is. The asset exchange isn’t clearly defined enough.

The Authority has not signed the application as a [participating] landowner for the CUP extension. We understood in 2013, when the Authority did sign it, that they would shut down the turbines that are killing birds [after] 2015. We supported that effort to line up AWI with the others for repowering, and get on the same timeline. We don’t think the EIR adequately addresses the fact that we’ll have a lot of overhead power lines on our

property not removed. This means the property west of the Authority's property – Corbett, Hanson and Lim, cannot transmit power across our property, or from the Ralph property to the east of the Authority lands. This was not analyzed or discussed in the Project Description. If the Board certifies the EIR, even if the impacts are less [or reduced by mitigation], it doesn't identify what the project is.

Finally, the decision-making process should align repowering of this project with other repowering projects. It will reduce impacts on avian species. Our recommendation is, do not certify the EIR, adopt the no project alternative, and shut down by [the end of] 2015. Also, do not adopt the [Statement] of Overriding Considerations. There are alternatives not to have these impacts at all.

C.J. Dunton, property owner, spoke regarding the EIR, or as he would refer to it, the "Economic Impact Report" because if the project is not approved, there will be an economic cost to the County, and in particular county charities. In his case, in Alameda County, there would be a loss of charitable donations of about \$50,000 a year that has to be thought of. He stated that his family has owned the property since 1880, and described other family history in Alameda County. He also suggested that other property owners make other charitable donations and employ people. He said he would not be able to donate those funds without the wind farm lease income. Those charitable contributions went to two rooms at the Valley Community Care Hospital, and a children's care facility in San Leandro. Income from this project stays in Alameda County, he said. He added that he was offended by persons who do not live in Alameda County and still want to tell us what to do. He said people do not question the effect of vineyards, which do not [accommodate habitat for] burrowing owls. Vineyards use fake raptors to chase off the songbirds. He repeated his statement that the EIR was an economic impact report, because it is shutting down an income stream to the people that work in the area.

Morgan McGovert, Altamont Winds Inc., Senior Vice President, said he wished to provide background information on AWI as a company, and also the work AWI is doing for repowering. Altamont Winds is a small company based in Alameda County, in business in the Altamont since 1998. They operate 828 turbines and employ about 40 people. He stated that the Board knows that no one has successfully repowered in the Altamont Pass in Alameda County. However, he said, AWI is committed to repowering as soon as possible. Yet, AWI is a small company, not one of the billion-dollar competitors in the Altamont, and therefore cannot put millions of dollars at risk as quickly as they are trying to repower. It is for this reason we are requesting the CUP extension. It will allow us to establish the necessary cash flow to support the immensely expensive repowering process in the Altamont, and as soon as possible. For the past year AWI has made substantial progress toward repowering. In March of 2014 we submitted our application for the Summit wind power project, and have executed repowering lease agreements, and completed project layout and design. Preparation of the project specific EIR has begun with environmental field surveys in the Altamont Pass including wetlands and wildlife habitat by our planning consultant. We have begun consultations with various stakeholders, agencies and filed the actual electrical interconnection application.

However he said, there remain substantial obstacles to repowering as quickly as AWI would like. Firstly, there's the completion of the project EIR. As mentioned, an independent engineer has been hired by the County to prepare the project specific EIR, which will take approximately eight more months to complete a cost of approximately \$500,000. Secondly, for the eagle take permit, AWI has begun consultations with the Fish and Wildlife Service, about applying for and obtaining an eagle take permit. This may require additional avian studies, and possibly a federal environmental impact statement as well. This process could take up to 24 months, and cost approximately one million dollars. For the interconnection expansion studies, AWI has submitted its application in early 2014, and is now 12 months into the study process and has about 14 months to go, and \$750,000. For a new power purchase agreement, PG&E does not need any renewable energy until the 2018-19 time frame, so AWI has to market the energy to other utility providers in California. Our power purchase agreements cannot be executed until after the receipt of permits and the interconnection agreement. Also these negotiations take 6 to 12 months, and require about \$3.5 million upon execution. These items, totaling almost six million dollars, have to be completed before the final two obstacles which are project financing, and wind turbine procurement and construction. Project financing requires 4 to 6 months, after the permits, interconnection agreements and power contracts are all in place, then procurement and construction takes approximately 16 months after financial closure of the project. The due to the immensely costly and time-intensive process, the earliest AWI would be able to repower is in 2018.

Mr. McGovert concluded that today they are requesting the continuation of the CUPs to 2018, that will allow our small local company to continue to spend millions of dollars for repowering as soon as possible.

Member Harvey asked Mr. McGovert if AWI is able to extend their power purchase agreements between 2015 and 2018, or is that how they are able to continue operating, if they cannot get new [agreements]. Mr. McGovert replied that AWI will not be able to get new [agreements] and AWI is not able to extend the old ones either. If our permits were extended, we plan to sell wholesale electricity into the CAISO market, not under a power purchase agreement. Member Harvey said that he now understood there was an alternative way to sell electricity, and then continued, asking for confirmation that the earliest they could repower was 2018 and if that was the "drop-dead" date AWI is asking for. He continued further, and noted that those things do not often align.

Mr. McGovert replied that it was hard to say, but early 2018 [was possible], but AWI wants to repower as soon as possible. That is it; if it is not done in 2018, then that would be it. We do not believe we would be able to continue. That is the timeframe for us, as a company that doesn't have a billion dollars behind us.

The Chair noted that Mr. McGovert opened the door to some financial questions, into your company, and opened the door to some timeframe issues. Mr. McGovert had indicated AWI's inability to achieve certain tasks for repowering by 2015, based on the timeline, so his question was, when did AWI become aware of these timeline [constraints] and the inability to achieve them by the 2015 deadline. Mr. McGovert indicated he could not easily reply, because each was a different issue. The Chair

continued, and said that a bunch of issues had been “dumped” on the Board, and the Board is being asked, essentially, or to paraphrase, [to accept AWI’s argument that] “this is hard” and “we want you to be good guys” and recognize it is hard. Board Chair Gosselin said that he wanted to take this a step further. He said he had asked for information during the EIR hearing, but recognized that was not the appropriate place for it, but he was trying to get a handle on what sets AWI apart from the other companies. What he had heard so far was that AWI is small, and does not have the same income stream. He asked Mr. McGovern if there was more to it than that.

Mr. McGovern replied that was primarily it, because most, if not all of these issues could be overcome if we did have that kind of money. AWI just cannot afford to take all these risks, for example, with an eagle take permit, proceeding without having a [project-] specific EIR certified, without having CAISO interconnection, and generation interconnection agreement in hand, without having a power contract in hand to proceed, and AWI has to get financing to build these projects on our own balance sheet. Buying wind turbines, for example. All of these things that these billion-dollar companies can do, to the speed up [the process], in the hope of repowering. So, he concluded, [AWI’s small size] is the primary differentiator. AWI just does not have the resources to throw at risk. If it doesn’t happen, then “Oh well. We can’t do it.”

Chris Bokides, Project Engineer, AWI, offered to go over how the avian mortalities were estimated, and discuss the [state] Department of Water Resources prey poisoning and how that impacts background avian mortality. He made a PowerPoint presentation to the Board, describing the multiplication of installed capacity in MW-Years, by the mortality rates to estimate fatalities. So the result would be 11.1 eagle fatalities over the life of the project.

In 2014, avian fatalities were up, and AWI wondered why, since they were not operating more turbines in 2014 (short recess of less than a minute to bring up PowerPoint), so we researched it and discovered Dept. of Water Resources have an extensive prey poisoning program all along the aqueduct, that they believe contribute substantially to background mortality. He showed photos of the poison on the ground, and a map of the poison sites.

He went on to describe the climate and air quality benefits that would result from the three year permit extension. Over three years, over 609 million pounds of air pollution offset from the wind farm operation, with human health and avian benefits, of reduced heart attacks, premature mortality, asthma attacks, and many other illnesses that mostly affect children and the elderly. The three year extension will avoid 952 avian deaths.

With the 609 million lbs. of toxic pollution offsets, 952 birds saved including eagles, and taking into account avian background mortality which is estimated to be about 47 percent, or about 5.2 golden eagles blamed on the wind farms, and taking into account the 322 power pole retrofits which will save 11.1 golden eagles [projected to be] over the life of the project – summing all those up, you get 5.2 eagles saved over the life of the project, not including [those saved through] climate benefits, but just based on the mortality rates [used in the SEIR].

Jeremy Liem, Attorney representing AWI, discussed the proposed mitigation measures, that go beyond the self mitigating effects [of reduced air pollution]. To date we have spent over \$16 million in mitigation costs to avoid impacts on avian species. This amount includes monies lost with the annual shutdown, as well as the wages we have paid to the Scientific Review Committee, the facilitator, and the avian monitoring program, which we fund to mitigate the environmental impacts of our project.

One of the mitigations we're involved with is the winter seasonal shutdown. Every winter we shut down the turbines for 3 ½ months in the belief that it's the winter seasonal migration period for many avian species. The shutdown has a severe impact on our revenue, affects all the wind farms, and reduces the ability of the state to achieve its goals for more sustainable energy. A second mitigation measure we've applied is the removal of high risk turbines. AWI has paid to investigate whether specific wind turbines pose unreasonable risk to birds. AWI has removed the highest number of high risk turbines, and continue to remove the highest risk turbines, to reduce impacts on avian species. We have removed 92 turbines, 49 of which were ranked by the SRC to be the most hazardous to avian species, and we anticipate shutting down another 21 highly ranked wind turbines by October 31st of this year.

Our third mitigation measure is the use of visual deterrents. One method we use is black blade technology. It is a patented blade painting technology to reduce motion smear – intended to make a moving thing appear as a single object.

Rick Koebbe, President, AWI, discussed the time line and with a PowerPoint, discussed his comments that had been submitted in writing, including recommendations: 1) Exhibit A, MM BIO-17a – 60 days from implementation date, Feb 16, 2016 vs. permit approval; 2) modify MM BIO-16 language to be consistent with Exhibit B; 3) inclusion of benefits of clean wind power to wildlife; 4) delete mitigation requirements for background mortality; 5) use lower eagle fatality rate - 0.061; 6) allow AWI to manage power pole retrofit funds; 7) establish \$1,069.00 as the typical cost of each power pole retrofit instead of \$7,500; and 8) extend permit for 3 years to Oct 31, 2018. In response to questions from Board members, he further discussed finances, source of funding, and repowering expenses/budget. He reported their only investor was the Boilermakers and Blacksmiths Union. They fund the company 100 percent. They want to support repowering. They are not directly involved, because it is a different funding mechanism, but they won't put money at risk, because it's a pension trust fund, but he (Mr. Koebbe) has to fund the repowering project out of his cash flow to fund the development process.

Member Gosselin asked if he had offered a reduction in lease fees for extending the CUPs, and he replied no; he also has not increased wages for his employees, nor any for himself. Member Gosselin also asked what is the cost of repowering; he replied about \$6 million; what would the interest rate/return on investment be? Mr. Koebbe declined to state, but urged the Board not to weigh the decision only on the financial issues.

Member Gosselin stated the Board has a good collective memory, but he apologized for putting Mr. Koebbe in the spotlight [of financial questions].

Koebbe wished to emphasize that no one has repowered there; they are very difficult to achieve. Cannot breach confidentiality, but it is difficult. Member Gosselin asked if there were things that could be done – across all issues, including repowering and operations, that would reduce these difficulties? Feedback and to suggest changes to the mitigation measure development process? Mr. Koebbe, there has been no mechanism of that kind. The SRC is made up of five members whose sole goal has been to reduce avian impacts, but though their charter included consideration of the benefits of renewables, they didn't look at that. Every time we went to them with an idea, they ignored it, unless they could shut down turbines. We went, for example, with our black blade technology, to put up 300 turbines with a field test, which they rejected, because they didn't want the turbines running, they just wanted to turn them off. Member Gosselin asked if it was the SRC themselves, or someone they were consulting; Mr. Koebbe replied back that he was sure it was the SRC members themselves. They were biased [towards] turning off wind turbines as the only solution. Could they have done a better job, he asked, and answered 'certainly'.

Member Harvey mentioned there had been an issue [or a contention] that there would be 'double dipping' if you remove high-risk turbines; he said he assumed you wouldn't be counting those [for the staff recommendation to reduce capacity by 50%]. Ms. Rivera replied that basically the impacts were determined just from MWs, and not from an HRT ranking. So, if the turbines are removed, the MWs are reduced [somewhat]. Member Harvey continued, and asked about the power pole retrofits, if AWI would be charged the actual cost, or the \$7,500 amount? Ms. Rivera replied that the mitigation is about the power poles, and not the cost. The costs are provided for reference but the objective is the retrofits. Member Harvey confirmed his understanding that AWI would only have to pay the actual cost, and not the \$7,500 [per pole retrofit].

Mr. Koebbe interjected, saying that he understood he would have to advance the \$2.4 million, when it would only cost \$322,000. Member Harvey asked if this was true; Ms. Rivera replied back that it was one of the proposals, but she thought it was supposed to be a midway point, not the \$7,500 cost basis. Andrew Young explained that the staff report used an average of \$2,500 per power pole, based on the range provided of between \$1,000 and \$4,000. Member Harvey asked if the County had the ability to determine the actual cost, and Mr. Young replied back that the information provided by [the Applicant] for the PG&E cost was obviously very useful. He added that the intention was not for the County to administer those funds, but just to obtain some documentation that those funds had been deposited.

The Chair asked if there were any other speakers, and deferred one speaker from making a 'rebuttal' statement. Public testimony was closed. The Board discussed the certification of SEIR, Findings and action options.

Member Goff began, saying that the EIR is intended to assist us, to answer the question of whether or not there is enough information in the EIR to make a decision about the Project. The Chair added that the EIR is supposed to discuss environmental impacts, potential mitigation measures, and Member Goff agreed, but for clarification, restated that the test was whether as a whole the EIR provided the needed information, and not so

much the details of each piece fitting exactly into place. More specifically, he asked if the Board did not agree with a certain piece of the EIR, do we have to disagree with the whole EIR, the whole information packet. He continued and said there was disagreement “among the EIR”; The Chair agreed that EIRs could go in different directions with certain [details or levels of] information, but the bottom line is whether there are significant impacts, and whether there is potential mitigation for those impacts, whether it can be mitigated, and what we are going to adopt as mitigation. The Chair added that he found that in this report, that it provided him with the foundation to move on to consider the application [itself].

Member Goff asked, if the Board did not certify the EIR, what would that do to the process – would it put brakes on the project? The Chair agreed, and asked staff to confirm that the County would have to redo the SEIR, recirculate it. Mr. Young replied and said it would be his interpretation of the requirements to go forward. County Counsel Heather Littlejohn agreed that the project could not be approved if the SEIR is not certified. Member Harvey asked if there were an appeal process for that, and Ms. Littlejohn said yes. Member Harvey stated that it could be a lot of time, perhaps enough time that the project would become “dead in the water”.

Member Goff stated that he believed the EIR had a lot of information in it, regardless of how you interpret it. We know there are flaws in it, like different ideas of what the baseline should be, or different ways of looking at it brought to us by the public, but as a whole, it assists me with making a decision for the process.

Member Harvey said for him, the EIR has to provide a solid platform in order to make a decision on the application, and the EIR, by itself, is [meant to be] there to provide that platform. The project is ultimately asking for overriding considerations, and he said he was having difficulty finding justification for that, based on the bigger picture. It is hard, he said, to not look at this “top-down” and not just “bottom-up”.

The Chair asked staff if the EIR has an obligation to provide enough information to address the overriding considerations, or is [separate] testimony supposed to flesh that out for the Board. Ms. Rivera said that the intent of the overriding considerations is to point out what the EIR determines as significant and unavoidable, and that gives the reasoning to the decision-makers, but [the EIR] is not supposed to justify, it is just to be an informational document. The Chair replied back that obviously the overriding considerations go beyond the impacts.

The Chair stated that regardless of what could have been included in the SEIR, he said it does provide the information that he would need to consider the environmental impacts. It did [describe] that there are significant impacts and what those were, and that there needs to be mitigation provided and that there are unavoidable adverse impacts. The next question – unless there is further discussion – is whether or we certify the EIR, it is a two-stage process.

County Counsel Heather Littlejohn suggested that the Board should review the Draft Resolution which has a list of the findings that will need to be made to certify the SEIR. They need to be the findings that the Board is ready to make.

Member Harvey stated that his concern remained about the “slippery slope” of approving the SEIR, it would provide a path for something other than repowering, we’re opening the door to extending it again, with another supplemental EIR in 2018, and [perhaps] another supplemental EIR from another wind energy operator. He said he would like to know if that is what is coming. The Chair asked if that comment was about the project, and Member Harvey replied back that it was about the EIR, and not project.

The Chair then asked if the EIR could address future eventual [outcomes]? Ms. Littlejohn replied back that the Board’s decision on the EIR should be based on its content, and whether it complies with CEQA, adequate information and notice, etc., and so she said again that the Board should focus on the content of the SEIR.

The Chair asked to confirm where in the Resolution the findings were made. Member Goff asked if the Chair wished to go over them one at a time, and Member Harvey agreed, and each member read and consented to the first finding, and then Member Harvey suggested that the second finding was in dispute, saying that the Board had heard testimony from [the public] indicating they were in disagreement about the EIR, and he cannot [dismiss those remarks] so he would set that aside. The Board concurred with the next several findings, and then Member Goff remarked on finding no. 8, beginning with “No new comments or information has been submitted...”, and upon consideration indicated his agreement. Member Harvey stated that with regard to no. 8 he believed that the Board had received testimony from the public, that if it were incorporated into the EIR, the Board would have more robust mitigation, and could possibly better balance that mitigation with the unavoidable impacts.

The Chair asked Member Harvey if he would be able to balance that based on the testimony, and Member Harvey replied no, not based on the testimony he’d heard.

After some discussion of the procedure, such as taking up the overriding considerations separately, and by Member Goff, what the value would be to discuss the project if the Board cannot agree on the EIR, the Chair indicated that the Board would proceed to take action on the SEIR before considering the project itself.

Public testimony was re-opened re adequacy of the SEIR. Brian Mathews indicated from the basis of what he had heard, the Board appears ready to certify the SEIR. He stated that some of the testimony that has come before you is a smoke-screen, is obfuscating and is diversionary – a mea culpa – that really isn’t here for the Board to decide. AWI has been at the table for 15 years and has smart people, and could have joined in with the other operators, but instead have gone with one diversion, then another, and try to work one angle and then another. It is time to say “enough”. The EIR is inadequate, it doesn’t look at the baseline properly, and based on that alone, you cannot certify this EIR. The baseline should have been based on a repowered project in this area, as opposed to allowing this to go on. He raised a question to staff that the Resolutions still shown the

[ACWMA's] property as subject to these Resolutions, and when those parcels would be removed. Staff confirmed that the Resolutions would be amended prior to action to strike or remove the Authority's parcels from the Resolution.

Mr. Mathews continued and addressed the contention by AWI that they would [save] 52, or 5 "extra" birds because of the positive effects of renewable energy. That is based on a really flawed assumption that any [replacement] energy is going to be produced by coal or climate-changing burning of gas. There is hydro-electric, there's other wind, there's solar – that's at least three sources of energy to replace what would be lost by [not extending] these wind turbines. And the assumption that we're going to have 900 tons of greenhouse gases is a false assumption. The Board cannot use that as testimony, or it would be ill-advised to use that as testimony, or a basis to determine that the SEIR is adequate, because, that is a false assumption being suggested by the proponent. He closed, saying that he doesn't mean to suggest that the Authority is insensitive to small business, or businesses that are wanting to repower, and that the Authority finds the Applicant to be a good partner, but it is time to move on, and 'get with the program'. If AWI had spent their time on getting this EIR done, and getting repowering done, and had worked with the AG, they would be right on schedule, but instead they've spent two years "fooling around" with this extension.

C.J. Dunton spoke, repeating his prior statement that the EIR should be deemed an Economic Environment Report, because the economics come into effect. If it is about birds, let's call it a Bird Report. He described reports of birds being killed in December, when the turbines are shut down, and asked why there was not a report on 580, which had gone from nothing to 15 lanes wide in some places. He can recall when there was no 580, and not many birds, because the farmers shot them, because they were getting the chickens and the lambs. Nobody raised hell in those days. The economy comes into effect, and affects the environment. Birds are not the only part of the environment.

Mike Lynes spoke, and stated that he would limit his remarks to certain aspects of the EIR and the draft Resolution, particularly no. 3 - that "The Board certifies that the Final SEIR reflects the County's independent judgment and analysis." He reminded the Board that in 2013 the same Board reviewed the current proposal and found it to be infeasible. And yet today, the Board is prepared to certify an EIR that would lead to the alternative. He can only believe there are other pressures at work here, than the "County's independent judgment and analysis." You have heard political pressure, the economic argument, and he also recognizes the economic role of benefits to people versus benefits to the environment. He said there may be reasons that the County did not really analyze this project in its entirety. With regard to finding no. 8, whether or not "new comments or information has been submitted" I think even AWI themselves had questions about the adequacy of the EIR, because it didn't include all the "co-benefits" of wind power to the project itself. They would not say that's a reason not to certify the EIR, but it goes towards the question of whether the EIR is effective. The EIR appeared very rushed. So, not only does it not address the Applicant's desire to consider co-benefits, it does not fully consider cumulative impacts, burrowing owls, and as far as benefits go, does the Board really understand power pole retrofits? Are they in the project area and are they going to save those birds? How is it going to be implemented? So, in conclusion, he

believes testimony has been submitted that throws into question whether or not the EIR is adequate.

The last issue he wanted to raise was the baseline, because it is a huge gaping hole in the EIR, because it looks at the 2013 baseline, where operations would continue, as opposed to everything shutting off at the end of this year, which they should. That's the true baseline for the time of analysis. That's a major problem we have with the [analysis].

Cindy Margulis noted that the 'end result' of the EIR was that there would be significant unavoidable impacts if you proceed with the project. She said if you proceed with the project, the County would potentially be in violation of state and federal law. Secondly, what the applicant is asking for – is “Gee, we're over-mitigating, we're actually going to [save] birds” – that's just not rational. You're seeing with this project, that is costing the tax-payers a lot of money, that they are trying to wiggle out of their commitments. They previously agreed to repower. Repowering is in the interest of Alameda County. The EIR does not identify any benefit to *not* repowering on schedule as previously agreed. And that is a glaring oversight.

Finally, Ms. Margulis said she had never believed that the environment and economics are automatically in conflict with each other. Here in Alameda County it is in our interests to have the kind of power that gives us the maximum mega-wattage, with the least environmental impact. All of these species have a role in the ecosystem in which we live. And when you kill one golden eagle, according to mortality figures, you are actually potentially killing much more. Depending on when you kill that bird, and the stage that its family is in, you're potentially endangering the entire life of that eagle. So the impact is potentially much more than what is in the specific [numbers shown in the] EIR.

So, she concluded, do not certify the EIR, because you would be [in conflict with] CEQA, going against [U.S.] Fish and Wildlife, and you're going against what is in the best interest of Alameda County, which is to repower on the most rapid schedule possible that was agreed to by all the other power vendors. She urged the Board to act accordingly.

Public testimony was closed. Ms. Rivera stated that the Board should consider that the purpose of the Supplemental EIR – because the Board had certified the original EIR in 2013 – it is to supplement that EIR with any available new information.

Member Harvey asked if the overriding considerations were part of the action on the EIR and was advised by the Chair that it would be separate. The Chair held up an edition of CEQA, and asked who else had a copy at hand. He continued, and stated that every ordinance or guideline leaves a degree of “wiggle room” and rarely establishes any absolutes, and that is his read of CEQA.

Member Harvey stated that with respect to finding no. 3, “that the Final SEIR reflects the County's independent judgment and analysis” that he was assured that that was the case, which is not to say that personally that it may not be enough, or accurate enough, but that he thought the Board Members were influenced by different things at different levels and

that will be reflected when the Board votes. With regard to no. 8 (about “new comments or information”, he said Mr. Lynes made his point exactly, that there was significant testimony today about there not being enough in the EIR and that there was significant disagreement on both sides of the issue about the information that was in the EIR. He said he could not know the right ‘answer’ but knows that the questions are out there, and it is not enough, and therefore he cannot vote to certify the EIR.

Member Goff made the motion to certify the SEIR and the Chair seconded. Motion carried 2/1 with Member Harvey dissenting.

The Chair stated that the Board would move next to the permit extensions themselves, and that there are two [main] issues to the permit, one is the overriding considerations, and the other is the permit, recognizing that the Board has to adopt those overriding considerations, too. He pointed out that the Board will not separately be approving or disapproving the Exhibits.

The Chair announced a brief recess to review Exhibit C, the Statement of Overriding Considerations.

3. **ALTAMONT WINDS, INC., MODIFICATIONS TO EXISTING (YEAR 2005, AS MODIFIED IN 2013) CONDITIONAL USE PERMITS, PLN2014-00028** ~ Application to extend 16 conditional use permits (CUPs) for three (3) years, through October 31, 2018, under specified conditions, beyond their current expiration date of October 31, 2015, for operation of an estimated 828 existing utility-scale wind turbines with a combined existing (current) generation capacity of 85.8 megawatts (MW), located throughout the approximately 14,436-acre Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), in the eastern portion of Alameda County, adjacent to Interstate I-580, on up to 58 parcels bearing 58 separate Assessor’s Parcel Numbers. Approval by resolution is contingent on a separate resolution to certify the FSEIR (see item 1), as well as adopting written findings of the significant impacts of the permit modifications, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program (MMRP).

Staff Planners: Sandra Rivera and Andrew Young

The Board discussed Exhibit C, Statement of Overriding Considerations, project impacts, and lack of substantial evidence to support the Statement. The Chair asked the other Members if they had any comment, and Member Harvey stated that he thought the Statement should provide clear evidence “staring him in the face”, but that he is unable to see that evidence. While he sees economic benefits for a few people, he see wide[spread] other impacts. Member Goff said he agreed 100%, and the Chair also indicated 100% agreement as well. The Chair said he had read relevant sections of CEQA during the recess and adding to what staff has shared in the report, per Section 15093(b), “the statement of overriding considerations shall be supported by substantial evidence in the record.” The state Attorney General sent comments to the County on that subject, and

the Chair said he believed he had to agree with the Attorney General's opinion, that there is not *substantial* evidence in the record for overriding considerations. As part of the testimony, the Chair indicated he had raised questions in the hope that he would receive any overriding, substantial evidence, and he said, he wasn't able to receive it. So he wanted to know what could be done at this point to address that issue. The only thing he could rely on was what he had asked at the previous hearing, which was whether there could be mitigation [agreed upon] that would compensate for the impacts of this project.

The Chair stated that there's been a lot of debate about the benefits of wind power production, and nobody is disputing that. The dispute is about old generation wind power production versus new generation wind power production. That's the discussion the Board is having today. New generation wind power production has been promised since 2004 as the best alternative for mitigation. That's the direction the process has been going in, and the effort that is being made by everybody. We are being asked to consider, whether or not, the public would like to exchange its public property, and that property is raptors, for the benefit of a single company. That is what the issue boils down to. He said he had been looking for overriding considerations to help him with that, and all that he could come up with was that the charges for mitigation reflect the compensation that the public would have the right to expect for this application. The Chair noted that he had asked the Audubon speakers to address that, and they may now do so, but if they do not wish to, that is also fine. He said he had also asked the representative of the East Bay Regional Park District to address that, or not, if they don't choose to.

With that, he re-opened the public hearing and public testimony was called for, with a request to be brief, not to repeat comments made before, and simply queue up. However, since there was a speaker card submitted, and he had not spoken before, he called for Juan Pablo Galvan to speak first.

Juan Pablo Galvan, Land Use Planner for Save Mt. Diablo, said he was surprised by the comments made by the Applicant, because he expected them to say, they were sure they would be repowering by 2016 or 2017, and instead it seems they don't expect to repower in 2018, if ever. He respects the viewpoint of the small business person, but did not believe the situation was akin to Walmart undercutting the small independent operator – as if NextEra were like Walmart undercutting AWI. Instead, it seems like AWI is structured with an inability to comply with regulations that have been in place for years. Given the focus throughout the area on repowering, repowering does not seem unreasonable if all the other companies are able to do it.

Michael Lynes said he would just like to touch on an issue he had not raised before, which was the issue of equity to stakeholders. The reason is, that when Audubon signed the Settlement [Agreement], Audubon took a lot of flak from the Center for Biological Diversity and the Sierra Club, who said Audubon was "selling out" the birds, "selling out" the wildlife, but that they had settled because they saw the way forward was repowering, and that's what we worked on. In 2010, we settled with NextEra and gave away some rights we had under the prior agreement, but we went ahead with Next Era because we were looking forward to repowering. We did the same thing when we had to give up on the NCCP [Natural Communities Conservation Plan]), which was extremely

expensive for the companies – they didn’t want to do, but we gave up on it because it was clear from the County that we needed to [move] forward with the Programmatic EIR, and that was the best way forward to repowering. In 2013, Audubon opposed the permit modifications for AWI, but Audubon did not appeal it, or litigate it because we understood the County’s reasoning for doing it, which was to facilitate repowering, and get everybody in the same place. So Audubon said “alright” with a plan that at the end of 2015, everything goes off. And now, with the EIR and the decision before the County, the County is telling us that all that good faith is for naught. That really, it was just about extending the permits further.

It has been brought up before, about fairness for the other companies. But in closing he asked, if the project is approved today, for what reason would the County not consider it again, the next time this applicant comes to you. And that is not good public policy or government.

The Chair asked Mr. Lynes again, if there were any mitigation measure – with nexus to the project – that would address their concerns. Mr. Lynes replied back that the problem was that in the confines of the EIR – which has now been certified – there is possible mitigation, but it would have to reduce impacts to be less than significant impacts. The Chair asked if those criteria could be laid out, and Mr. Lynes replied that it would take a team of [stakeholders] – Audubon, the County, the companies, to come up with a real conservation strategy that would actually do that. The Chair concluded that the Board would have to actually continue this hearing. Mr. Lynes added that he did not want to volunteer AWI into that process. He said the NCCP process fell apart because of the complexity of getting a conservation benefit for the different species. It would be a long, arduous process to get there. He said he thinks we could, but he didn’t think they were in a position today, based on the possibility [of such an agreement]. The Chair said he had a suggestion, because there is a way of doing things that hasn’t been done by the agencies. The agencies have the freedom to just look at a commitment to mitigate, and that is legally binding. So a deposit of funds into a trust account could be considered a legally binding commitment – with an outline for the use of those funds. Mr. Lynes replied back that he thinks he address the law on that subject in his letter, and the law requires fairly well-defined parameters of what you’re actually going to do with those funds or for that mitigation. He said he doesn’t feel that is present at this point in the process, for this project. The Chair acknowledged the comment but said he disagrees on that, that he did not think a high level of specificity was required. But the intent to get to that specificity is required. This time does not allow us to research the code, but if there were a continuation then such information could be considered.

Doug Bell, EBRPD, said he wanted to discuss mitigation and possible mitigation strategies [and the use of trust funds]. He said he thought the intent would be proper to follow, where one could put together a type of landscape level mitigation, that could improve the situation entirely – somewhere along the lines of an NCCP/HCP that was proposed a few years ago – to go beyond just a set number of retrofits. So there are efforts that would go above and beyond power pole retrofits. He would caution against the idea promulgated by AWI that would reduce mitigation options or reducing funding

for specific programs. The Chair asked Dr. Bell if continuation would enable more research into how that would work would be helpful, and Dr. Bell affirmed that it would.

Brian Mathews, ACWMA, reported that the Authority signed the CUP applications for the modifications in 2013 for operations through 2015, under the auspices and knowledge that [AWI's turbines] would be shut down on the same schedule as anyone else. This application is a "second bite at the apple." The Authority did not sign the second, current application for modifications, because AWI is not fulfilling their promises that were given on the last one. So the Authority [does not recognize any] credibility by AWI that they will follow through, and [not] just do what they want [to do]. For this discussion of mitigation, and additional things that could be done – is a fleece. It would just distract them from the repowering project, that they need to get done anyway. Starting another committee or another process, or spending money, gives them a diversionary tactic around the process that has been agreed upon, and that all the scientists, the public, the stakeholders, the County, the landowners, have an understanding of. He said he suggests that the Board just cut that off, as not productive towards repowering, which is the most effective way of mitigation of killing more birds.

Rick Koebbe, AWI, in rebuttal, said it is their intent to repower in 2018. He said if they do not, they will never be back for another permit extension. Ever. He offered to swear as such. He said the assertions that they would be back [for another extension] is just to "throw you off". He said all the land leases for repowering expire in 2018 [(if repowering is not complete)]. If they do not repower in 2018, they will not be back in 2019. He assured the Board that they would not be back for another extension. There is no scheme to just operate the turbines "and make a lot of money." That is the furthest from the truth. AWI is only here to get the repowering done. We make this much money (*using a pinching gesture*); any cash we make is going towards repowering.

The overriding considerations, he continued, were the same ones the board approved in 2013, so, he said he was surprised they were no longer valid and that the Board no longer sees the benefit. There's a climate benefit, economic benefits to the landowners, County tax revenues, all kinds of benefits to the project, and society, overall. Some of the commenters here in the audience said AWI had made promises. He said he had kept all the promises he had made. He said he did not promise [in 2013] not to come back for a permit extension, but promised to get the repowering done, and will do it if the Board gives AWI the permit extension. He said he did not promise to get the repowering done by the end of 2015. That was why he did not sign a Settlement Agreement. He said AWI is different, it is smaller, and can't do things that other companies can. If we don't get the permit extension, and there's no cash flow, we can't repower, he said.

Public testimony was closed. Board Chair Gosselin asked if the Board cannot make the findings of overriding considerations, if it would disallow the Board from going any further in evaluating the CUP extensions. If the Board cannot make those findings, then the Board would obviously be voting not to approve the application. He continued and asked if it would be helpful for the Board to make findings specific to that condition, or if it was enough just not to make the findings that are required to approve it. Counsel advised that whatever discussion the Board thinks is appropriate, that come into your

decision, whether or not you can make than required findings of overriding considerations, the board is certainly free to make whatever decision you choose. She added that the more substance there is to the findings, it is always beneficial.

The Chair said the Board should now determine if the other Members agree with Member Harvey's sense that there is not enough to make the overriding considerations. Member Harvey agreed, saying that the information he did have was not a compelling "weight" that was tipping him towards making the substantial overriding considerations. The Chair stated what he had said before, that the only way he could make the overriding considerations, was if they could increase the mitigation funding that would address the public's concern about the damage being done [to avian safety].

The Chair continued and said there were two ways to value the loss of natural resources. One is ascribing a value to the community a value that represents the perception of loss – i.e., community value. He said the Board is not doing that; we are instead using Resource Equivalency Analysis, which is more of a technical exercise, and which looks at ways of reproducing the habitat or the effort that is necessary to reproduce the lost resource. It is a tool used, for example, with major oil spills, to quantify the lost resource and assign values to that quantification. The community value system is a much more arbitrary kind of system and that is typically done by conducting massive surveys and asking the public what they think things are worth. And though that has not been part of the process, the Board has obtained a sense of that from the testimony received. It is not an issue of the public wanting money, for birds that are killed; instead what he said he had heard, over and over again, is that the public will accept [some degree of] avian mortality, but the public wants to know that a serious effort is being made to reduce it as much as possible, so that is the issue. That is the reason that a lot of the testimony received today is pertinent to the application we heard in 2013, but it is no longer pertinent, because the issue now is repowering and that is what the public is asking for.

So the Chair said that, if the mitigation was [expansive] enough the public might consider it. And he said he thinks in order to receive further testimony on [acceptable mitigation] the Board would have to continue it. So the options are, he said, either continue it or decline the application.

Member Harvey said looking ahead at the process staff made a really aggressive attempt at trying to "water down" the application and install a lot of mitigation, in the draft Resolution they prepared, and crafted some language that the Board could get their heads around. However, he said the Board did not come close. Even the applicant's "showstopper" was [very distant] from what staff was proposing and some of the [staff's] "showstoppers" are not even real issues. So he said he wasn't sure the Board was going to get through this without an appeal anyway.

The Chair agreed, but added that a continuation provided for a small chance may move us away from an appeal process but as mentioned by Mr. Lynes, would require some conferencing away from our board to reach agreement on that.

Member Goff said he recognized that the Chair had a vision [for this mitigation]; the Chair replied he did not have such a vision; Member Goff said he did not see any mitigation that one could throw at this, as long as one had to use a baseline of no turbines turning. The Chair said he had heard a little bit of a vision from Dr. Bell, and maybe less of a vision from Mr. Lynes.

Member Harvey said the most fair thing they could do for the applicant was to take action today, to allow them to make a better pitch to the Board of Supervisors. The Chair said that gets us to the point for making findings and providing guidance to staff with findings specific to the Board's decision. He said the Board had put a lot of time into this and the Supervisors will have a lot of items on their agenda.

Member Harvey said the supervisors will get a certified EIR; The Chair interjected and asked if the certification would get appealed or if it would be separate; Counsel explained that there were two separate actions. The Chair recognize that somebody could appeal the certification. Member Harvey said that if he had ideas about how to move this forward he would certainly share them but he said he does not know what he could add.

Member Goff asked if the Chair wanted separate findings such as for economic benefit environmental benefit etc. The Chair agreed and said if the Board can state each of those, it will justify our decision, and provide useful information to the Supervisors, as well as the applicant.

The Chair stated the first finding, that the Statement of Overriding Considerations does not meet the requirements of CEQA Guidelines Section 15093 for such a Statement. Secondly, based on testimony and evidence before the BZA, the economic benefit of this specific project does not exceed the value of the impact on biological resources. Thirdly, no evidence has been presented or substantiated that no project or no other wind power project will move forward should this application be denied and the argument that there would be a loss of jobs would not be sufficient to outweigh the unavoidable adverse environmental risks of the project.

The Board agreed that those findings were sufficient. Member Goff said it would be unfair to continue this to the end of the month. Member Harvey said the Resolutions the way they are crafted now, are vehemently opposed by the applicant and would be a "non-starter". He added that the applicant would be appealing it themselves were we to adopt it as it is stated, and the Board does not have the time now to re-craft those. Part of the reason the Board is taking an action now, he said, is so the Applicant can have an opportunity to have a different result. The Chair agreed that there was a potential for a different result. Member Harvey agreed and said we did not create this timeline.

Member Harvey made the motion for a denial and Member Goff seconded. Motion carried unanimously, 3/0.

STAFF COMMENTS & CORRESPONDENCE: *None*

COMMISSION ANNOUNCEMENTS, COMMENTS AND REPORTS: *Member Gosselin provided an update formation of an Ad Hoc Committee to advise on the formation of the APWRA Technical Advisory Committee, reporting that the Committee has been formed with two members and discussion on another, with plans for a total of four members.*

ADJOURNMENT: *There being no further business, Member Goff moved to adjourn the meeting at 5:00 p.m. Member Harvey seconded the motion. The motion was carried 3/0.*

ALBERT LOPEZ, SECRETARY
EAST COUNTY BOARD OF ZONING ADJUSTMENTS



**ALAMEDA COUNTY CDA
PLANNING DEPARTMENT**

STAFF REPORT

TO: EAST COUNTY BOARD OF ZONING ADJUSTMENTS
HEARING DATE: FEBRUARY 2, 2015

GENERAL INFORMATION

**APPLICATION: MODIFICATIONS TO 16 EXISTING CONDITIONAL USE PERMITS
(APPROVED YEAR 2005, AS MODIFIED IN 2013), PLN2014-00028**

APPLICANT: ALTAMONT WINDS, INC.

REQUEST: To extend 16 conditional use permits (CUPs) for three (3) years, through October 31, 2018, under specified conditions, beyond their current expiration date of October 31, 2015, for operation of an estimated 828 existing utility-scale wind turbines with a combined existing (current) generation capacity of 85.8 megawatts (MW).

LOCATION, SPECIFIC PERMITS, OPERATORS, PROPERTY OWNERS AND PARCEL NUMBERS: The existing turbines are located throughout the approximately 14,436-acre Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), in the eastern portion of Alameda County, bisected by Interstate I-580, on up to 58 parcels bearing 58 separate Assessor's Parcel Numbers.

Conditional Use Permit Numbers, Facility Permittee/Land Owner family names and Assessor's Parcel Numbers (APNs) as follows:

C-8036, Altamont Infrastructure Company/Frick & Costa, APN: 099B-5680-015-00;
C-8037, Altamont Infrastructure Company/Pombo, APNs: 099B-6300-002-01, 099B-6300-002-02, 099B-6325-002-03, 099B-6325-002-04 and 099B-6425-001-06;
C-8134, Altamont Infrastructure Company/Rooney, APN: 099B-6125-002-00;
C-8137, Altamont Infrastructure Company/Mulqueeney, APNs: 099A-1800-002-03, 99A-1800-002-04, 99b 7890-002-04, 99B-7890-002-05, 99B-7900-001-05, 99B-7900-001-07, 99B-7910-001-01, 99B-7925-001-03, 99B-7925-001-04, 99B-7925-002-04, 99B-7925-002-05, 99B-7975-001-00, 99B-7980-001-00, 99B-7985-001-03, 99B-7985-001-04, 99B-7985-001-05, 99B-7985-001-06 and 99B-8050-001-00;
C-8191, WindWorks Inc./Mulqueeney, APN: 099B-7910-001-01;
C-8216, WindWorks Inc./Alameda County Waste Management Authority, APN: 099A-1810-001-00;
C-8232, Altamont Infrastructure Company/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/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 and 099B-7300-001-05;
C-8241, Altamont Infrastructure Company/Walker Family Trust, APNs: 099B-6100-002-10, 099B-6100-002-12, 099B-6100-002-12, 099B-6100-003-10, 099B-6100-003-11, and 099B-6100-003-13;
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;

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

ZONING: A-BE 160 and A-BE-320 (Agriculture, Minimum Building Site Area 160 and 320 acres, respectively) Districts, intended to promote implementation of general plan land use proposals (or designations) for agricultural and other non-urban uses, to conserve and protect existing agricultural uses, and to provide space for and encourage such uses in places where more intensive development is not desirable or necessary. (Section 17.06.010). Permitted uses include a variety of agricultural and agricultural support uses, including crop, vine and tree farms, animal husbandry, wineries, fish hatcheries, trails, and on qualified building sites, single family and secondary dwelling units. Conditionally permitted uses include privately-owned wind electric generators.

GENERAL PLAN DESIGNATION: The site is subject to the East County Area Plan (ECAP), adopted in 1994 and amended substantially in November 2000 by the voter-approved Ordinance/Initiative Measure D. The ECAP designates the site as Large Parcel Agriculture (LPA), and establishes minimum parcel sizes for specific areas of the East County (100 acres for the subject parcels) and maximum building intensity (floor area ratio or FAR). Subject to the provisions, policies and programs of the ECAP, the LPA designation permits one single family residence per parcel, agricultural uses, agricultural processing facilities, public and quasi-public uses, quarries, landfills and related facilities, "windfarms and related facilities, utility corridors and similar uses compatible with agriculture."

ENVIRONMENTAL REVIEW: A Final Supplemental Environmental Impact Report (FSEIR) has been prepared that evaluates the potential environmental impacts of the application to extend for three years the existing CUPs, and which is "tiered" from an EIR that was certified by the EBZA on July 18, 2013 for modifications approved on the same date, to allow full operation of the 828 existing turbines through October 31, 2015.

RECOMMENDATIONS:

The Board of Zoning Adjustments should receive a staff presentation, take public comment on the FSEIR and on the subject application, review the draft resolutions and exhibits, including the Mitigation Monitoring and Reporting Programs (MMRPs) for the project, certify the Final SEIR by adoption of a draft Resolution for the purpose of CEQA, and approve the proposed CUP modifications (PLN2014-00028) by adoption of the second Resolution and proposed conditions.

PERTINENT FACTS:

Physical Features: The subject CUPs are widely distributed across the Alameda County portion of the Altamont Pass Wind Resource Area (APWRA). The project location containing AWI's existing wind turbines falls within an approximately 14,196-acre portion of the 50,000-acre APWRA. The APWRA extends across the northeastern hills of Alameda County and a smaller proportion of Contra Costa County to the north. The region is generally characterized by rolling foothills of annual grassland. The area in which the CUPs are permitted is mostly treeless with relatively steep terrain on the west and gently rolling hills on the east toward the floor of the Central Valley. The underlying landscape generally consists of undeveloped grazing land. Major features of the area include the wind turbines, ancillary

facilities, an extensive grid of high voltage power transmission lines, substations, microwave towers, a landfill site, Interstate 580, railroad track lines, ranch houses, and clusters of rural residential homes on Dyer and Midway Roads.

History/Background: The 16 subject CUPs were initially approved by the EBZA in November 2003 and January 2004 with conditions, as the continued operation of existing wind farm facilities, including turbines and infrastructure. These permits, along with 13 other CUPs approved on those dates, and another two CUPs approved in 2006, were approved with a determination that they were categorically exempt from CEQA as the continued operation of existing facilities. A total of 31 CUPs were operating under a common set of conditions after the Alameda County Board of Supervisors approved a resolution in September of 2005 which provided for operation of the wind farms through 2018 but with phased decommissioning requirements, in the expectation that repowering of the APWRA – replacing the older generation turbines with newer and substantially fewer, larger and more efficient turbines – would be well under way after 2010. After litigation by a coalition of environmental advocacy organizations in 2006, a Settlement Agreement was approved in 2007 by three of the four wind energy companies that required greater commitments to repowering and cessation of most of their operations after 2015. As a result of the Settlement Agreement, the conditions of approval applicable to the turbines beneficially owned by the Settling Parties were substantially changed; however, AWI (the current applicant) was not one of the Settling Parties, and therefore remained subject to the original conditions adopted in 2005. More detailed history and background on the year 2005 CUPs is provided in the prior staff report on the public hearing on the Draft SEIR on December 18, 2014.

In 2013, AWI obtained approval of its application (PLN2011-00102) to modify these same CUPs, to eliminate the requirements of the year 2005 CUPs for phased decommissioning, which more specifically required removal of 10 percent of its original 920 turbines by September 30, 2009 (92 turbines), an additional 25 percent by September 30, 2013 (35 percent cumulative, or 322 turbines), an additional 50 percent by September 30, 2015 (another 460 turbines), and the remaining 15 percent of turbines (138) by September 30, 2018. The first phase of decommissioning took place in 2009, at which time AWI removed 10 percent of its 920 turbines. Together with the elimination of phased decommissioning, AWI also sought under that application to remove the requirements for winter seasonal shutdown, and proposed that 100 percent of AWI's turbines would be decommissioned by the end of 2015. The modifications approved in 2013 (July 19, 2013, by Resolution Z-13-36) were the subject of an EIR to address both the CUP modifications and decommissioning activities, as required by the year 2005 CUPs. On the basis of the 2013 EIR, the County denied the request to eliminate the winter seasonal shutdown and instead approved an alternative with continued seasonal shutdown, consistent with other wind farm operators, but with expiration on October 31, 2015.

The 2013 approval also instituted a Mitigation Monitoring and Reporting Program (MMRP) which primarily applied to ground-disturbing activities associated with repowering, but also required that the seasonal shutdown established in the prior years by the County be maintained through the life of the project (Mitigation Measure BIO-16), and retrofit off-site electrical facilities (i.e., power poles) proportional to the number of projected eagle fatalities (Mitigation Measure BIO-17). The County confirms that the seasonal shutdowns occurred on schedule since 2013, and that the power pole retrofits required by the MMRP were completed in October of 2014. In addition, removal of high-risk turbines (HRTs, aka hazardous-rated turbines), required by the 2013 conditions of approval (not by the MMRP), was completed by October of 2014.

PROJECT DESCRIPTION

The current project proposal is a request to modify 16 existing Conditional Use Permits (CUPs), approved in 2005 and modified in July 2013 (PLN2011-00102), for continued operation of the wind farm assets of

Altamont Winds, Inc. (AWI), now comprised of 828 wind turbines with a rated capacity of 85.8 MW. Specifically, AWI's request would provide for the wind farm turbines to continue operating through October 2018, as a change from the current expiration of the CUPs on October 31, 2015. While the CUPs as approved in 2005 provided for operations through September 2018, they also required phased shutdown and removal, with a combined 35 percent of all turbines removed by September 2013 and an additional 50 percent removed by September 2015, so that only 15 percent of the original number of turbines would be operating between 2015 and 2018. The modifications approved in 2013 in effect exchanged the phased shutdown requirement for a complete shutdown in October of 2015, in order to initiate repowering of its wind farm assets in 2016.

The Applicant, AWI, contends that its progress in developing a repowering program for its turbines is constrained by ongoing commercial and regulatory difficulties, and that the CUP modifications allowing it to operate through 2018 are necessary in the event that circumstances beyond AWI's control prevent it from initiating repowering in 2015 or in a financially feasible manner after the current CUPs expire in 2015. AWI proposes to operate through 2018 only on the condition that it has diligently pursued repowering of its wind farm assets, and can demonstrate that circumstances beyond AWI's control have delayed completion of the repowered project. Conditions of approval would require an bi-annual review to document AWI's efforts to repower its assets.

Asset Exchange. Concurrently with the request for an extension through 2018, AWI is in discussions with another wind farm operator, Green Ridge Power LLC (an operating entity of NextEra Energy Resources, aka NEER), for an exchange of wind turbine assets. Specifically, approximately 300 wind turbines currently owned by AWI south of I-580 would be acquired by Green Ridge and a roughly equal number of wind turbines would be acquired by AWI north of I-580. As proposed, and under assurances from both companies, such an exchange will not increase the capacity or quantity of AWI's operating turbines. Green Ridge will shut down and remove the turbines it will acquire, for the purpose of repowering.

The asset exchange is recognized in the FSEIR and certain aspects of it are discussed, such as that it would result in a decrease of roughly 1.7 MW in AWI's rated annual capacity, and that it would result in a moderate reduction in the number of operating high-risk turbines (HRT), specifically those rated 8.5 to 10.0 for their relative risk of striking birds. The asset exchange and the reduced number of HRTs to be operated was also the subject of some comments on the Draft SEIR, that asserted that such calculations of benefit were unreasonably describing it as a means of mitigating impacts on birds, or adjusting the assessment of avian mortality impacts. The response to these comments in the FSEIR indicates that the asset exchange is not directly part of the project, and neither of the possible decreases in MWs or HRTs described in the DSEIR were intended to suggest the impact of the project on avian mortality was mitigated or reduced in a substantive way. The DSEIR in fact described the effect as having no statistical importance.

RESPONSES TO COMMENTS ON THE DRAFT SUPPLEMENTAL EIR

The Draft SEIR (DSEIR) circulated for the purpose of public and agency comment between November 17, 2014, and January 12, 2015, having been extended for 10 additional days beyond the original 45-day comment period in recognition of the winter holiday period. The County held a public hearing to obtain verbal comments on the DSEIR on December 12, 2014. A Final SEIR (FSEIR) was prepared as a complete revision of the Draft SEIR with Appendices containing comments on the DSEIR, master responses to frequent or prominent comments, responses to individual comments, a version showing changes to the DSEIR (deletions and insertions), notification documents, and assorted other materials. The DSEIR and FSEIR were prepared by Power Engineers, Inc. under County supervision.

The 2014 SEIR is a supplement to the 2013 EIR, which was certified in July 2013 as a complete assessment of the environmental impacts of AWI's existing operations, and of proposed modifications to operate all of AWI's 828 turbines through the end of 2015 without a seasonal shutdown, as well as three alternatives or scenarios: 1) operations through October 31, 2015; 2) operations through October 31, 2016; and 3) operations through October 31, 2018. All alternatives assumed full operations (no additional decommissioning), and included 3-½-month seasonal shutdowns. The SEIR is not intended to re-evaluate the assessment of those impacts, but is meant to provide additional, detailed analysis of the impacts attributable to the third alternative (to operate through 2018), which are limited almost exclusively to biological resources and in particular, avian mortality. Some additional analysis of hazardous materials was completed due to concerns raised by an area resident, but did not identify any significant impacts. More broadly speaking, the SEIR provides useful information regarding the asset exchange, new comparisons between the current project and its alternatives, revised mortality rates for focal raptor species, additional mitigation options, and provides for further public review of the current proposal. As with the 2013 EIR, the analysis quantifies effects on the four focal raptor species that were the subject of the 2007 Settlement Agreement, including golden eagle, red-tailed hawk, burrowing owl and American kestrel, as well as all bird species known to inhabit the APWRA. The DSEIR used the same method as the 2013 EIR to quantify the relative, projected number of bird deaths in the years 2013 to 2018, which was the range of years used in the 2013 EIR to show avian mortality impacts and changes due to that proposal, between the baseline (no project) conditions (with phased shutdown and decommissioning between 2013 and 2018) and complete shutdown in 2015.

The Executive Summary (Table ES-4) briefly outlines the impacts that were identified, and topic areas that were excluded from the analysis as not relevant or applicable to the site location or nature of the project. The SEIR's analysis of the current proposal's impacts identified only one significant, overarching environmental impact (among the specific determinations required by CEQA), which were the significant and unavoidable adverse impacts on biological resources, and the same significant impact as defined in the 2013 FEIR: *Impact BIO-1* – the potential to cause a substantial adverse effect, either directly or through habitat modifications, on special-status avian species.

To address impact BIO-1, the 2014 SEIR identifies three distinct mitigation measures, two of which were previously included in the 2013 EIR, namely continuing the winter seasonal shutdown (Mitigation Measure 16), and retrofitting electrical power poles (Mitigation Measure 17). To further mitigate and compensate for the projected level of avian mortality resulting from the proposed CUPs extension, the DSEIR identified Mitigation Measure "BIO-17a" (i.e., a subdivision of BIO-17), as a suite of five optional measures to supplement Mitigation Measure 17 and provide a means of compensation for the loss of special-status avian species, including golden eagles, by enabling contributions to conservation efforts. This measure was adopted almost verbatim and directly from the *Program EIR* (PEIR) for the *Altamont Pass Wind Resource Area Repowering* that was certified in November, 2014, and as outlined in the DSEIR, could include measures "outlined" in a programmatic eagle take permit, contributing to raptor recovery activities, raptor conservation, and regional raptor habitat conservation efforts. Contributions to raptor recovery activities and raptor conservation efforts were to be based on the estimated average cost of each raptor recovery reported in the PEIR (\$580, based on an interview with staff of the California Raptor Center at the University of California, Davis), for use in a Resource Equivalency Analysis (REA) to calculate appropriate costs for land conservation.

However, after certification of the PEIR, that average recovery cost was refuted by the Raptor Center as having been taken out of context, and because no substitute dollar amount was identified, the FSEIR was changed to remove those two components of Mitigation Measure BIO-17a that were associated with that recovery cost estimate. Another component of the suite from the 2014 PEIR, described as "Other Conservation Measures Identified in the Future" was also eliminated in the FSEIR as it would only apply in the long term, beyond 2018. The remaining options under Mitigation Measure BIO-17a would now

require contributions to regional conservation of raptor habitat by funding conservation easements within the APWRA or its bordering eco-region if approved by the County, held by an organization dedicated to managing conservation lands, based on a well-reasoned REA approved by the USFWS and the County, and according to a specific timetable, would remain as a strategy acceptable by the County to mitigate impacts on raptors. The impacts would not be reduced to less than significant levels, however. These changes would maintain the intent of Mitigation Measure BIO-17a to provide options for the applicant to diversify its mitigation program as defined in the 2013 EIR, which was limited to retrofitting power poles.

Major Comments and Master Responses. The County received nine letters of comment and some verbal comments at the public hearing. The majority of the comments fell into a limited number of common themes, for which the County prepared Master Responses, as summarized below.

- *Fatality Calculation and Use of MW-Years.* Several commenters, including members of the APWRA Scientific Review Committee, stated that it appeared that fatalities were being calculated on the basis of only a portion (0.708) of a “MW-year” as defined in the annual APWRA-wide Monitoring Reports to reflect the winter season shutdown, and that no such “subtraction” should have been applied. The County responds in the FSEIR that no such subtraction occurred, and that all of the comparisons of the proposed project with the existing CUPs, or with the prior baseline of phased decommissioning, all account for the seasonal shutdown. Simply stated, each scenario is measured on the basis of the cumulative total MWs of installed capacity operating or permitted to operate between October 1, 2013 and October 31, 2018, and as such are “scored” by the same metric.

Although there was a bias in estimating impacts of the 2013 proposal for operations without a seasonal shutdown, due to the likelihood of substantially higher fatality rates during the peak winter migration season, this is a separate issue, and none of the scenarios under consideration at the present time involve operations during the winter season shutdown.

- *Baseline for Analysis.* Some commenters believed the impacts of the current project proposal should be measured on the basis of the current CUPs that disallow any operations after October 31, 2015, in order to show the project’s levels of avian mortality in sharp contrast to conditions with no AWI-turbine operational related impacts. The response indicated that the County retained the use of the same baseline as used in the 2013 FEIR, of continued operations with phased decommissioning through 2018, because of the need (as described above as well) for comparing each scenario on the same metric.
- *Asset Exchange and Reduction of HRTs.* Some commenters questioned if the description of the asset exchange and the resulting modest reduction in the number of operating HRTs (high-risk turbines) in the APWRA at large, and modestly lower MWs of operating capacity were intended as a mitigation measures or in other ways give ‘credit’ to the asset exchange and the project in general. The response in the FSEIR makes it clear that neither the asset exchange or reduction of HRTs are treated as mitigation measures, though it is recognized that it will help facilitate repowering of the APWRA on those parcels south of I-580 that AWI will exchange or trade ‘away’ for assets north of I-580, where repowering will occur somewhat later, after 2015.

It was clarified in the FSEIR that the asset exchange is *not* an actual component of the project but merely a likely means of ‘disentangling’ assets in the APWRA that have historically over-lapped.

- *Inadequacy of Mitigation Measures.* Numerous commenters expressed concerns that the mitigation measures identified lacked certainty of implementation, such as that Mitigation Measure BIO-17a was an option rather than a requirement. Additionally, the details and number of power pole retrofits to be required under Mitigation Measure BIO-17 were not sufficiently clear to some commenters. The FSEIR responses to these issues consists of clarifications that the Measures are required, and reassurances that the suite of optional and supplemental measures available under Mitigation Measure

BIO-17a can be implemented effectively. The FSEIR response cites Table 3-3 as the basis for estimating total golden eagle fatalities attributable to the operations between 2016 and 2018 and the determination that retrofitting 322 power poles would be sufficient mitigation. The basis on which the retrofit of 322 power poles was determined is discussed separately below (see *Power Pole Retrofits Under Mitigation Measure BIO-17*).

The FSEIR also provided for changes to Mitigation Measure BIO-17a to eliminate the reliance on a disavowed estimate of the cost of an individual raptor recovery (\$580). Two of the five options that were considered to be reliant on the 2014 Program EIR-based dollar amount of \$580 were deleted from Mitigations Measure 17a, as well as the general and long-term-oriented “Other Conservation Measures Identified in the Future.”

- *Cumulative Impacts on Avian Populations.* A few comments, including some from the SRC, asked why the DSEIR did not evaluate in broader terms the deaths of avian predators on local or regional breeding, wintering and migratory populations, or other cumulative impacts. The FSEIR response acknowledged the cumulative impact but noted that as a Supplement to the 2013 FEIR, it would be inappropriate for the SEIR to add a new or expanded scope of assessment or methodology to define new impacts. The response also states that Mitigation Measures BIO-16, -17, and 17a are all intended to address cumulative impacts on all bird species, and that BIO-17a enables the wider ecological issues to be addressed through an REA to provide landscape-scale analysis and subsequent compensation and conservation strategies. Lastly, the FSEIR indicates that the cumulative impacts of other wind and energy projects in the APWRA were considered in the 2013 FEIR, and that the impacts of the project were categorized as cumulatively significant and unavoidable.
- *Current Monitoring Data.* Some commenters requested that the SEIR incorporate the latest Avian Monitoring Reports to estimate APWRA-wide avian mortality rates, to include bird years 2011 and 2012. The FSEIR responded that for consistency between the 2013 FEIR and the SEIR, the 2008-2010 mortality rates should be used as the basis for consistent analysis of avian impacts between the 2013 project and the current proposal. However, mortality rates from the later Monitoring Reports were included in the FSEIR in Table 3-5, to provide the range of estimated fatalities from the different mortality rates. Most importantly, the mortality rates for golden eagles including the later years were within the range established by the earlier years (0.085 for the period 2005 to 2010, and 0.061 for the years 2008 to 2010). As such, the use of later Avian Monitoring Report data did not substantially change the estimated range of projected fatalities. Nevertheless, and in consideration of the entire record, staff recommends that the mortality rates from later periods be included and that the response should be deemed to be revised accordingly in the resolution to certify the SEIR and in the Findings of Significant Impacts.
- *Overriding Considerations.* Several commenters asserted that the SEIR does not contain the background information necessary to support a Statement of Overriding Considerations, needed for project approval. The FSEIR response notes the comments, but characterizes them as primarily directed at the merits of the project itself rather than the adequacy of the DSEIR analysis. In addition, while the SEIR describes some of the intended benefits of the project (page 23, Section 2.3, Project Need and Objectives), which may contribute to the content of the Statement of Overriding Considerations, the Statement does not normally rely solely on the analysis in an EIR, and the FSEIR response notes that it may be based on information from the 2013 FEIR, the SEIR, or other information in the record. The FSEIR response acknowledges that the current project, substantially the same as Alternative 3 as described in the 2013 FEIR, was deemed infeasible in 2013, but concludes that the FSEIR is only intended to inform the County’s decision makers and the public about the potential environmental effects of the CUP modification currently proposed by the applicant.

Power Pole Retrofits Under Mitigation Measure BIO-17. Mitigation Measure BIO-17 as defined in the FSEIR is intended to provide for 29 power pole retrofits per projected golden eagle fatality, consistent with the 2013 FEIR. The following discussion is intended to provide some clarification with respect to statements in the DSEIR regarding Mitigation Measure 17 as described in the FSEIR. Firstly, the DSEIR and FSEIR state, on pages 37-8:

The proposed project with implementation of mitigation measure BIO-16, (together identified as Alternative 1 in the analysis of project alternatives) is projected to result in the fatality of approximately one eagle (cumulatively, and statistically, 0.7–1.0) when compared to the existing avian baseline condition (the No Project Alternative) (2013 FEIR Table 3.2-5).

This statement was directly copied from the 2013 FEIR description of Mitigation Measure BIO-17, and thus only applies to the 2013 proposed project, not the current 2014 proposal. However, revisions to the text in the FSEIR clarify that “this mitigation addresses the impacts of the 2013 project proposal (with Mitigation Measure BIO-16), which is approximately one additional eagle fatality.” The FSEIR also adds text explaining the basis for calculating the one additional eagle fatality, and that the currently proposed project (2014) would have a notably greater number of projected eagle fatalities – 11.1 – requiring 322 power pole retrofits.

As reported in Table 3-3 (and duplicated as Table ES-1), on the basis of the *2008-2010 Bird Year Adjusted Fatality Rates*, the current project would result in 3.7 annual estimated fatalities, or 11.1 estimated fatalities over the three-year period 2016-2018. The total estimated fatalities for the period 2013 to 2018 was 19, all of which data is derived from Tables 3-1 and 3-2, using the average fatality rates from the 2008-2010 bird years (i.e., 0.061×60.8 MW of operating capacity per year = 3.7; or for the whole period, 2013 to 2018, 0.061×311.0 MW of cumulative operating capacity = 19). However, to clarify, the projected 19 fatalities represent a “gross” number, including the number of fatalities anticipated to occur in the same period under the existing CUPs – 7.9 (statistically), a difference of 11.1 fatalities – the same as the three-year total in Table 3-3. It should be emphasized again that these results are based on the 2008-2010 fatality rates, which had special merit in the 2013 FEIR, in that they represented the years in which the winter seasonal shutdown was fully in effect, whereas it was only partly implemented in the years 2005 to 2007.

The Executive Summary of the FSEIR, which was intended to summarize the content of the text body (Chapters 1.0 to 3.0) of the FSEIR, also contains a statement (page 5) clarified below the subject excerpt:

Use of power poles for the mitigation of all estimated golden eagle fatalities projected to result from the current proposal to operate through 2018 – a range of 19.0 to 26.4 such fatalities between 2013 and 2018 [2013 FEIR, Table 4-2, *Adjusted Species Fatality Rates for Each Alternative, Based on an Average Fatality Rate (Fatalities per Megawatt per Year)*] would require the retrofitting of between 551 and 722 power poles, including at least 322 poles during the proposed three-year CUP extension.”

Although the range of 19 to 26.4 fatalities is represented in Table 4-2 of the 2013 FEIR, it also represents the “gross” number of fatalities projected from 2013 to 2018 and includes fatalities that would occur otherwise under the prior existing CUPs as they had been approved in 2005, between October 1 of 2013 and October 31, 2018. As such, the last portion of this statement could be rephrased to say “*could* require the retrofitting of between 551 and 722 power poles *due to the “gross” number of projected avian fatalities, but based on the “net” increase in projected fatalities, compared to conditions without the 2013 permit modifications, only a minimum of 322 pole retrofits would be required* during the proposed three-year CUP extension.” However, the FSEIR Executive Summary correctly concludes that AWI will retrofit 322 utility poles as mitigation for the currently proposed (2014) project.

Table 3-1 in the DSEIR also included fatality rates based on Avian Monitoring Reports from the period 2005 to 2010, and 2005 to 2011, and in response to some comments received on the DSEIR, Table 3-1 was supplemented with the fatality rates from 2005 to 2012. Table 3-5 was also amended to show average fatality rates for the period 2008 to 2012, which the County recognizes as having the greatest number of years (i.e., more supporting data) during which time the winter season shutdown was in full effect. However, some minor formatting and typographic corrections to Table 3-5 as revised for the FSEIR are necessary, as shown below with changes underlined, and with some additional explanatory footnotes.

TABLE 3-5 COMPARISON OF ADJUSTED SPECIES FATALITY TOTALS OF FOUR FOCAL SPECIES, BASED ON AN AVERAGE FATALITY RATE (FATALITIES PER MEGAWATT PER YEAR)
(UPDATED)

SPECIES	AVERAGE FATALITIES PER MW (2005-2010/2008-2010/ <u>2005-2011/ 2005-2012/ 2008-2012</u>)	PROJECTED NUMBER OF FATALITIES UNDER THE 2013 FEIR PROPOSED PROJECT ¹	PROJECTED NUMBER OF FATALITIES UNDER 2013 FEIR BASELINE CONDITIONS ²	PROJECTED NUMBER OF FATALITIES UNDER 2013 FEIR ALTERNATIVE 3 ³	PROJECTED NUMBER OF FATALITIES FOR YEARS 2016-2018 ⁴
American Kestrel	0.496/0.443/ <u>0.59/0.577/0.571</u>	85.5-113.9	51.6-68.7	137.8-183.5	80.8-107.6
Burrowing Owl	0.721/0.425/ <u>0.78/0.70/0.52</u>	82.1-150.6	49.5-90.9	132.2-242.6	77.5-142.3
Golden Eagle	0.085/0.061/ <u>0.08/0.081/0.075</u>	11.7-16.4	7.1-9.9	19-26.4	11.1-15.5
Red-Tailed Hawk	0.449/0.286/ <u>0.44/0.411/0.35</u>	55.2-86.7	33.3-52.3	88.9-139.6	52.2-81.9

Notes:

¹ This column of data is a remnant of Table 3.2-5 in the 2013 FEIR which represents the 2013 proposal to eliminate seasonal shutdowns; the results were also determined to be biased low in the 2013 FEIR.

² These baseline conditions represent the 2005 CUPs with phased decommissioning through 2018.

³ Alternative 3 is identical to the current 2014 project proposal, for the purposes of this table.

⁴ These results represent the increment of additional focal species fatalities attributed to the 2014 project proposal, based on the lowest and highest fatality rates in the 2nd column and the increment in cumulative MWs for the period 2016-2018.

It should be noted that the updated mortality rates for golden eagle in the various periods (2005 to 2011, 2005 to 2012, and 2008 to 2012), all fell within the lowest and highest mortality rates previously used in the 2013 FEIR (0.061 to 0.085 eagle fatalities per MW per year). If the lowest and highest fatality rates are considered, the potential increment of additional eagle fatalities for the three-year period 2016 to 2018, as shown in the last column of Table 3-5, would range between 11.1 and 15.5 (respectively using the fatality rates from 2008 to 2010, and 2005 to 2010).

Although using different fatality rates would result in different total projected fatalities, the FSEIR used the rate of 0.061 eagle fatalities per MW per year, based on the 2008 to 2010 period as the “final” rate and interpreted it to be consistent with the 2013 FEIR. Most importantly, as discussed above, based on the three years of operating capacity between 2016 and 2018 (182.4 MWs) the current project would result in 11.1 golden eagle fatalities, and require 322 power pole retrofits to mitigate the project’s impacts under Mitigation Measure BIO-17. Master Response 6 of the FSEIR states that “For consistency between the 2013 FEIR and the DSEIR, the 2008-2010 fatality rates should be used as the basis for comparing avian impact analysis.” In this case, the DSEIR and FSEIR used the lowest result (11.1) and not the highest result (15.5). It is common practice in CEQA and the policy of the County to base its identification of required mitigation measures on the worst-case condition, which in this case is a potential result of 15.5 (statistical) eagle fatalities, for which, based on the rate of 29 power pole retrofits per potential fatality,

would require 450 power pole retrofits, not 322. However, the County considers the highest rate of eagle mortality, 0.085 per MW per year, based on the years 2005 to 2010, to be the *least* representative of current conditions, because half of the years on which it is based did not include the fully implemented winter season shutdown. Based on comments received on the DSEIR, it appears that the rate based on the years from 2008 to 2012, as noted above, represent the largest number of years (i.e., more supporting data) during which time the winter season shutdown was in effect. It should also be recognized that the 2013 FEIR used a worst-case result to determine that the net increase in fatalities from approval of the 2013 project was 1.0, rather than the least-case result of “0.7”, based on the 2008 to 2010 mortality rates.

Alternatively, using the updated average golden eagle mortality rate of 0.075 per MW per year from the years 2008 to 2012, the result of operating a net additional 182.4 MW of installed capacity through 2018 would be 13.7 additional golden eagle fatalities, for which – assuming the use of Mitigation Measure BIO-17 and power pole retrofits to exclusively mitigate for all raptor impacts, at the USFWS-sanctioned rate of 29 power pole retrofits per projected golden eagle fatality, the applicant would have to retrofit a minimum of 397 power poles. This number represents a smaller amount than the range indicated in the Executive Summary of 551 to 722, is based on a rate reported in the FSEIR (Table 3-5), falls within the range of projected fatalities for the project, is considered to be supported by the FSEIR and would be acceptable to the County as mitigation. More importantly, it is based on a total of five years of monitoring during the current regime of 3½ months of winter season shutdown, and may be a more reliable and authentic mortality rate available at this time.

Combining Mitigation Measures BIO-17 and BIO-17a. Because the SEIR provides for some or all of the impacts to be mitigated through Mitigation Measure BIO-17a, the applicant may choose to combine power pole retrofits with some of the options identified with BIO-17a. For example, the applicant may retrofit 200 power poles under BIO-17, and under BIO-17a, provide for mitigation of the full range of special status species through contributions to conservation strategies during the four-year remaining life of the CUPs as modified.

Other Concerns. In response to a specific comment in response to the Notice of Preparation from a resident on Dyer Road, regarding the appearance of oil or other lubricants being released from leaking turbine generators or other equipment, including along the turbine blades, the DSEIR and FSEIR provided information on the potential of a significant leak of hazardous materials into the environment. As discussed in the prior staff report for the Public Hearing, the DSEIR determined that the impacts were less than significant and did not warrant the requirement for any mitigation measures; no different findings were made for the FSEIR. After the close of the comment period, the Dyer Road resident, Bob Cooper, submitted an e-mail to County staff reporting on a site tour on January 20, 2015, in which he indicated he was satisfied that what he believed was leaking oil was in fact rust stains, and that maintenance of the turbines was adequate. The e-mail is included in the FSEIR (Appendix B), but as it was received late, was not responded to directly in the FSEIR, nor did it require a response or change any determination in the FSEIR.

GENERAL/NON-CEQA-RELATED COMMENTS ON THE PROJECT

Many comments received on the DSEIR expressed strongly negative opinions regarding the merits of the project, that were not appropriate to be addressed in the FSEIR. Comments from the U.S. Fish and Wildlife Service (USFWS), the California Department of Justice/Office of the Attorney General, the East Bay Regional Park District (EBRPD), Audubon California (Audubon), and Save Mount Diablo (SMD), may be summarized as follows.

- The USFWS noted that approximately 31 golden eagle fatalities were recorded at AWI facilities in the APWRA since late 2009, when eagle take permit regulations were first promulgated, but without

the benefit of any permit. Additionally, the Service stated that in spite of their encouragement of AWI to apply for such a permit, and indications by AWI of their intent to apply, the Service has not received a permit application from AWI or taken other steps to reduce its impacts on the species protected by the Migratory Bird Treaty Act (MBTA) or the Bald and Golden Eagle Protection Act (BGEPA). It was also noted that the golden eagle and other special-status species deaths attributable to AWI operations represent violations of the MBTA and BGEPA, and though enforcement has been withheld for those wind energy companies actively engaged in repowering, AWI is not doing so, and for this reason the Service recommended that the County deny the permit modifications.

AWI provided the County with a letter response to the DSEIR comment letter from USFWS, and it is attached to this staff report.

- The Attorney General opened its letter with opposition to the permit modifications on the grounds that it would “create serious inequities for other turbine operators and will undercut current efforts to repower” the APWRA, and that the DSEIR does not provide substantial evidence to support the required statement of overriding considerations and is otherwise legally inadequate. Primarily, the AG’s office considers repowering to be the more feasible alternative to lessen the significant environmental impacts of the project, and cited case law wherein a lead agency was found to have abused its discretion where the record did not support the finding that other less damaging alternatives were infeasible. It points out that the current record of evidence shows that Alameda County has already made a determination that repowering the APWRA with new turbines is a feasible alternative. The letter closes with a recommendation to the County to not certify the SEIR, and to deny the request.
- The EBRPD expressed its opinion that the finding made in 2013 that Alternative 3 (addressed in the prior 2013 FEIR and roughly the same as the current project proposal) would “very substantially increase the avian mortality impacts compared to the project and all other alternatives... [and] is considered infeasible” would be unchanged, and should continue to be found to be infeasible. The District does not explicitly state that it opposes the permit modifications, but more simply states that the permit extensions would delay repowering – and continue what it considers visual effects that would otherwise be removed.
- Audubon California’s letter begins with an observation that the County previously determined in 2013 that the extension of operations to 2018 were “infeasible” and that removal of the existing turbines after 2016 would be the best means of promoting repowering of the APWRA at large. Most of the comments address the DSEIR and CEQA issues, but others express the opinion that AWI would be given an unfair competitive advantage over other wind energy companies in the APWRA that are pursuing repowering, that the County would be complicit in the killing of golden eagles and other protected species by approving the extension, and as the project would delay repowering and result in higher levels of avian mortality, it should be denied.
- Save Mount Diablo expressed its opposition to the project due to the increases in avian mortality, but primarily addressed its remarks to the DSEIR.

PLANNING CONSIDERATIONS

Planning staff have carefully considered the current project proposal, the FSEIR analysis, the comments from the public, private organizations and government agencies, and support approval of the project in part, with limits on the scale of the permitted operations, additional conditions of approval and related requirements for implementation of the identified Mitigation Measures BIO-16, BIO-17 and BIO-17a. The Board of Zoning Adjustments may choose to approve the project application as proposed with no changes, or it may choose to deny the request. Under the existing CUPs approved in 2013 (Condition 5, Expiration), the applicant has no express or implied right to operate existing turbines under these Permits after October 31, 2015. The Board may consider the assertion by the applicant that in order for it to

operations in a financially feasible manner beyond 2015, and thereby approve the project as proposed. County staff recognize that there are certain overriding considerations, as described in Exhibit C to the draft Resolution, related to local jobs and renewable energy. Alternatively, the Board may consider Planning staff's following recommendations.

Firstly, with respect to the primary request to operate the full 828-turbine, 85.8 MW wind farm for the three years between February 15, 2016 and October 31, 2018, for a cumulative three-year installed capacity of 182.4 MWs, County staff recommend that the use permits be extended ~~but to allow no more than one half of the MWs to be operated within that period, which may be either operated fully until June 22, 2017 (i.e., a total of 12 ¼ months out of the applicant's requested extension to allow 25 ½ months of operation, with winter season shutdown as provided by Mitigation Measure 16), at 50% at 100% capacity for all three years through October 31, 2018, or in other stages such that the three-year installed or operating capacity of AWI's entire windfarm operations, with or without an asset exchange, may not be greater than 91.2 MWs, or one half of 182.4 MWs. The result of such a reduction in MWs would proportionally reduce the number of golden eagle, other raptors and avian species fatalities. The East County Board of Zoning Adjustments may specify that the CUPs will expire on June 22, 2017, or another later date if the applicant requests to operate fewer turbines over a longer period of time.~~

~~Planning staff consider this reduced level of operations to be somewhat comparable to, but notably more liberal than reverting back to the original 2005 CUP conditions, in which only 15 percent of the turbines were allowed to be operating between 2016 and 2018. It would provide for a total operational output in MWs from October 2013 to October 2018 of 220.0 MW, when compared to the other alternatives considered in the 2013 FEIR and as represented in Table 3-2 of the FSEIR (page 33). It is moderately more MWs of allowed output than Alternative 2 considered in the 2013 FEIR (30.5 more MW, compared to 189.5 under Alternative 2, which provided for cessation of operations after October 31, 2016).~~

Secondly, staff believes the applicant should be required to shutdown all turbine sites it currently operates or could operate after the asset exchange, with an HRT rating of 8.5 or greater. The elimination of hazardous-rated turbines (HRTs) has been shown by the preponderance of evidence over many years to reduce the number of avian fatalities, and has been part of the conditions of approval in various forms for the CUPs since 2005.

Thirdly, in order to assure the applicant honors its statements that it is taking all possible steps to engage in repowering of its APWRA assets except under specific conditions that it contends are outside of its control, the applicant should be required to submit a report semi-annually (twice yearly) to the Board of Zoning Adjustments describing, relative to each of the potential obstacles to repowering outlined as "Circumstances Outside of AWI's Control" in the FSEIR (page 25).

Fourthly, the Board should agree on a fatality rate to be used for projecting the total number of golden eagle fatalities anticipated to result from the project, from among the three principal options: a) 0.061 based on the monitoring years 2008-2010; ~~b) 0.071 based on monitoring years 2008-2012; or c) 0.085 using monitoring years 2005-2010.~~ The fatality rate will then be used to determine the number of power pole retrofits to be required under Mitigation Measure BIO-17 (and as adjusted by half, assuming the first recommendation above is required). Further, this fatality rate shall be adjusted for any clean wind power climate benefits and background mortality, with use of best available information, and implemented under adaptive management techniques.

~~Finally, unless the applicant chooses to apply for an eagle take permit as described in Mitigation Measure BIO-17a (and submits a complete draft Eagle Conservation Plan and meets other USFWS requirements for an ETP) within six months of approval of the CUP modifications, the applicant should make a deposit of adequate trust funds prior to the start of each operational year (February 15th of each year, starting in 2016)~~

that are dedicated to implementing Mitigation Measure BIO-17 and/or BIO-17a. Such deposits for the use of power pole retrofits, or contributions to regional conservation of raptor habitat could be adjusted at the end of each operational year (2016 to 2018) based on actual expenditures and power pole retrofits completed, subject to approval by a Technical Advisory Committee (TAC) as will be structured under the APWRA Repowering Program EIR. However, the TAC is not required to approve accounting refunds from expenditures from power pole retrofits, if any.

Finally, the applicant will provide progress reports, on a semi-annual (twice yearly) basis, regarding the installation of its power pole retrofits (as it did with its power pole retrofits in 2014).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DRAFT RESOLUTION NO. 15-XX
AWI PERMIT MODIFICATIONS, PLN2014-00028
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C-8243, Altamont Infrastructure Co./Alameda County Waste Management Authority: APNs: 099A-1770-002-01, 099A-1770-002-02, 099A-1770-002-03, 099A-1780-001-04, 099A-1790-003-00 and 099A-1810-001-00; and

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

WHEREAS, on September 22, 2005 the Alameda County Board of Supervisors approved Resolution Number R-2005-453, on appeal of the East County Board of Zoning Adjustments decisions on November 13, 2003 and January 29, 2004 to conditionally approve a total of 29 conditional use permits (CUPs) for the maintenance and continued operations of existing wind turbines, including one permit (C-8191) held by WindWorks, Inc. (as an operating partner of Altamont Winds, Inc.), thirteen (13) permits held by Altamont Infrastructure Company LLC (a management company which does not own individual turbines) on behalf of Altamont Winds, Inc. and three other companies (SeaWest Power Resources, LLC, Altamont Power, LLC {a subsidiary of FPL Group, Inc. and ESI Energy LLC} and enXco., Inc., collectively the Wind Power Companies) that own turbines (or "beneficially own"), thereby approving with findings included that the CUPs, including those CUPs listed above, were exempt from the California Environmental Quality Act (CEQA), and with conditions modified from the original Board of Zoning Adjustments decision, said Resolution and conditions are incorporated herein by reference (hereinafter the "Permit Extensions"); and

WHEREAS, on January 12, 2006 the East County Board of Zoning Adjustments adopted Resolutions Z-06-03 and Z-06-04, respectively approving two Conditional Use Permits, C-8216 and C-8243, allowing continued operation of existing turbines by WindWorks, Inc. (C-8216), and Altamont Infrastructure Company LLC (C-8243) on separate sites in the APWRA, said use permits having not been included in Resolution R-2005-453, but made subject to the same conditions therein by Resolutions Z-06-03 and Z-06-04; and

WHEREAS, Resolutions R-2005-453, Z-06-03 and Z-06-04, among other conditions, established an Avian Wildlife Protection Program and Schedule (AWPPS, Condition 7), with detailed requirements established in Exhibit G to reduce avian mortality by removing turbines identified as hazardous to avian wildlife, removing derelict turbines, shutting down turbines during winter months when bird use increases, and for the purpose of implementing the repowering program, permanently removing 10% of the existing turbines by September 30, 2009, an additional 25% by September 30, 2013, an additional 50% of the original turbines by September 30, 2015, and the remaining 15% of turbines by September 30, 2018; and

WHEREAS, Resolutions R-2005-453, Z-06-03 and Z-06-04 also required the Permittee to sponsor preparation of an Environmental Impact Report (EIR) to evaluate the environmental effects of the repowering program, the phased removal of turbines and existing operations (Condition 8); and

WHEREAS, in 2005 a coalition of five regional Audubon groups (Golden Gate Audubon Society, Ohlone Audubon Society, Mount Diablo Audubon Society, Santa Clara Valley Audubon Society and Marin Audubon Society, collectively Audubon) and CARE petitioned the Alameda County Superior Court to set aside Resolutions R-2005-453, and subsequently Z-06-03 and Z-06-04 on various grounds, including that such action violated the County's General Code and CEQA, whereupon Audubon, CARE, the County and the Wind Power Companies agreed to participate in mediation and negotiations which led to a Settlement Agreement among the petitioners, the County, and three companies (the "Settling Companies") that own turbines in the APWRA but not including Altamont Winds, Inc. (the "Non-Settling Company"), with the objective of achieving a 50 percent reduction in the mortality rates of four avian raptor species (American kestrel, burrowing owl, golden eagle and red-tailed hawk) by November 1, 2009, adding a conservation planning component to the approved CUPs in consultation with the California Department of Fish and Game (CDFG, recently renamed the Department of Fish and Wildlife or CDFW) regarding such a component and enabling other programs and contingency adaptive management measures; and

WHEREAS, on January 11, 2007 the Alameda County Board of Supervisors adopted Resolution R-2007-111, which authorized the County's participation in the Settlement Agreement and amended the CUPs, thereby replacing Exhibit G (Avian Wildlife Protection Program and Schedule) of the prior Resolution R-2005-453, with Exhibit G-2 for the turbines beneficially owned by the Settling Companies (the "Applicable Turbines"), and Exhibit G-2 for turbines beneficially owned by the Non-Settling Company (Altamont Winds, Inc.) which for all intents and purposes was identical to the original Exhibit G, and made other changes to the conditions of approval of the prior Resolutions for the Applicable Turbines of the Settling Companies, including eliminating the requirement for an EIR to be prepared on the specified schedule and certain requirements related to relocation of identified Tier 1 and Tier 2 hazardous turbines; and

WHEREAS, Altamont Winds, Inc. applied in 2011 to modify its sixteen (16) use permits by eliminating selected requirements of Exhibit G-2 of Resolution R-2007-111 for the remaining life of the permit (years six through eight and years nine through thirteen: October 2010 to September 2018) and require termination of the CUPs on December 31, 2015, or more specifically:

- a) Eliminate the requirement for the annual 3½-month winter season shutdown, from November 1 of each year to the following February 15;
- b) Eliminate the requirement for repowering or permanent shutdown of an additional twenty-five (25) percent of currently operating turbines (10 percent of its turbines having been permanently shut down by September of 2009);
- c) Replace the requirement for repowering or permanent shutdown of an additional fifty (50) percent of operating turbines by September 2015 with a requirement that 100

percent of all originally approved turbines be permanently shut down on December 31, 2015; and

- d) Add a requirement that the County consider the human health, wildlife and climate benefits of wind power generated in the APWRA when making regulatory and use permit decisions;

WHEREAS, the Planning Department determined that the proposed permit modifications of 2013 would result in potentially significant adverse environmental impacts and therefore be a project subject to the California Environmental Quality Act (CEQA), and that completion of an Environmental Impact Report (EIR) 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, Altamont Winds Inc. and Windworks Inc. filed the subject application in early 2014 requesting extension of its permits through the end of 2018, which was one of the alternatives considered in the 2013 FEIR (Alternative 3), but for which the Board made findings in July 2013 to reject as infeasible and as likely to result in the next highest level of avian mortality after the proposal to operate without the winter season shutdown, and in order to address continued operations only and not the effects of decommissioning addressed in the 2013 EIR, provide the basis for findings in support of operations through 2018, incorporate new mitigation options and provide for adequate public review, the County required the preparation of a Supplemental Environmental Impact Report (SEIR) ; and

WHEREAS, a Draft SEIR was completed on November 17, 2014, which made the same findings as the original 2013 EIR of significant adverse impacts, either directly or

through habitat modifications, on special-status avian species, and identified the same mitigation measures applicable to ongoing operations as the 2013 EIR but also identified a new Mitigation Measure 17a to provide optional strategies to mitigate impacts on special-status avian species; and

WHEREAS, the East County Board of Zoning Adjustments held a public hearing on said application at the hour of 1:30 p.m. on the 18th day of December, 2014 for the purpose of receiving comments on the Draft SEIR, and again at 1:30 p.m. on the 2nd day of February, 2015 for the purpose of receiving comments on the project proposal, in the City of Pleasanton Council Chambers, 200 Old Bernal Avenue, Pleasanton, California; and

WHEREAS, the Planning Department submitted a Staff Report to the Board 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-XX** on February 2, 2015 to certify that the Final SEIR has been completed in compliance with CEQA, that the Final SEIR was presented to the Board and reviewed and considered the information contained in the Final EIR, that the Final EIR reflects the independent judgment of the Board; and

WHEREAS, the Board has considered Exhibit A (Written Findings of Significant Effects), Exhibit B (Mitigation Monitoring and Reporting Program) and Exhibit C (Statement of Overriding Considerations) of this Resolution, each of which are required by State and Local CEQA Guidelines; and

WHEREAS, East County Board of Zoning Adjustments has determined that extension of the Conditional Use Permits as conditioned herein, including implementation of the Mitigation Monitoring and Reporting Program attached as Exhibit B, would provide for all of the significant effects on the environment to have been eliminated or substantially lessened where feasible, as indicated in the Written Findings of Significant Effects attached as Exhibit A, and that there are remaining significant effects on the environment found to be unavoidable which 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, Z-06-03, Z-06-04 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 East County Board of Zoning Adjustments did hear and consider all said reports, recommendations and testimony as hereinabove set forth;

NOW THEREFORE BE IT RESOLVED, that this East County Board of Zoning Adjustments does hereby find the following with respect to the requested Conditional Use Permit extensions:

1. That the recitals above are accurate and are hereby adopted as findings of this Board of Zoning Adjustments; and

2. The Board shall require Mitigation Measure 17 to 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;

~~OR 2. The Board shall require Mitigation Measure 17 to be implemented on the basis of the average golden eagle fatality rate (0.075) obtained from the Avian Monitoring Reports results for the bird years 2008 to 2012, in recognition that such a rate represents the largest number of years (i.e., more supporting data) during which time the winter season shutdown was in effect;~~

~~OR 2. The Board shall require Mitigation Measure 17 to be implemented on the basis of the average golden eagle fatality rates (0.085) obtained from the Avian Monitoring Reports results for the bird years 2005 to 2010, in recognition that such a rate represents the worst case rate and the worst case rate available in 2013 used to calculate Mitigation Measure 17 under the 2013 EIR;~~

BE IT FURTHER RESOLVED that the Board of Zoning Adjustments does hereby amend the subject Conditional Use Permits approved by Resolutions R-2005-453, Z-06-03, Z-06-04, R-2007-111, Z-13-35 and Z-13-36, held in separate files in the offices of the

Community Development Agency, Planning Department, 224 West Winton, Rm. 111, Hayward, CA, 94544), subject to the following amended 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 to 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. Beginning on February 15, 2016, the Permittee shall **not** be limited to operate its wind energy turbine facilities ~~to have an installed total operating capacity of 91.2 MW~~ over three years, ~~either by operating all facilities until June 22, 2017 (i.e., a total of 12 ¾ months), or by shutting down 50% of its turbines through October 31, 2018, or in other stages such that the three-year installed or operating capacity may not be greater than 91.2 MWs. The Permittee shall submit its plans to the Planning Director to operate a set number of turbines for a set number of months prior to each February 15 of the years 2016 to 2018, and cease operating all turbines after the installed and operating capacity in these three years reaches 91.2 MWs based on the number and months of operations reported in said plans.~~
3. By October 31, ~~2015~~ 2013, 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.
4. ~~Unless the Permittee chooses to apply for an eagle take permit as described in Mitigation Measure BIO 17a (and submits a complete draft Eagle Conservation Plan and meets other USFWS requirements for an ETP) within six months of account of adequate funds prior to the start of each operational year (February 15th of each year, starting in 2016), that are dedicated to implementing Mitigation Measure BIO 17 and/or BIO 17a.~~

~~Such deposits for the use of power pole retrofits, or contributions to regional conservation of raptor habitat may be adjusted (supplemented with additional funds or refunded) at the end of each operational year (2016 to 2018) based on actual expenditures and power pole retrofits completed.~~

5. 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 ~~Resolution Z-13-35~~ this Resolution.
6. Indemnity: The Permittee shall defend, indemnify and hold harmless Alameda County and its agents, officers and employees from any claim, action or proceeding against Alameda County, and/or its agents, 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. 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.
7. Repowering Progress Reporting. The Permittee shall submit a report semi-annually (twice yearly) to the Board of Zoning Adjustments describing, relative to each of the potential obstacles to repowering outlined as "Circumstances Outside of AWI's Control" in the FSEIR.
8. Expiration: This permit shall expire on October 31, 2018 one month after its 13th (thirteenth) anniversary. The Permittee(s) shall have no express or implied right to operate existing turbines under these Permits after October 31, 2018.

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.

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

EXHIBIT B

Bibliography of Recent Documentation on Rodenticide Poisoning of Raptor Species

Anticoagulant Rodenticides: Secondary Poisoning of Wildlife in California, Stella McMillin, California Department of Fish and Game, Wildlife Investigations Laboratory (Dec. 12, 2012).

Rodenticides: Rodenticides can harm wildlife; please use carefully, California Department of Fish and Wildlife (last viewed February 9, 2015). <https://www.wildlife.ca.gov/LivingwithWildlife/Rodenticides>.

Anticoagulant Rodenticide Fact Sheet, Oregon Department of Fish and Wildlife (Dec. 4, 2013).

Poisoning of Wildlife With Anticoagulant Rodenticides in New York, Ward B. Stone, Joseph C. Okoniewski, James R. Stedelin, Journal of Wildlife Diseases, Vol. 35 No 2 (Apr. 1999).

Protecting Raptors from Rodenticides, William Quarles, Common Sense Pest Control Quarterly, Vol. XXVII, No. 104 (Jan. 2011).

Poisons Used to Kill Rodents Have Safer Alternatives, Ted Williams, National Audubon Society, (Jan. 2013).

Peet's Coffee and Poisoned Raptors, Iliana DeBare, Golden Gate Audubon Society (Aug. 1, 2012).

Update – Risks to Raptors From Anticoagulant Rodenticides, Scott Thomas, Sea and Sage Audubon Society (Apr. 17, 2014).

Rodent-killing Poisons Also Kill Foxes, Haws, Other Wildlife, Jonathan Evans, Center for Biological Diversity (Dec. 11, 2012).

California Bans Retail Sale of Super-toxic Rat Poisons, Jonathan Evans, Center for Biological Diversity (Mar. 20, 2014).

Super Toxic Rat Poison, Environmental Protection Information Center, (last viewed Feb. 9, 2015). <http://www.wildcalifornia.org/actionissues/pollutionpot/supertoxicratpoison/>

Rodenticides and Raptors – A Deadly Relationship, The Hungry Owl Project (Jan. 20, 2006).

Rodenticides are Killing California Hawks, S.E. Smith, Care2 (Jul. 13, 2014).

Household rat poison linked to death and disease in wildlife, Martha Groves, Los Angeles Times (Apr. 16, 2014). <http://www.latimes.com/local/lameratpoison20140418story.html#page=1>

EXHIBIT C

Statement of Overriding Considerations from Alameda County Staff Report

Exhibit C

Statement of Overriding Considerations

Pursuant to the requirements of CEQA Sections 21002, 21002.1, and 21081 and Section 15093 of the State CEQA Guidelines, the EBZA finds that approval of Modifications to the Conditional Use Permits (2013) for Altamont Winds, Inc., the potential environmental impacts of which have been evaluated in the Final Supplemental EIR, and as indicated in the above findings, will result in the occurrence of significant effects which are not avoided or substantially lessened, as described in the Written Findings of Environmental Significance. 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

Further, as required by CEQA Section 21081(b) and State CEQA Guidelines Section 15093, the EBZA finds that the unavoidable significant effects listed above are outweighed by specific findings that the project, as mitigated by the measures identified in the EIR, would provide overriding economic and region-wide and statewide environmental benefits. There are no legal, social, technological or other benefits known to the County, nor are such benefits required to be provided (they are only examples of reasons that may be applicable). Specifically, the project will provide the following benefits:

Economic Benefits

The project will maintain the electrical production from the AWI windfarm as has been in place since the beginning of 2013, or a maximum of 85.8 MW, 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 represents 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 Altamont Winds, Inc. to continue operating at its full capacity through 2018 would also serve to maintain a greater number of jobs and higher tax revenue from the production of electricity.

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 under construction in Hayward) that would in part serve to replace electrical energy production capacity that would be eliminated if the project were not approved.

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 31, 2018 and required removal by 2020 will further assist in these repowering efforts.

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. 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 are limited.

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. 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, to the least acceptable level.



February 13, 2015

Via Federal Express & Email

Maria Palmeri
Alameda County Planning Department
224 West Winton Ave., Room 111
Hayward, California 94544

RE: Appeal of the certification of the Supplemental Environmental Impact Report for the
Altamont Winds, Inc. proposed Conditional Use Permit modifications

Dear Ms. Palmeri:

Audubon California, Golden Gate Audubon Society, Santa Clara Valley Audubon Society, Marin Audubon society, and Mount Diablo Audubon Society (collectively "Audubon") write to appeal the February 2, 2015 decision by the Alameda County East Board of Zoning Adjustments (EBZA) to certify the Supplemental Environmental Impact Report (SEIR) for the proposed project of modifying 16 Conditional Use Permits (CUPs) for Altamont Winds, Inc. (AWI). The Planning Department code for this action is PLN2014-00028.

Written and oral testimony regarding the SEIR has repeatedly demonstrated that the document fails to meet the requirements of the California Environmental Quality Act (CEQA) on several grounds, including, but not limited to:

- reliance on an incorrect baseline for bird mortality that results in an underestimation of bird mortality due to the project;
- underestimation of projected bird mortality due to flawed analysis;
- failure to acknowledge that the Altamont Pass Golden Eagle population current has a 12% mortality rate due to wind turbines when the Fish & Wildlife Service has determined that local mortality from wind projects should not exceed 5%;
- failure to adequately identify and assess all significant impacts arising from the project;
- failure to adequately assess cumulative impacts;
- failure to adequately identify and assess all reasonable mitigation measures and to propose feasible mitigation measures that would reduce the severity of potential impacts from the project;
- incorrectly deferring mitigation and/or inadequately describing mitigation measures, which prevented the public and decision-makers from assessing their adequacy; and
- failure to acknowledge that approval of the project would have additional impacts, including the potential delay of repowering in the Altamont Pass and disruption to monitoring efforts, and would contradict the reasons for approving the modifications in 2013.

Because the SEIR fails to meet the requirements of CEQA, the EBZA erred. We ask that the Alameda County Board of Supervisors overturn the EBZA and determine that the SEIR is inadequate and cannot be certified until revised to meet CEQA's standards.

Thank you for processing this appeal. Audubon will subsequently submit additional materials to more fully explain the SEIR's inadequacies and reasons for this appeal. Should you need additional information, please do not hesitate to contact me at (916) 737-5707 ext. 102 or mlynes@audubon.org.

Respectfully submitted,



Michael Lynes
Director of Public Policy
Audubon California

Cindy Margulis
Executive Director
Golden Gate Audubon Society

Nancy Wenninger
Conservation Chair
Mount Diablo Audubon Society

Barbara Salzman
President
Marin Audubon Society

Shani Kleinhaus
Environmental Advocate
Santa Clara Valley Audubon Society



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

February 13, 2015

Chris Bazar
Agency Director

Albert Lopez
Planning Director

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William Damon
Altamont Winds, Inc.
15850 Jess Ranch Road
Tracy, CA 95377

Re: Conditional Use Permit Modifications, PLN2014-00028, Alameda County (East) Board of Zoning Adjustments

Your application, PLN2014-00028, to modify and extend 16 Conditional Use Permits, originally approved by Resolution R-2005-453 of the Alameda County Board of Supervisors on September 22, 2005, and by Resolutions Z-06-03 and Z-06-04 of the East County Board of Zoning Adjustments on January 12, 2006, and as modified by the Board of Zoning Adjustments by Resolution Z-13-36 on July 18, 2013, for the maintenance and continued operations of existing wind turbines in the Altamont Pass Wind Resources Area (APWRA) of Alameda County, has been denied subject to Resolution Z-15-04 of the East County Board of Zoning Adjustments (EBZA), dated February 2, 2015.

Also on February 2, 2015, prior to the action to deny PLN2014-00028, the EBZA certified the Supplemental Environmental Impact Report (SEIR) prepared to evaluate the proposed modifications of application PLN2014-00028.

This action may be appealed within ten (10) days after the action by the Board of Zoning Adjustments on February 2, 2015, by submitting a letter to the Planning Department, 224 W. Winton Avenue, Room III, Hayward, CA 94544. As the ten-day period falls on a County holiday (Lincoln's Birthday), the appeal period was extended by one additional day, ending on Friday, February 13, 2015. The project applicant will be charged actual County costs for consideration of appeals. An appeal fee of \$250.00 must be submitted by anyone else appealing an action. The application number, PLN2014-00028, any specific condition appealed, and the reason for the appeal should be clearly stated in the letter.

We are in receipt of letters of appeal from Jeremy Liem, Altamont Winds, Inc., of the EBZA decision under Resolution Z-15-04 to deny Conditional Use Permit PLN2014-00028, and from Audubon California and affiliated regional chapters of the decision of the EBZA under Resolution Z-15-03 to certify the Final Supplemental Environmental Impact Report. These appeal letters will be provided upon request, and will be available on the Planning Department's website at least ten (10) days prior to a hearing by the Board of Supervisors on these appeals.

If you have any questions on this matter, please contact Andrew Young at (510) 670-5400.

Very truly yours,

Albert Lopez
Planning Director

Enclosures: Resolution Z-15-03, Certifying Supplemental Environmental Impact Report
Resolution Z-15-04, Denying Application PLN2014-00028

cc: Affected property owners, responsible government agencies and interested parties

**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**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, on September 22, 2005 the Alameda County Board of Supervisors approved Resolution Number R-2005-453, on appeal of the East County Board of Zoning Adjustments decisions on November 13, 2003 and January 29, 2004 to conditionally approve a total of 29 conditional use permits (CUPs) for the maintenance and continued operations of existing wind turbines, including one permit (C-8191) held by WindWorks, Inc. (as an operating partner of Altamont Winds, Inc.), thirteen (13) permits held by Altamont Infrastructure Company LLC (a management company which does not own individual turbines) on behalf of Altamont Winds, Inc. and three other companies (SeaWest Power Resources, LLC, Altamont Power, LLC {a subsidiary of FPL Group, Inc. and ESI Energy LLC} and enXco., Inc., collectively the Wind Power Companies) that own turbines (or "beneficially own"), thereby approving with findings included that the CUPs, including those CUPs listed above, were exempt from the California Environmental Quality Act (CEQA), and with conditions modified from the original Board of Zoning Adjustments decision, said Resolution and conditions are incorporated herein by reference (hereinafter the "Permit Extensions"); and

WHEREAS, on January 12, 2006 the East County Board of Zoning Adjustments adopted Resolutions Z-06-03 and Z-06-04, respectively approving two Conditional Use Permits, C-8216 and C-8243, allowing continued operation of existing turbines by WindWorks, Inc. (C-8216), and Altamont Infrastructure Company LLC (C-8243) on separate sites in the APWRA, said use permits having not been included in Resolution R-2005-453, but made subject to the same conditions therein by Resolutions Z-06-03 and Z-06-04; and

WHEREAS, Resolutions R-2005-453, Z-06-03 and Z-06-04, among other conditions, established an Avian Wildlife Protection Program and Schedule (AWPPS, Condition 7), with detailed requirements established in Exhibit G to reduce avian mortality by removing turbines identified as hazardous to avian wildlife, removing derelict turbines, shutting down turbines during winter months when bird use increases, and for the purpose of implementing the repowering program, permanently removing 10% of the existing turbines by September 30, 2009, an additional 25% by September 30, 2013, an additional 50% of the original turbines by September 30, 2015, and the remaining 15% of turbines by September 30, 2018; and

WHEREAS, Resolutions R-2005-453, Z-06-03 and Z-06-04 also required the Permittee to sponsor preparation of an Environmental Impact Report (EIR) to evaluate the

environmental effects of the repowering program, the phased removal of turbines and existing operations (Condition 8); and

WHEREAS, in 2005 a coalition of five regional Audubon groups (Golden Gate Audubon Society, Ohlone Audubon Society, Mount Diablo Audubon Society, Santa Clara Valley Audubon Society and Marin Audubon Society, collectively Audubon) and CARE petitioned the Alameda County Superior Court to set aside Resolutions R-2005-453, and subsequently Z-06-03 and Z-06-04 on various grounds, including that such action violated the County's General Code and CEQA, whereupon Audubon, CARE, the County and the Wind Power Companies agreed to participate in mediation and negotiations which led to a Settlement Agreement among the petitioners, the County, and three companies (the "Settling Companies") that own turbines in the APWRA but not including Altamont Winds, Inc. (the "Non-Settling Company"), with the objective of achieving a 50 percent reduction in the mortality rates of four avian raptor species (American kestrel, burrowing owl, golden eagle and red-tailed hawk) by November 1, 2009, adding a conservation planning component to the approved CUPs in consultation with the California Department of Fish and Game (CDFG, recently renamed the Department of Fish and Wildlife or CDFW) regarding such a component and enabling other programs and contingency adaptive management measures; and

WHEREAS, on January 11, 2007 the Alameda County Board of Supervisors adopted Resolution R-2007-111, which authorized the County's participation in the Settlement Agreement and amended the CUPs, thereby replacing Exhibit G (Avian Wildlife Protection Program and Schedule) of the prior Resolution R-2005-453, with Exhibit G-2 for the turbines beneficially owned by the Settling Companies (the "Applicable Turbines"), and Exhibit G-2 for turbines beneficially owned by the Non-Settling Company (Altamont Winds, Inc.) which for all intents and purposes was identical to the original Exhibit G, and made other changes to the conditions of approval of the prior Resolutions for the Applicable Turbines of the Settling Companies, including eliminating the requirement for an EIR to be prepared on the specified schedule and certain requirements related to relocation of identified Tier 1 and Tier 2 hazardous turbines; and

WHEREAS, Altamont Winds, Inc. applied in 2011 to modify its sixteen (16) use permits by eliminating selected requirements of Exhibit G-2 of Resolution R-2007-111 for the remaining life of the permit (years six through eight and years nine through thirteen: October 2010 to September 2018) and require termination of the CUPs on December 31, 2015, or more specifically:

- a) Eliminate the requirement for the annual 3½-month winter season shutdown, from November 1 of each year to the following February 15;
- b) Eliminate the requirement for repowering or permanent shutdown of an additional twenty-five (25) percent of currently operating turbines (10 percent of its turbines having been permanently shut down by September of 2009);

- c) Replace the requirement for repowering or permanent shutdown of an additional fifty (50) percent of operating turbines by September 2015 with a requirement that 100 percent of all originally approved turbines be permanently shut down on December 31, 2015; and
- d) Add a requirement that the County consider the human health, wildlife and climate benefits of wind power generated in the APWRA when making regulatory and use permit decisions;

WHEREAS, the Planning Department determined that the proposed permit modifications of 2013 would result in potentially significant adverse environmental impacts and therefore be a project subject to the California Environmental Quality Act (CEQA), and that completion of an Environmental Impact Report (EIR) was required by Condition 8 of Resolution R-2005-453 (and Condition 8 of Resolution R-2007-111); and

WHEREAS, an EIR was prepared in compliance with CEQA to evaluate the permit modifications, ongoing operations and future decommissioning impacts associated with repowering as required by Condition 8 of Resolution R-2007-111, and the East County Board of Zoning Adjustments held a public hearing and certified the Final EIR (FEIR) on July 18, 2013; and

WHEREAS, on July 18, 2013 the East County Board of Zoning Adjustments approved by Resolution Z-13-36 Alternative 1 as defined in the FEIR, as a version of the application to modify the use permits allowing for undiminished operation (without phased decommissioning as required under the AWPPS program of the 2005 CUPs) of the applicant's turbines, providing for continued winter seasonal shutdowns between November 1 and the following February 15 of each year, removal or relocation of individual turbines with a Hazardous Rated Turbine (HRT) ranking of 9.5 and 10.0, retrofitting of power poles to compensate for projected golden eagle fatalities and expiration on October 31, 2015; and

WHEREAS, the applicant has complied with the conditions of approval under Resolution Z-13-36 to continue the winter season shutdowns, remove designated HRT turbines and retrofit the requisite number of power poles in coordination with a local utility provider; and

WHEREAS, Altamont Winds Inc. and Windworks Inc. filed the subject application in early 2014 requesting extension of its permits through the end of 2018, which was one of the alternatives considered in the 2013 FEIR (Alternative 3), but for which the Board made findings in July 2013 to reject as infeasible and as likely to result in the next highest level of avian mortality after the proposal to operate without the winter season shutdown, and in order to address continued operations only and not the effects of decommissioning addressed in the 2013 EIR, provide the basis for findings in support of operations through 2018, incorporate new mitigation options and provide for adequate public review, the County required the preparation of a Supplemental Environmental Impact Report (SEIR); and

WHEREAS, a Draft SEIR was completed on November 17, 2014, which made the same findings as the original 2013 EIR of significant adverse impacts, either directly or through habitat modifications, on special-status avian species, and identified the same mitigation measures applicable to ongoing operations as the 2013 EIR but also identified a new Mitigation Measure 17a to provide optional strategies to mitigate impacts on special-status avian species; and

WHEREAS, the East County Board of Zoning Adjustments held a public hearing on said application at the hour of 1:30 p.m. on the 18th day of December, 2014 for the purpose of receiving comments on the Draft SEIR, and again at 1:30 p.m. on the 2nd day of February, 2015 for the purpose of receiving comments on the project proposal, in the City of Pleasanton Council Chambers, 200 Old Bernal Avenue, Pleasanton, California; and

WHEREAS, the Applicant attended the hearings on December 18, 2014 and February 2, 2015 during which it presented evidence to the East County Board of Zoning Adjustments in support of its application, including presentations on February 2, 2015 by its President, Senior Vice President, Project Engineer and Legal Counsel and submission of evidence regarding the Applicant's description of the project's benefits, such as green energy and jobs; and

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

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

WHEREAS, it satisfactorily appears from affidavits on file that proper notice of said public hearings was given in all respects as required by law; and

WHEREAS, the East County Board of Zoning Adjustments approved Resolution Z-15-03 on February 2, 2015 to certify that the Final SEIR has been completed in compliance with CEQA, that the Final SEIR was presented to the Board and reviewed and considered the information contained in the Final EIR, that the Final EIR reflects the independent judgment of the Board; and

WHEREAS, the Board has considered Exhibit A (Written Findings of Significant Effects), Exhibit B (Mitigation Monitoring and Reporting Program) and Exhibit C (Statement of Overriding Considerations) of this Resolution, each of which are required by State and Local CEQA Guidelines; and

WHEREAS, the East County Board of Zoning Adjustments did hear and consider all said reports, recommendations and testimony as hereinabove set forth;

NOW THEREFORE BE IT RESOLVED, that this East County Board of Zoning Adjustments does hereby find the following with respect to the requested Conditional Use Permit extensions:

1. That the recitals above are accurate and are hereby adopted as findings of this Board of Zoning Adjustments; and
2. The proposed Statement of Overriding Considerations does not meet the requirements of Section 15093 of the CEQA Guidelines in that it does not identify economic, legal, social, technological or other benefits of the project that outweigh its unavoidable adverse environmental risks, or that are supported by substantial evidence in the record; and
3. Based on testimony received, and the evidence before the Board, that the economic benefit of the proposal to extend for three years the existing CUPs does not exceed the value of impacts on biological resources; and
4. No substantial evidence has been presented that no repowering project, which was the principal intent of the prior Resolution Z-13-36, or that no other wind power project, will move forward should the application be denied, nor has substantial evidence been provided that there would be a loss of jobs as a result of disapproval of the application sufficient to outweigh the unavoidable adverse environmental risks of the project; and

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

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

86 MW ALTAMONT WIND FARMS
MODIFICATIONS TO EXISTING CONDITIONAL USE PERMITS
FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT (SEIR)

PUBLIC HEARING – CERTIFICATION OF FINAL SEIR

FEBRUARY 2, 2015



ALAMEDA COUNTY | Community Development Agency



PURPOSE OF PRESENTATION

- **Provide Brief Review of 86 MW Altamont Wind Farms Project – CUP Extension to 2018**
- **Review Public Comments on Draft SEIR and Associated Responses**
- **Additional Discussion of SEIR Document**

PROPOSED PROJECT

- Extension of operations of 16 existing CUPs set to expire on October 31, 2015 (as amended in July 2013)
- **Specifically, extend CUP through October 31, 2018** for operation of 828 turbines with a rated capacity of 86 MW, under specified conditions

KEY PROJECT COMPONENTS

- 828 existing operating
- 155 acres within a 14,196-acre area
- Nameplate capacity of 85.8 MW
- Operating output capacity of 60.8 MW with winter season shutdown

86 MW Altamont Wind Farms
Draft SEIR

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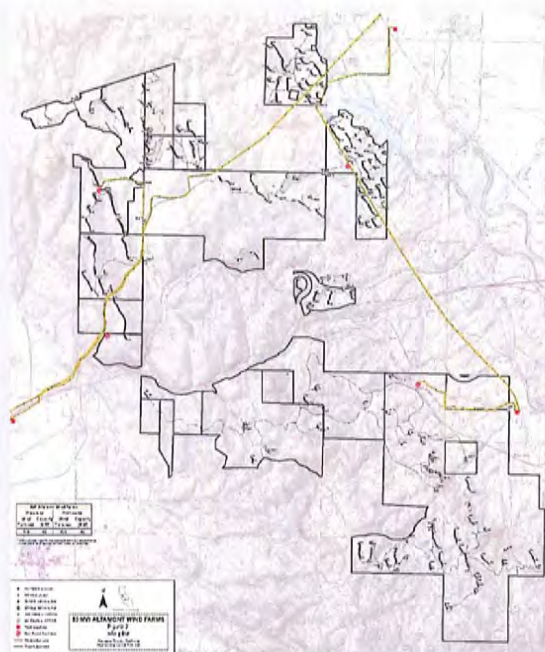
ASSET EXCHANGE

- Not part of project application or for approval, but informational and geographically relevant
- Exchange approximately 300 wind turbines south of I-580 for an equal number of wind turbines owned and operated by Green Ridge Power LLC, north of I-580.
- Exchange will not increase the capacity or quantity of AWI's operating turbines.
- Asset exchange will physically separate shared assets and allow for unencumbered and geographically consolidated operations.

86 MW Altamont Wind Farms
Draft SEIR

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PROJECT OPERATIONAL AREA



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SEIR PROCESS SCHEDULE

Distribute Notice of Preparation (NOP)	9/15/14 – 10/15/14
Prepare Draft SEIR <ul style="list-style-type: none"> Evaluate only the additional environmental effects attributable to the additional 3 years of operations proposed by AWI Recommend mitigation measures to avoid/reduce impacts 	10/15/14 – 11/14/14
Circulate Draft SEIR for public review <ul style="list-style-type: none"> Scientific Review Committee Public Hearing for comments (EBZA) 	11/17/14 – 1/12/15 (extended) 12/11/14 12/18/14
Respond to comments / prepare Final SEIR <ul style="list-style-type: none"> Circulate Final SEIR 	1/12/14 – 1/23/15 1/23/15
EZBA Hearing	2/2/15

86 MW Altamont Wind Farms
Draft SEIR

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PUBLIC COMMENTS AND RESPONSES

Major Public Comments

- Fatality Calculation and Use of MW-Years
- Baseline for Analysis
- Asset Exchange and Reduction of HRTs
- Inadequacy of Mitigation Measures
- Cumulative Impacts on Avian Populations
- Current Monitoring Data
- Overriding Considerations

86 MW Altamont Wind Farms
Draft SEIR

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PUBLIC COMMENTS AND RESPONSES

Fatality Calculation and Use of MW-Years

Comment

Fatalities were calculated using only 0.708 of a MW-year, and that such a "subtraction" resulted in flawed or underestimated projections of avian mortality.

Comment originated with the SRC and was repeated by others

Response

- The fatalities were calculated on the basis of only the fatality rates obtained from the Avian Monitoring Reports, and the MWs of each scenario over the entire analysis period, operate between October 1, 2013 and October 31, 2018.
- No subtraction occurred. All scenarios include a seasonal shutdown – 60.8 MWs of installed capacity allowed to operate each year, out of 85.6 MWs. Same as past 6 years.
- Each scenario is therefore measured or "scored" by the same metric.
- Bias recognized in 2013 for estimate of impacts of the 2013 proposal for operations without a seasonal shutdown, due to the likelihood of substantially higher fatality rates during the peak winter migration season, but none of the scenarios currently under review involve operations during the winter season shutdown.

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PUBLIC COMMENTS AND RESPONSES

Baseline for Analysis

Comments

The proposed extension of operations from 2016 to 2018 should have been analyzed by comparison with conditions with no operations in the same period, as under current CUPs, in order to show in more sharp relief the project's levels of avian mortality.

Response

- The Supplemental EIR used the same baseline as in the 2013 FEIR: continued operations with phased decommissioning through 2018, because of the need to compare each scenario on the same metric.
- However, a comparison with the current CUPs expiration on October 31, 2015 is clearly evident in the FSEIR on Table 3-3, on page 33, which shows the net increase in avian fatalities over three years.

PUBLIC COMMENTS AND RESPONSES

Asset Exchange and Reduction of HRTs

Comments

SEIR appeared to give 'credit' to the asset exchange, because it would reduce the number of HRTs (high-risk turbines), and modestly lower the total MWs of operating capacity

Response

- FSEIR makes it clear that neither the asset exchange or reduction of HRTs are treated as mitigation measures, though it is recognized that it will help facilitate repowering of the APWRA on those parcels south of I-580 that AWI will exchange or trade 'away' for assets north of I-580.
- It was clarified in the FSEIR that the asset exchange is *not* an actual component of the project but merely a likely means of 'disentangling' assets or physically separate certain historically shared (or common) project assets.

PUBLIC COMMENTS AND RESPONSES

Inadequacy of Mitigation Measures

Comments

Mitigation measures identified lacked guarantee and certainty of being implemented, such as how Mitigation Measure BIO-17a was an option rather than a requirement. In addition, the number of power pole retrofits to be required under Mitigation Measure BIO-17 were not sufficiently clear.

Response

- The FSEIR clarifies that Mitigation Measure BIO-17a would be an option to mitigating all of the impacts on avian species through power pole retrofits (BIO-17).
- Mitigation Measure BIO-17a was changed to eliminate two options that relied on the estimate of the cost of an individual raptor recovery (\$580), which was disavowed by the California Raptor Center as the actual cost (cost derived from 2014 Program EIR). Also deleted "Other Conservation Measures Identified in the Future."
- Number of power pole retrofits were noted as being 322 power poles, and not 29, based on a golden eagle fatality rate of .061 which is further clarified in the staff report.

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PUBLIC COMMENTS AND RESPONSES

Cumulative Impacts on Avian Populations

Comments

Asked why the DSEIR did not evaluate in broader terms the deaths of avian predators on local or regional breeding, wintering and migratory populations, or other cumulative impacts.

Response

- As a Supplement to the 2013 FEIR, it would be inappropriate to add a new or expanded scope of assessment or methodology to define new impacts.
- Mitigation Measures BIO-16, -17, and 17a are all intended to address cumulative impacts on all bird species. BIO-17a would require a Resource Equivalency Analysis (REA), which would address wider ecological issues, provide landscape-scale analysis and identify appropriate compensation and conservation strategies.
- Cumulative impacts of other wind and energy projects in the APWRA were considered in the 2013 FEIR. The impacts of the project are categorized as cumulatively significant and unavoidable.

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PUBLIC COMMENTS AND RESPONSES

Current Monitoring Data

Comments

Requested that the SEIR incorporate the latest Avian Monitoring Reports to estimate APWRA-wide avian mortality rates, to include bird years 2011 and 2012.

Response

- For consistency between the 2013 FEIR and the SEIR, the 2008-2010 mortality rates should be used. However, the DSEIR added data from bird year 2011, and the FSEIR shows fatality rates from bird years through 2012.
- Use of later bird year data did not substantially change the estimated range of projected fatalities. Golden eagle fatality rates remained within the previous range.
- Staff recognize that use of mortality rates from 2008 to 2010, or with addition of 2011 and 2012 data, is consistent with CEQA or County practice to consider the entire record before the decision-makers and the public.

PUBLIC COMMENTS AND RESPONSES

Avian Impacts

Estimated Fatality Total of Golden Eagle, Based on an Average Fatality Rate (Fatalities per MW per Year)

SCENARIO	TOTAL MW YEARS	2005 – 2010 (Golden Eagle Avg. Rate .083)	2008 – 2010 (Golden Eagle Avg. Rate .061)	2008 – 2012 (Golden Eagle Avg. Rate .075)
2013 FEIR Proposed Project	193.1	16.41	11.78	14.48
2013 No Project Alternative	116.5	9.90	7.11	8.73
2013 FEIR Alternative 1 (Current CIP Conditions)	128.7	10.94	7.85	9.65
2013 FEIR Alternative 3	311.0	26.44	18.98	23.32
Years 2016 - 2018	182.4	15.50	11.13	13.68

PUBLIC COMMENTS AND RESPONSES

Overriding Considerations

Comments

The SEIR lacks back-ground information necessary to support a Statement of Overriding Considerations

Response

- SEIR describes some of the intended benefits of the project (page 23, Section 2.3, Project Need and Objectives), which may contribute to the content of the Statement of Overriding Considerations.
- A Statement of Overriding Considerations does not normally rely solely on the analysis in an EIR. It may be based on information from the 2013 FEIR, the SEIR, or other information in the record.
- FSEIR is only intended to inform the County's decision makers and the public about the potential environmental effects of the CUP modification now proposed by the applicant.

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CLARIFICATIONS

Avian Impacts

Table 3-5-Updated: Comparison of Adjusted Species Fatality Totals of Four Focal Species, Based on an Average Fatality Rate (Fatalities per Megawatt per Year), 2008-2010 and 2005-2010

SPECIES	AVERAGE FATALITIES PER MW (2005-2010/2008-2010/2006-2011/2005-2012/2008-2012)	PROJECTED RANGE OF FATALITIES UNDER THE 2013 FEIR PROPOSED PROJECT (2013-2018 w/ WSSD)	PROJECTED RANGE OF FATALITIES UNDER 2013 FEIR BASELINE CONDITIONS (2005-2018 w/ WSSD & phased shutdowns)	PROJECTED RANGE OF FATALITIES UNDER 2013 FEIR ALTERNATIVE 3 (2013-2018 w/ WSSD)	PROJECTED RANGE OF FATALITIES UNDER 2013 FEIR ALTERNATIVE 1 (Current CUP Conditions)	PROJECTED RANGE OF FATALITIES FOR YEARS 2016-2018 (current proposed project)
American Kestrel	0.496/0.443/0.59/ 0.577/0.571	85.5-113.9	51.6-68.7	137.8-183.5	57-75.93	80.8-107.6
Burrowing Owl	0.721/0.425/0.78/ 0.70/0.52	82.1-150.6	49.5-90.9	132.2-242.6	54.7-100.39	77.5-142.3
Golden Eagle	0.085/0.061/0.08/ 0.081/0.075	11.7-16.4	7.1-9.9	19-26.4	7.85-10.93	11.1-15.5
Red-Tailed Hawk	0.449/0.286/0.44/ 0.411/0.35	55.2-86.7	33.3-52.3	88.9-139.6	36.81-57.79	52.2-81.9

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CLARIFICATIONS

Mitigation Measure 17 – Retrofitting Power Poles

- Defined originally to address impacts of the 2013 project proposal (combined with Mitigation Measure BIO-16), which was statistically one additional eagle fatality. Based on USFWS (2012) guidelines, 29 utility pole retrofits were required to mitigate each eagle.
- FSEIR used the golden eagle fatality rate from 2008-2010 (0.061 per MW per year) to project fatalities due to the current project proposal – 182.4 net additional MWs times 0.061 = 11.1, times 29 = 322 poles.
- Rate of 0.061 per MW per year, from years 2008-2010 is valid because it is based on three years of winter season shutdown.

CLARIFICATIONS

Mitigation Measure 17 – Retrofitting Power Poles

- DSEIR included data from bird years 2011, and based on comments received, data from bird year 2012 was also added, providing for updated avian fatality rates for all available years with a fully implemented winter season shutdown.
- FSEIR finds it reasonable to provide consistency between a prior EIR and its Supplement. However, the County considers use of the latest data and worst-case conditions to be equally sound and consistent with CEQA and County practice.
- FSEIR identified updated rate of 0.075 golden eagle fatalities per MW per year, from which 13.7 eagle fatalities would be projected, and require retrofitting of 397 power poles (*without* BIO-17a).

CLARIFICATIONS

Mitigation Measure 17

Table 3-8 Updated Annual Number of Eagle Fatalities to be Mitigated Through Power Pole Retrofits (Original 2008-2010 rate, compared to Alternative 2008-2012 rate)

OPERATING YEAR	POLES RETROFITTED		QUANTITY OF GOLDEN EAGLES MITIGATED PER YEAR		QUANTITY OF GOLDEN EAGLES MITIGATED PER PROJECT	
	Original	Alternative	Original	Alternative	Original	Alternative
2016	108	133	3.7	4.6	3.7	4.6
2017	107	132	3.7	4.55	7.4	9.15
2018	107	132	3.7	4.55	11.1	13.7
TOTAL	322	397	3.7	4.6	11.1	13.7

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CLARIFICATIONS

Mitigation Measure 17 – Options for implementation, with golden eagle fatality rates from different bird year sets

OPTIONS	Golden Eagle Fatality Rate	Results from 182.4 of net added MWs For 2014 project	Power pole retrofits required under MM BIO-17
RESULTS FROM 2005-2010	.061	11.1	322
RESULTS FROM 2008-2010	.085	15.5	450
RESULTS FROM 2008-2012	.075	13.7	397

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CLARIFICATIONS

Mitigation Measure 17a – Contributions to raptor conservation efforts

Optional, voluntary measures, may be accepted in lieu of some or all of BIO-17.

OPTION 1: Obtaining a programmatic eagle take permit (ETP) and carrying out measures outlined in an approved Eagle Conservation Plan (ECP) and Bird and Bat Conservation Strategy (BBCS).

ETP would require the applicant to receive USFWS approval of its ECP - not just applying for ETP.

OPTION 2: Contribute to regional conservation of raptor habitat.

The REA must be completed and approved, in consultation with the APWRA TAC, within six (6) months of the CUP approval and acquisition of conservation easements be completed within twelve (12) months of the CUP approval. The REA must be accepted by the USFWS and the County.

QUESTIONS AND DISCUSSION

Next steps:

- Board takes public comment on the Final SEIR
- Board may certify the Final SEIR
- Board proceeds to Item 2 on the Agenda:
 - Public comment on the project proposal
 - Deliberation and consideration of the project proposal

KEY ISSUES OF PROJECT PROPOSAL

- AWI (applicant) asserts extension is necessary for potential financial, tax policy, and other reasons outside of AWI's control or related to CEQA
- Federal and State Attorney General representatives oppose approval of any extension
- State and Regional Park District urge approval only with conditions involving a take permit application
- California Audubon and Save Mount Diablo oppose approval of any extension

ADDITIONAL ISSUES

Comments to be read into the record

- John Humphrey, representing Rooney property owner, recommends approval of the CUP extensions
- Marie Cooley, representing Ralph Properties II, a family partnership

Hazardous waste issue

- Resident Bob Cooper withdrew comment letter and concerns following site visit with applicant

ADDITIONAL ISSUES

- Late information received that County Waste Management Authority (ACWMA), which owns properties on which AWI operates 20 turbines or 2.6 MWs, does not favor project approval on ACWMA properties.
- County staff recommend the project Resolution be amended to withdraw extension of CUPs C-8216, C-8243 and C-8235.

PLANNING CONSIDERATIONS

- Board may deny the proposed project
 - Condition 5 of existing CUPs states the applicant has no express or implied right to operate existing turbines under these Permits after October 31, 2015
- If Board has certified the Final SEIR:
 - Board may consider project request
 - Project approval requires decision on rate of eagle mortality to be applied for implementation of Mitigation Measure 17
 - Board may consider staff recommendations modifying the project and conditions

PLANNING CONSIDERATIONS

Staff Recommendations:

Modification to Proposed Project

- Reduce project operations by 50% - 182.4 MW to 91.2 MW
 - Reduction can be phased over three years or terminated before 2018 (possible scenarios below)

2016	2017	2018	Total
30.4 MW	30.4 MW	30.4 MW	91.2 MW
60.8 MW	15.2 MW	15.2 MW	91.2 MW
60.8 MW	30.4 MW	0.0 MW	91.2 MW
46.6 MW	46.6 MW	0.0 MW	91.2 MW

- Phased approach is similar to 2005 CUP conditions for approach
- Comparable to Alternative 2 considered in 2013 FEIR (189.5 MW from 2013-2016), but provides for moderately more MWs (30.5).

PLANNING CONSIDERATIONS

Staff Recommendations:

Other Conditions to Proposed Project

- Removal of all hazardous rated turbines (HRTs) rated 8.5 or greater
- Semi-annual reporting to the Board describing AWI's progress towards repowering
- Deposit of adequate trust funds, per MM-BIO-17 and BIO-17a, prior to the start of each operational year (Feb. 15th of each year, starting in 2016)

QUESTIONS

- Questions for staff

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**ALAMEDA COUNTY CDA
PLANNING DEPARTMENT**

STAFF REPORT

TO: EAST COUNTY BOARD OF ZONING ADJUSTMENTS
HEARING DATE: FEBRUARY 2, 2015

GENERAL INFORMATION

**APPLICATION: MODIFICATIONS TO 16 EXISTING CONDITIONAL USE PERMITS
(APPROVED YEAR 2005, AS MODIFIED IN 2013), PLN2014-00028**

APPLICANT: ALTAMONT WINDS, INC.

REQUEST: To extend 16 conditional use permits (CUPs) for three (3) years, through October 31, 2018, under specified conditions, beyond their current expiration date of October 31, 2015, for operation of an estimated 828 existing utility-scale wind turbines with a combined existing (current) generation capacity of 85.8 megawatts (MW).

LOCATION, SPECIFIC PERMITS, OPERATORS, PROPERTY OWNERS AND PARCEL NUMBERS: The existing turbines are located throughout the approximately 14,436-acre Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), in the eastern portion of Alameda County, bisected by Interstate I-580, on up to 58 parcels bearing 58 separate Assessor's Parcel Numbers.

Conditional Use Permit Numbers, Facility Permittee/Land Owner family names and Assessor's Parcel Numbers (APNs) as follows:

C-8036, Altamont Infrastructure Company/Frick & Costa, APN: 099B-5680-015-00;
C-8037, Altamont Infrastructure Company/Pombo, APNs: 099B-6300-002-01, 099B-6300-002-02, 099B-6325-002-03, 099B-6325-002-04 and 099B-6425-001-06;
C-8134, Altamont Infrastructure Company/Rooney, APN: 099B-6125-002-00;
C-8137, Altamont Infrastructure Company/Mulqueeney, APNs: 099A-1800-002-03, 99A-1800-002-04, 99b 7890-002-04, 99B-7890-002-05, 99B-7900-001-05, 99B-7900-001-07, 99B-7910-001-01, 99B-7925-001-03, 99B-7925-001-04, 99B-7925-002-04, 99B-7925-002-05, 99B-7975-001-00, 99B-7980-001-00, 99B-7985-001-03, 99B-7985-001-04, 99B-7985-001-05, 99B-7985-001-06 and 99B-8050-001-00;
C-8191, WindWorks Inc./Mulqueeney, APN: 099B-7910-001-01;
C-8216, WindWorks Inc./Alameda County Waste Management Authority, APN: 099A-1810-001-00;
C-8232, Altamont Infrastructure Company/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/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 and 099B-7300-001-05;
C-8241, Altamont Infrastructure Company/Walker Family Trust, APNs: 099B-6100-002-10, 099B-6100-002-12, 099B-6100-002-12, 099B-6100-003-10, 099B-6100-003-11, and 099B-6100-003-13;
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;

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

ZONING: A-BE 160 and A-BE-320 (Agriculture, Minimum Building Site Area 160 and 320 acres, respectively) Districts, intended to promote implementation of general plan land use proposals (or designations) for agricultural and other non-urban uses, to conserve and protect existing agricultural uses, and to provide space for and encourage such uses in places where more intensive development is not desirable or necessary. (Section 17.06.010). Permitted uses include a variety of agricultural and agricultural support uses, including crop, vine and tree farms, animal husbandry, wineries, fish hatcheries, trails, and on qualified building sites, single family and secondary dwelling units. Conditionally permitted uses include privately-owned wind electric generators.

GENERAL PLAN DESIGNATION: The site is subject to the East County Area Plan (ECAP), adopted in 1994 and amended substantially in November 2000 by the voter-approved Ordinance/Initiative Measure D. The ECAP designates the site as Large Parcel Agriculture (LPA), and establishes minimum parcel sizes for specific areas of the East County (100 acres for the subject parcels) and maximum building intensity (floor area ratio or FAR). Subject to the provisions, policies and programs of the ECAP, the LPA designation permits one single family residence per parcel, agricultural uses, agricultural processing facilities, public and quasi-public uses, quarries, landfills and related facilities, "windfarms and related facilities, utility corridors and similar uses compatible with agriculture."

ENVIRONMENTAL REVIEW: A Final Supplemental Environmental Impact Report (FSEIR) has been prepared that evaluates the potential environmental impacts of the application to extend for three years the existing CUPs, and which is "tiered" from an EIR that was certified by the EBZA on July 18, 2013 for modifications approved on the same date, to allow full operation of the 828 existing turbines through October 31, 2015.

RECOMMENDATIONS:

The Board of Zoning Adjustments should receive a staff presentation, take public comment on the FSEIR and on the subject application, review the draft resolutions and exhibits, including the Mitigation Monitoring and Reporting Programs (MMRPs) for the project, certify the Final SEIR by adoption of a draft Resolution for the purpose of CEQA, and approve the proposed CUP modifications (PLN2014-00028) by adoption of the second Resolution and proposed conditions.

PERTINENT FACTS:

Physical Features: The subject CUPs are widely distributed across the Alameda County portion of the Altamont Pass Wind Resource Area (APWRA). The project location containing AWI's existing wind turbines falls within an approximately 14,196-acre portion of the 50,000-acre APWRA. The APWRA extends across the northeastern hills of Alameda County and a smaller proportion of Contra Costa County to the north. The region is generally characterized by rolling foothills of annual grassland. The area in which the CUPs are permitted is mostly treeless with relatively steep terrain on the west and gently rolling hills on the east toward the floor of the Central Valley. The underlying landscape generally consists of undeveloped grazing land. Major features of the area include the wind turbines, ancillary

facilities, an extensive grid of high voltage power transmission lines, substations, microwave towers, a landfill site, Interstate 580, railroad track lines, ranch houses, and clusters of rural residential homes on Dyer and Midway Roads.

History/Background: The 16 subject CUPs were initially approved by the EBZA in November 2003 and January 2004 with conditions, as the continued operation of existing wind farm facilities, including turbines and infrastructure. These permits, along with 13 other CUPs approved on those dates, and another two CUPs approved in 2006, were approved with a determination that they were categorically exempt from CEQA as the continued operation of existing facilities. A total of 31 CUPs were operating under a common set of conditions after the Alameda County Board of Supervisors approved a resolution in September of 2005 which provided for operation of the wind farms through 2018 but with phased decommissioning requirements, in the expectation that repowering of the APWRA – replacing the older generation turbines with newer and substantially fewer, larger and more efficient turbines – would be well under way after 2010. After litigation by a coalition of environmental advocacy organizations in 2006, a Settlement Agreement was approved in 2007 by three of the four wind energy companies that required greater commitments to repowering and cessation of most of their operations after 2015. As a result of the Settlement Agreement, the conditions of approval applicable to the turbines beneficially owned by the Settling Parties were substantially changed; however, AWI (the current applicant) was not one of the Settling Parties, and therefore remained subject to the original conditions adopted in 2005. More detailed history and background on the year 2005 CUPs is provided in the prior staff report on the public hearing on the Draft SEIR on December 18, 2014.

In 2013, AWI obtained approval of its application (PLN2011-00102) to modify these same CUPs, to eliminate the requirements of the year 2005 CUPs for phased decommissioning, which more specifically required removal of 10 percent of its original 920 turbines by September 30, 2009 (92 turbines), an additional 25 percent by September 30, 2013 (35 percent cumulative, or 322 turbines), an additional 50 percent by September 30, 2015 (another 460 turbines), and the remaining 15 percent of turbines (138) by September 30, 2018. The first phase of decommissioning took place in 2009, at which time AWI removed 10 percent of its 920 turbines. Together with the elimination of phased decommissioning, AWI also sought under that application to remove the requirements for winter seasonal shutdown, and proposed that 100 percent of AWI's turbines would be decommissioned by the end of 2015. The modifications approved in 2013 (July 19, 2013, by Resolution Z-13-36) were the subject of an EIR to address both the CUP modifications and decommissioning activities, as required by the year 2005 CUPs. On the basis of the 2013 EIR, the County denied the request to eliminate the winter seasonal shutdown and instead approved an alternative with continued seasonal shutdown, consistent with other wind farm operators, but with expiration on October 31, 2015.

The 2013 approval also instituted a Mitigation Monitoring and Reporting Program (MMRP) which primarily applied to ground-disturbing activities associated with repowering, but also required that the seasonal shutdown established in the prior years by the County be maintained through the life of the project (Mitigation Measure BIO-16), and retrofit off-site electrical facilities (i.e., power poles) proportional to the number of projected eagle fatalities (Mitigation Measure BIO-17). The County confirms that the seasonal shutdowns occurred on schedule since 2013, and that the power pole retrofits required by the MMRP were completed in October of 2014. In addition, removal of high-risk turbines (HRTs, aka hazardous-rated turbines), required by the 2013 conditions of approval (not by the MMRP), was completed by October of 2014.

PROJECT DESCRIPTION

The current project proposal is a request to modify 16 existing Conditional Use Permits (CUPs), approved in 2005 and modified in July 2013 (PLN2011-00102), for continued operation of the wind farm assets of

Altamont Winds, Inc. (AWI), now comprised of 828 wind turbines with a rated capacity of 85.8 MW. Specifically, AWI's request would provide for the wind farm turbines to continue operating through October 2018, as a change from the current expiration of the CUPs on October 31, 2015. While the CUPs as approved in 2005 provided for operations through September 2018, they also required phased shutdown and removal, with a combined 35 percent of all turbines removed by September 2013 and an additional 50 percent removed by September 2015, so that only 15 percent of the original number of turbines would be operating between 2015 and 2018. The modifications approved in 2013 in effect exchanged the phased shutdown requirement for a complete shutdown in October of 2015, in order to initiate repowering of its wind farm assets in 2016.

The Applicant, AWI, contends that its progress in developing a repowering program for its turbines is constrained by ongoing commercial and regulatory difficulties, and that the CUP modifications allowing it to operate through 2018 are necessary in the event that circumstances beyond AWI's control prevent it from initiating repowering in 2015 or in a financially feasible manner after the current CUPs expire in 2015. AWI proposes to operate through 2018 only on the condition that it has diligently pursued repowering of its wind farm assets, and can demonstrate that circumstances beyond AWI's control have delayed completion of the repowered project. Conditions of approval would require an bi-annual review to document AWI's efforts to repower its assets.

Asset Exchange. Concurrently with the request for an extension through 2018, AWI is in discussions with another wind farm operator, Green Ridge Power LLC (an operating entity of NextEra Energy Resources, aka NEER), for an exchange of wind turbine assets. Specifically, approximately 300 wind turbines currently owned by AWI south of I-580 would be acquired by Green Ridge and a roughly equal number of wind turbines would be acquired by AWI north of I-580. As proposed, and under assurances from both companies, such an exchange will not increase the capacity or quantity of AWI's operating turbines. Green Ridge will shut down and remove the turbines it will acquire, for the purpose of repowering.

The asset exchange is recognized in the FSEIR and certain aspects of it are discussed, such as that it would result in a decrease of roughly 1.7 MW in AWI's rated annual capacity, and that it would result in a moderate reduction in the number of operating high-risk turbines (HRT), specifically those rated 8.5 to 10.0 for their relative risk of striking birds. The asset exchange and the reduced number of HRTs to be operated was also the subject of some comments on the Draft SEIR, that asserted that such calculations of benefit were unreasonably describing it as a means of mitigating impacts on birds, or adjusting the assessment of avian mortality impacts. The response to these comments in the FSEIR indicates that the asset exchange is not directly part of the project, and neither of the possible decreases in MWs or HRTs described in the DSEIR were intended to suggest the impact of the project on avian mortality was mitigated or reduced in a substantive way. The DSEIR in fact described the effect as having no statistical importance.

RESPONSES TO COMMENTS ON THE DRAFT SUPPLEMENTAL EIR

The Draft SEIR (DSEIR) circulated for the purpose of public and agency comment between November 17, 2014, and January 12, 2015, having been extended for 10 additional days beyond the original 45-day comment period in recognition of the winter holiday period. The County held a public hearing to obtain verbal comments on the DSEIR on December 12, 2014. A Final SEIR (FSEIR) was prepared as a complete revision of the Draft SEIR with Appendices containing comments on the DSEIR, master responses to frequent or prominent comments, responses to individual comments, a version showing changes to the DSEIR (deletions and insertions), notification documents, and assorted other materials. The DSEIR and FSEIR were prepared by Power Engineers, Inc. under County supervision.

The 2014 SEIR is a supplement to the 2013 EIR, which was certified in July 2013 as a complete assessment of the environmental impacts of AWI's existing operations, and of proposed modifications to operate all of AWI's 828 turbines through the end of 2015 without a seasonal shutdown, as well as three alternatives or scenarios: 1) operations through October 31, 2015; 2) operations through October 31, 2016; and 3) operations through October 31, 2018. All alternatives assumed full operations (no additional decommissioning), and included 3-½-month seasonal shutdowns. The SEIR is not intended to re-evaluate the assessment of those impacts, but is meant to provide additional, detailed analysis of the impacts attributable to the third alternative (to operate through 2018), which are limited almost exclusively to biological resources and in particular, avian mortality. Some additional analysis of hazardous materials was completed due to concerns raised by an area resident, but did not identify any significant impacts. More broadly speaking, the SEIR provides useful information regarding the asset exchange, new comparisons between the current project and its alternatives, revised mortality rates for focal raptor species, additional mitigation options, and provides for further public review of the current proposal. As with the 2013 EIR, the analysis quantifies effects on the four focal raptor species that were the subject of the 2007 Settlement Agreement, including golden eagle, red-tailed hawk, burrowing owl and American kestrel, as well as all bird species known to inhabit the APWRA. The DSEIR used the same method as the 2013 EIR to quantify the relative, projected number of bird deaths in the years 2013 to 2018, which was the range of years used in the 2013 EIR to show avian mortality impacts and changes due to that proposal, between the baseline (no project) conditions (with phased shutdown and decommissioning between 2013 and 2018) and complete shutdown in 2015.

The Executive Summary (Table ES-4) briefly outlines the impacts that were identified, and topic areas that were excluded from the analysis as not relevant or applicable to the site location or nature of the project. The SEIR's analysis of the current proposal's impacts identified only one significant, overarching environmental impact (among the specific determinations required by CEQA), which were the significant and unavoidable adverse impacts on biological resources, and the same significant impact as defined in the 2013 FEIR: *Impact BIO-1* – the potential to cause a substantial adverse effect, either directly or through habitat modifications, on special-status avian species.

To address impact BIO-1, the 2014 SEIR identifies three distinct mitigation measures, two of which were previously included in the 2013 EIR, namely continuing the winter seasonal shutdown (Mitigation Measure 16), and retrofitting electrical power poles (Mitigation Measure 17). To further mitigate and compensate for the projected level of avian mortality resulting from the proposed CUPs extension, the DSEIR identified Mitigation Measure "BIO-17a" (i.e., a subdivision of BIO-17), as a suite of five optional measures to supplement Mitigation Measure 17 and provide a means of compensation for the loss of special-status avian species, including golden eagles, by enabling contributions to conservation efforts. This measure was adopted almost verbatim and directly from the *Program EIR* (PEIR) for the *Altamont Pass Wind Resource Area Repowering* that was certified in November, 2014, and as outlined in the DSEIR, could include measures "outlined" in a programmatic eagle take permit, contributing to raptor recovery activities, raptor conservation, and regional raptor habitat conservation efforts. Contributions to raptor recovery activities and raptor conservation efforts were to be based on the estimated average cost of each raptor recovery reported in the PEIR (\$580, based on an interview with staff of the California Raptor Center at the University of California, Davis), for use in a Resource Equivalency Analysis (REA) to calculate appropriate costs for land conservation.

However, after certification of the PEIR, that average recovery cost was refuted by the Raptor Center as having been taken out of context, and because no substitute dollar amount was identified, the FSEIR was changed to remove those two components of Mitigation Measure BIO-17a that were associated with that recovery cost estimate. Another component of the suite from the 2014 PEIR, described as "Other Conservation Measures Identified in the Future" was also eliminated in the FSEIR as it would only apply in the long term, beyond 2018. The remaining options under Mitigation Measure BIO-17a would now

require contributions to regional conservation of raptor habitat by funding conservation easements within the APWRA or its bordering eco-region if approved by the County, held by an organization dedicated to managing conservation lands, based on a well-reasoned REA approved by the USFWS and the County, and according to a specific timetable, would remain as a strategy acceptable by the County to mitigate impacts on raptors. The impacts would not be reduced to less than significant levels, however. These changes would maintain the intent of Mitigation Measure BIO-17a to provide options for the applicant to diversify its mitigation program as defined in the 2013 EIR, which was limited to retrofitting power poles.

Major Comments and Master Responses. The County received nine letters of comment and some verbal comments at the public hearing. The majority of the comments fell into a limited number of common themes, for which the County prepared Master Responses, as summarized below.

- *Fatality Calculation and Use of MW-Years.* Several commenters, including members of the APWRA Scientific Review Committee, stated that it appeared that fatalities were being calculated on the basis of only a portion (0.708) of a “MW-year” as defined in the annual APWRA-wide Monitoring Reports to reflect the winter season shutdown, and that no such “subtraction” should have been applied. The County responds in the FSEIR that no such subtraction occurred, and that all of the comparisons of the proposed project with the existing CUPs, or with the prior baseline of phased decommissioning, all account for the seasonal shutdown. Simply stated, each scenario is measured on the basis of the cumulative total MWs of installed capacity operating or permitted to operate between October 1, 2013 and October 31, 2018, and as such are “scored” by the same metric.

Although there was a bias in estimating impacts of the 2013 proposal for operations without a seasonal shutdown, due to the likelihood of substantially higher fatality rates during the peak winter migration season, this is a separate issue, and none of the scenarios under consideration at the present time involve operations during the winter season shutdown.

- *Baseline for Analysis.* Some commenters believed the impacts of the current project proposal should be measured on the basis of the current CUPs that disallow any operations after October 31, 2015, in order to show the project’s levels of avian mortality in sharp contrast to conditions with no AWI-turbine operational related impacts. The response indicated that the County retained the use of the same baseline as used in the 2013 FEIR, of continued operations with phased decommissioning through 2018, because of the need (as described above as well) for comparing each scenario on the same metric.
- *Asset Exchange and Reduction of HRTs.* Some commenters questioned if the description of the asset exchange and the resulting modest reduction in the number of operating HRTs (high-risk turbines) in the APWRA at large, and modestly lower MWs of operating capacity were intended as a mitigation measures or in other ways give ‘credit’ to the asset exchange and the project in general. The response in the FSEIR makes it clear that neither the asset exchange or reduction of HRTs are treated as mitigation measures, though it is recognized that it will help facilitate repowering of the APWRA on those parcels south of I-580 that AWI will exchange or trade ‘away’ for assets north of I-580, where repowering will occur somewhat later, after 2015.

It was clarified in the FSEIR that the asset exchange is *not* an actual component of the project but merely a likely means of ‘disentangling’ assets in the APWRA that have historically over-lapped.

- *Inadequacy of Mitigation Measures.* Numerous commenters expressed concerns that the mitigation measures identified lacked certainty of implementation, such as that Mitigation Measure BIO-17a was an option rather than a requirement. Additionally, the details and number of power pole retrofits to be required under Mitigation Measure BIO-17 were not sufficiently clear to some commenters. The FSEIR responses to these issues consists of clarifications that the Measures are required, and reassurances that the suite of optional and supplemental measures available under Mitigation Measure

BIO-17a can be implemented effectively. The FSEIR response cites Table 3-3 as the basis for estimating total golden eagle fatalities attributable to the operations between 2016 and 2018 and the determination that retrofitting 322 power poles would be sufficient mitigation. The basis on which the retrofit of 322 power poles was determined is discussed separately below (see *Power Pole Retrofits Under Mitigation Measure BIO-17*).

The FSEIR also provided for changes to Mitigation Measure BIO-17a to eliminate the reliance on a disavowed estimate of the cost of an individual raptor recovery (\$580). Two of the five options that were considered to be reliant on the 2014 Program EIR-based dollar amount of \$580 were deleted from Mitigation Measure 17a, as well as the general and long-term-oriented “Other Conservation Measures Identified in the Future.”

- *Cumulative Impacts on Avian Populations.* A few comments, including some from the SRC, asked why the DSEIR did not evaluate in broader terms the deaths of avian predators on local or regional breeding, wintering and migratory populations, or other cumulative impacts. The FSEIR response acknowledged the cumulative impact but noted that as a Supplement to the 2013 FEIR, it would be inappropriate for the SEIR to add a new or expanded scope of assessment or methodology to define new impacts. The response also states that Mitigation Measures BIO-16, -17, and 17a are all intended to address cumulative impacts on all bird species, and that BIO-17a enables the wider ecological issues to be addressed through an REA to provide landscape-scale analysis and subsequent compensation and conservation strategies. Lastly, the FSEIR indicates that the cumulative impacts of other wind and energy projects in the APWRA were considered in the 2013 FEIR, and that the impacts of the project were categorized as cumulatively significant and unavoidable.
- *Current Monitoring Data.* Some commenters requested that the SEIR incorporate the latest Avian Monitoring Reports to estimate APWRA-wide avian mortality rates, to include bird years 2011 and 2012. The FSEIR responded that for consistency between the 2013 FEIR and the SEIR, the 2008-2010 mortality rates should be used as the basis for consistent analysis of avian impacts between the 2013 project and the current proposal. However, mortality rates from the later Monitoring Reports were included in the FSEIR in Table 3-5, to provide the range of estimated fatalities from the different mortality rates. Most importantly, the mortality rates for golden eagles including the later years were within the range established by the earlier years (0.085 for the period 2005 to 2010, and 0.061 for the years 2008 to 2010). As such, the use of later Avian Monitoring Report data did not substantially change the estimated range of projected fatalities. Nevertheless, and in consideration of the entire record, staff recommends that the mortality rates from later periods be included and that the response should be deemed to be revised accordingly in the resolution to certify the SEIR and in the Findings of Significant Impacts.
- *Overriding Considerations.* Several commenters asserted that the SEIR does not contain the background information necessary to support a Statement of Overriding Considerations, needed for project approval. The FSEIR response notes the comments, but characterizes them as primarily directed at the merits of the project itself rather than the adequacy of the DSEIR analysis. In addition, while the SEIR describes some of the intended benefits of the project (page 23, Section 2.3, Project Need and Objectives), which may contribute to the content of the Statement of Overriding Considerations, the Statement does not normally rely solely on the analysis in an EIR, and the FSEIR response notes that it may be based on information from the 2013 FEIR, the SEIR, or other information in the record. The FSEIR response acknowledges that the current project, substantially the same as Alternative 3 as described in the 2013 FEIR, was deemed infeasible in 2013, but concludes that the FSEIR is only intended to inform the County’s decision makers and the public about the potential environmental effects of the CUP modification currently proposed by the applicant.

Power Pole Retrofits Under Mitigation Measure BIO-17. Mitigation Measure BIO-17 as defined in the FSEIR is intended to provide for 29 power pole retrofits per projected golden eagle fatality, consistent with the 2013 FEIR. The following discussion is intended to provide some clarification with respect to statements in the DSEIR regarding Mitigation Measure 17 as described in the FSEIR. Firstly, the DSEIR and FSEIR state, on pages 37-8:

The proposed project with implementation of mitigation measure BIO-16, (together identified as Alternative 1 in the analysis of project alternatives) is projected to result in the fatality of approximately one eagle (cumulatively, and statistically, 0.7–1.0) when compared to the existing avian baseline condition (the No Project Alternative) (2013 FEIR Table 3.2-5).

This statement was directly copied from the 2013 FEIR description of Mitigation Measure BIO-17, and thus only applies to the 2013 proposed project, not the current 2014 proposal. However, revisions to the text in the FSEIR clarify that “this mitigation addresses the impacts of the 2013 project proposal (with Mitigation Measure BIO-16), which is approximately one additional eagle fatality.” The FSEIR also adds text explaining the basis for calculating the one additional eagle fatality, and that the currently proposed project (2014) would have a notably greater number of projected eagle fatalities – 11.1 – requiring 322 power pole retrofits.

As reported in Table 3-3 (and duplicated as Table ES-1), on the basis of the *2008-2010 Bird Year Adjusted Fatality Rates*, the current project would result in 3.7 annual estimated fatalities, or 11.1 estimated fatalities over the three-year period 2016-2018. The total estimated fatalities for the period 2013 to 2018 was 19, all of which data is derived from Tables 3-1 and 3-2, using the average fatality rates from the 2008-2010 bird years (i.e., 0.061×60.8 MW of operating capacity per year = 3.7; or for the whole period, 2013 to 2018, 0.061×311.0 MW of cumulative operating capacity = 19). However, to clarify, the projected 19 fatalities represent a “gross” number, including the number of fatalities anticipated to occur in the same period under the existing CUPs – 7.9 (statistically), a difference of 11.1 fatalities – the same as the three-year total in Table 3-3. It should be emphasized again that these results are based on the 2008-2010 fatality rates, which had special merit in the 2013 FEIR, in that they represented the years in which the winter seasonal shutdown was fully in effect, whereas it was only partly implemented in the years 2005 to 2007.

The Executive Summary of the FSEIR, which was intended to summarize the content of the text body (Chapters 1.0 to 3.0) of the FSEIR, also contains a statement (page 5) clarified below the subject excerpt:

Use of power poles for the mitigation of all estimated golden eagle fatalities projected to result from the current proposal to operate through 2018 – a range of 19.0 to 26.4 such fatalities between 2013 and 2018 [2013 FEIR, Table 4-2, *Adjusted Species Fatality Rates for Each Alternative, Based on an Average Fatality Rate (Fatalities per Megawatt per Year)*] would require the retrofitting of between 551 and 722 power poles, including at least 322 poles during the proposed three-year CUP extension.”

Although the range of 19 to 26.4 fatalities is represented in Table 4-2 of the 2013 FEIR, it also represents the “gross” number of fatalities projected from 2013 to 2018 and includes fatalities that would occur otherwise under the prior existing CUPs as they had been approved in 2005, between October 1 of 2013 and October 31, 2018. As such, the last portion of this statement could be rephrased to say “*could* require the retrofitting of between 551 and 722 power poles *due to the “gross” number of projected avian fatalities, but based on the “net” increase in projected fatalities, compared to conditions without the 2013 permit modifications, only a minimum of 322 pole retrofits would be required* during the proposed three-year CUP extension.” However, the FSEIR Executive Summary correctly concludes that AWI will retrofit 322 utility poles as mitigation for the currently proposed (2014) project.

Table 3-1 in the DSEIR also included fatality rates based on Avian Monitoring Reports from the period 2005 to 2010, and 2005 to 2011, and in response to some comments received on the DSEIR, Table 3-1 was supplemented with the fatality rates from 2005 to 2012. Table 3-5 was also amended to show average fatality rates for the period 2008 to 2012, which the County recognizes as having the greatest number of years (i.e., more supporting data) during which time the winter season shutdown was in full effect. However, some minor formatting and typographic corrections to Table 3-5 as revised for the FSEIR are necessary, as shown below with changes underlined, and with some additional explanatory footnotes.

TABLE 3-5 COMPARISON OF ADJUSTED SPECIES FATALITY TOTALS OF FOUR FOCAL SPECIES, BASED ON AN AVERAGE FATALITY RATE (FATALITIES PER MEGAWATT PER YEAR)
(UPDATED)

SPECIES	AVERAGE FATALITIES PER MW (2005-2010/ 2008-2010/ 2005-2011/ 2005-2012/ 2008-2012)	PROJECTED NUMBER OF FATALITIES UNDER THE 2013 FEIR PROPOSED PROJECT ¹	PROJECTED NUMBER OF FATALITIES UNDER 2013 FEIR BASELINE CONDITIONS ²	PROJECTED NUMBER OF FATALITIES UNDER 2013 FEIR ALTERNATIVE 3 ³	PROJECTED NUMBER OF FATALITIES FOR YEARS 2016-2018 ⁴
American Kestrel	0.496/0.443/ <u>0.59</u> / <u>0.577</u> /0.571	85.5–113.9	51.6–68.7	137.8–183.5	80.8–107.6
Burrowing Owl	0.721/0.425/ <u>0.78</u> / <u>0.70</u> /0.52	82.1–150.6	49.5–90.9	132.2–242.6	77.5–142.3
Golden Eagle	0.085/0.061/ <u>0.08</u> / <u>0.081</u> / <u>0.075</u>	11.7–16.4	7.1–9.9	19–26.4	11.1–15.5
Red-Tailed Hawk	0.449/0.286/0.44/0.411/0.35	55.2–86.7	33.3–52.3	88.9–139.6	52.2–81.9

Notes:

¹ This column of data is a remnant of Table 3.2-5 in the 2013 FEIR which represents the 2013 proposal to eliminate seasonal shutdowns; the results were also determined to be biased low in the 2013 FEIR.

² These baseline conditions represent the 2005 CUPs with phased decommissioning through 2018.

³ Alternative 3 is identical to the current 2014 project proposal, for the purposes of this table.

⁴ These results represent the increment of additional focal species fatalities attributed to the 2014 project proposal, based on the lowest and highest fatality rates in the 2nd column and the increment in cumulative MWs for the period 2016-2018.

It should be noted that the updated mortality rates for golden eagle in the various periods (2005 to 2011, 2005 to 2012, and 2008 to 2012), all fell within the lowest and highest mortality rates previously used in the 2013 FEIR (0.061 to 0.085 eagle fatalities per MW per year). If the lowest and highest fatality rates are considered, the potential increment of additional eagle fatalities for the three-year period 2016 to 2018, as shown in the last column of Table 3-5, would range between 11.1 and 15.5 (respectively using the fatality rates from 2008 to 2010, and 2005 to 2010).

Although using different fatality rates would result in different total projected fatalities, the FSEIR used the rate of 0.061 eagle fatalities per MW per year, based on the 2008 to 2010 period as the “final” rate and interpreted it to be consistent with the 2013 FEIR. Most importantly, as discussed above, based on the three years of operating capacity between 2016 and 2018 (182.4 MWs) the current project would result in 11.1 golden eagle fatalities, and require 322 power pole retrofits to mitigate the project’s impacts under Mitigation Measure BIO-17. Master Response 6 of the FSEIR states that “For consistency between the 2013 FEIR and the DSEIR, the 2008-2010 fatality rates should be used as the basis for comparing avian impact analysis.” In this case, the DSEIR and FSEIR used the lowest result (11.1) and not the highest result (15.5). It is common practice in CEQA and the policy of the County to base its identification of required mitigation measures on the worst-case condition, which in this case is a potential result of 15.5 (statistical) eagle fatalities, for which, based on the rate of 29 power pole retrofits per potential fatality,

would require 450 power pole retrofits, not 322. However, the County considers the highest rate of eagle mortality, 0.085 per MW per year, based on the years 2005 to 2010, to be the *least* representative of current conditions, because half of the years on which it is based did not include the fully implemented winter season shutdown. Based on comments received on the DSEIR, it appears that the rate based on the years from 2008 to 2012, as noted above, represent the largest number of years (i.e., more supporting data) during which time the winter season shutdown was in effect. It should also be recognized that the 2013 FEIR used a worst-case result to determine that the net increase in fatalities from approval of the 2013 project was 1.0, rather than the least-case result of “0.7”, based on the 2008 to 2010 mortality rates.

Alternatively, using the updated average golden eagle mortality rate of 0.075 per MW per year from the years 2008 to 2012, the result of operating a net additional 182.4 MW of installed capacity through 2018 would be 13.7 additional golden eagle fatalities, for which – assuming the use of Mitigation Measure BIO-17 and power pole retrofits to exclusively mitigate for all raptor impacts, at the USFWS-sanctioned rate of 29 power pole retrofits per projected golden eagle fatality, the applicant would have to retrofit a minimum of 397 power poles. This number represents a smaller amount than the range indicated in the Executive Summary of 551 to 722, is based on a rate reported in the FSEIR (Table 3-5), falls within the range of projected fatalities for the project, is considered to be supported by the FSEIR and would be acceptable to the County as mitigation. More importantly, it is based on a total of five years of monitoring during the current regime of 3½ months of winter season shutdown, and may be a more reliable and authentic mortality rate available at this time.

Combining Mitigation Measures BIO-17 and BIO-17a. Because the SEIR provides for some or all of the impacts to be mitigated through Mitigation Measure BIO-17a, the applicant may choose to combine power pole retrofits with some of the options identified with BIO-17a. For example, the applicant may retrofit 200 power poles under BIO-17, and under BIO-17a, provide for mitigation of the full range of special status species through contributions to conservation strategies during the four-year remaining life of the CUPs as modified.

Other Concerns. In response to a specific comment in response to the Notice of Preparation from a resident on Dyer Road, regarding the appearance of oil or other lubricants being released from leaking turbine generators or other equipment, including along the turbine blades, the DSEIR and FSEIR provided information on the potential of a significant leak of hazardous materials into the environment. As discussed in the prior staff report for the Public Hearing, the DSEIR determined that the impacts were less than significant and did not warrant the requirement for any mitigation measures; no different findings were made for the FSEIR. After the close of the comment period, the Dyer Road resident, Bob Cooper, submitted an e-mail to County staff reporting on a site tour on January 20, 2015, in which he indicated he was satisfied that what he believed was leaking oil was in fact rust stains, and that maintenance of the turbines was adequate. The e-mail is included in the FSEIR (Appendix B), but as it was received late, was not responded to directly in the FSEIR, nor did it require a response or change any determination in the FSEIR.

GENERAL/NON-CEQA-RELATED COMMENTS ON THE PROJECT

Many comments received on the DSEIR expressed strongly negative opinions regarding the merits of the project, that were not appropriate to be addressed in the FSEIR. Comments from the U.S. Fish and Wildlife Service (USFWS), the California Department of Justice/Office of the Attorney General, the East Bay Regional Park District (EBRPD), Audubon California (Audubon), and Save Mount Diablo (SMD), may be summarized as follows.

- The USFWS noted that approximately 31 golden eagle fatalities were recorded at AWI facilities in the APWRA since late 2009, when eagle take permit regulations were first promulgated, but without

the benefit of any permit. Additionally, the Service stated that in spite of their encouragement of AWI to apply for such a permit, and indications by AWI of their intent to apply, the Service has not received a permit application from AWI or taken other steps to reduce its impacts on the species protected by the Migratory Bird Treaty Act (MBTA) or the Bald and Golden Eagle Protection Act (BGEPA). It was also noted that the golden eagle and other special-status species deaths attributable to AWI operations represent violations of the MBTA and BGEPA, and though enforcement has been withheld for those wind energy companies actively engaged in repowering, AWI is not doing so, and for this reason the Service recommended that the County deny the permit modifications.

AWI provided the County with a letter response to the DSEIR comment letter from USFWS, and it is attached to this staff report.

- The Attorney General opened its letter with opposition to the permit modifications on the grounds that it would “create serious inequities for other turbine operators and will undercut current efforts to repower” the APWRA, and that the DSEIR does not provide substantial evidence to support the required statement of overriding considerations and is otherwise legally inadequate. Primarily, the AG’s office considers repowering to be the more feasible alternative to lessen the significant environmental impacts of the project, and cited case law wherein a lead agency was found to have abused its discretion where the record did not support the finding that other less damaging alternatives were infeasible. It points out that the current record of evidence shows that Alameda County has already made a determination that repowering the APWRA with new turbines is a feasible alternative. The letter closes with a recommendation to the County to not certify the SEIR, and to deny the request.
- The EBRPD expressed its opinion that the finding made in 2013 that Alternative 3 (addressed in the prior 2013 FEIR and roughly the same as the current project proposal) would “very substantially increase the avian mortality impacts compared to the project and all other alternatives... [and] is considered infeasible” would be unchanged, and should continue to be found to be infeasible. The District does not explicitly state that it opposes the permit modifications, but more simply states that the permit extensions would delay repowering – and continue what it considers visual effects that would otherwise be removed.
- Audubon California’s letter begins with an observation that the County previously determined in 2013 that the extension of operations to 2018 were “infeasible” and that removal of the existing turbines after 2016 would be the best means of promoting repowering of the APWRA at large. Most of the comments address the DSEIR and CEQA issues, but others express the opinion that AWI would be given an unfair competitive advantage over other wind energy companies in the APWRA that are pursuing repowering, that the County would be complicit in the killing of golden eagles and other protected species by approving the extension, and as the project would delay repowering and result in higher levels of avian mortality, it should be denied.
- Save Mount Diablo expressed its opposition to the project due to the increases in avian mortality, but primarily addressed its remarks to the DSEIR.

PLANNING CONSIDERATIONS

Planning staff have carefully considered the current project proposal, the FSEIR analysis, the comments from the public, private organizations and government agencies, and support approval of the project in part, with limits on the scale of the permitted operations, additional conditions of approval and related requirements for implementation of the identified Mitigation Measures BIO-16, BIO-17 and BIO-17a. The Board of Zoning Adjustments may choose to approve the project application as proposed with no changes, or it may choose to deny the request. Under the existing CUPs approved in 2013 (Condition 5, Expiration), the applicant has no express or implied right to operate existing turbines under these Permits after October 31, 2015. The Board may consider the assertion by the applicant that in order for it to

develop its repowering program for its turbines and prevent closure of the company, it must continue operations in a financially feasible manner beyond 2015, and thereby approve the project as proposed. County staff recognize that there are certain overriding considerations, as described in Exhibit C to the draft Resolution, related to local jobs and renewable energy. Alternatively, the Board may consider Planning staff's following recommendations.

Firstly, with respect to the primary request to operate the full 828-turbine, 85.8 MW wind farm for the three years between February 15, 2016 and October 31, 2018, for a cumulative three-year installed capacity of 182.4 MWs, County staff recommend that the use permits be extended but to allow no more than one-half of the MWs to be operated within that period, which may be either operated fully until June 22, 2017 (i.e., a total of 12-¾ months out of the applicant's requested extension to allow 25-½ months of operation, with winter season shutdown as provided by Mitigation Measure 16), at 50% capacity for all three years through October 31, 2018, or in other stages such that the three-year installed or operating capacity of AWI's entire windfarm operations, with or without an asset exchange, may not be greater than 91.2 MWs, or one-half of 182.4 MWs. The result of such a reduction in MWs would proportionally reduce the number of golden eagle, other raptors and avian species fatalities. The East County Board of Zoning Adjustments may specify that the CUPs will expire on June 22, 2017, or another later date if the applicant requests to operate fewer turbines over a longer period of time.

Planning staff consider this reduced level of operations to be somewhat comparable to, but notably more liberal than reverting back to the original 2005 CUP conditions, in which only 15 percent of the turbines were allowed to be operating between 2016 and 2018. It would provide for a total operational output in MWs from October 2013 to October 2018 of 220.0 MW, when compared to the other alternatives considered in the 2013 FEIR and as represented in Table 3-2 of the FSEIR (page 33). It is moderately more MWs of allowed output than Alternative 2 considered in the 2013 FEIR (30.5 more MW, compared to 189.5 under Alternative 2, which provided for cessation of operations after October 31, 2016).

Secondly, staff believes the applicant should be required to shutdown all turbine sites it currently operates or could operate after the asset exchange, with an HRT rating of 8.5 or greater. The elimination of hazardous-rated turbines (HRTs) has been shown by the preponderance of evidence over many years to reduce the number of avian fatalities, and has been part of the conditions of approval in various forms for the CUPs since 2005.

Thirdly, in order to assure the applicant honors its statements that it is taking all possible steps to engage in repowering of its APWRA assets except under specific conditions that it contends are outside of its control, the applicant should be required to submit a report semi-annually (twice yearly) to the Board of Zoning Adjustments describing, relative to each of the potential obstacles to repowering outlined as "Circumstances Outside of AWI's Control" in the FSEIR (page 25).

Fourthly, the Board should agree on a fatality rate to be used for projecting the total number of golden eagle fatalities anticipated to result from the project, from among the three principal options: a) 0.061 based on the monitoring years 2008-2010; b) 0.071 based on monitoring years 2008-2012; or c) 0.085 using monitoring years 2005-2010. The fatality rate will then be used to determine the number of power pole retrofits to be required under Mitigation Measure BIO-17 (and as adjusted by half, assuming the first recommendation above is required).

Finally, unless the applicant chooses to apply for an eagle take permit as described in Mitigation Measure BIO-17a (and submits a complete draft Eagle Conservation Plan and meets other USFWS requirements for an ETP) within six months of approval of the CUP modifications, the applicant should make a deposit of adequate trust funds prior to the start of each operational year (February 15th of each year, starting in 2016) that are dedicated to implementing Mitigation Measure BIO-17 and/or BIO-17a. Such deposits for

the use of power pole retrofits, or contributions to regional conservation of raptor habitat could be adjusted at the end of each operational year (2016 to 2018) based on actual expenditures and power pole retrofits completed, subject to approval by a Technical Advisory Committee (TAC) as will be structured under the APWRA Repowering Program EIR.

The above recommendations have been incorporated into the draft Resolution to approve the proposed project (attached), as revisions to the Avian Wildlife Protection Program & Schedule (AWPPS) component of the existing CUPs. A separate draft Resolution is also attached for certification of the FSEIR. Together with the draft Resolution to approve the project, three Exhibits are also provided, including: Exhibit A, Findings of Significant Impacts; Exhibit B, Statement of Overriding Considerations; and Exhibit C, the Mitigation Monitoring and Reporting Program. Although the FSEIR indicates that the identified mitigation measures would reduce the impacts on avian species, they would not eliminate the effects or reduce the impact to a level that is less than significant, and the impacts would remain significant and unavoidable. The purpose of the Exhibits, which are referred to in the draft Resolution for the project, is to support the decision of the Board to approve the project and comply with CEQA requirements.

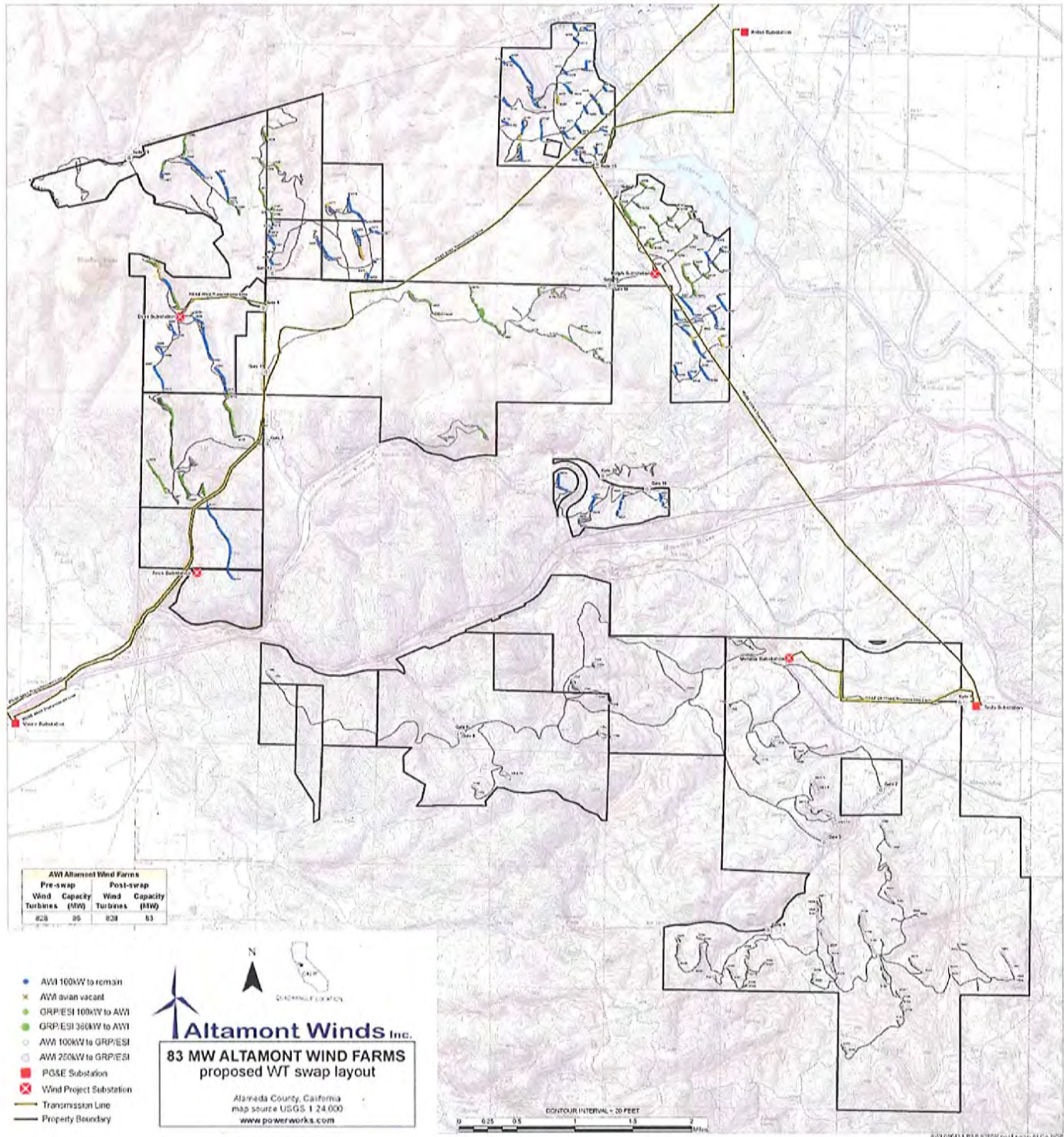
Recommendation: The Board of Zoning Adjustments should receive a staff presentation, take public comment on the FSEIR and on the subject application, review the draft resolutions and exhibits, including the Mitigation Monitoring and Reporting Program (MMRPs) for the project, certify the Final SEIR by adoption of a draft Resolution for the purpose of CEQA, and approve the proposed CUP modifications (PLN2014-00028) by adoption of the second Resolution and proposed conditions.

Staff Planner: Andrew Young, Planner III

Reviewed By: Sandra Rivera, Assistant Planning Director

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FIGURE 1
DISTRIBUTION OF ALTAMONT WINDS INC. WIND ENERGY PLANT
Including Representation of Proposed Asset Exchange



**RESOLUTION NO. Z-15-YY 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, said Conditional Use Permits identified as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, on September 22, 2005 the Alameda County Board of Supervisors approved Resolution Number R-2005-453 to conditionally approve a total of 29 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 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

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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 that AWI is required to sponsor the preparation of an EIR, and therefore required AWI to fund the preparation of an EIR to evaluate the proposed modifications, the ongoing operation of the turbines through the life of the CUPs (expiring on September 22, 2018), and decommissioning activities associated with the required removals of turbines and related infrastructure; and

WHEREAS, 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 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, did hold a public hearing 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 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**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, on September 22, 2005 the Alameda County Board of Supervisors approved Resolution Number R-2005-453, on appeal of the East County Board of Zoning Adjustments decisions on November 13, 2003 and January 29, 2004 to conditionally approve a total of 29 conditional use permits (CUPs) for the maintenance and continued operations of existing wind turbines, including one permit (C-8191) held by WindWorks, Inc. (as an operating partner of Altamont Winds, Inc.), thirteen (13) permits held by Altamont Infrastructure Company LLC (a management company which does not own individual turbines) on behalf of Altamont Winds, Inc. and three other companies (SeaWest Power Resources, LLC, Altamont Power, LLC {a subsidiary of FPL Group, Inc. and ESI Energy LLC} and enXco., Inc., collectively the Wind Power Companies) that own turbines (or "beneficially own"), thereby approving with findings included that the CUPs, including those CUPs listed above, were exempt from the California Environmental Quality Act (CEQA), and with conditions modified from the original Board of Zoning Adjustments decision, said Resolution and conditions are incorporated herein by reference (hereinafter the "Permit Extensions"); and

WHEREAS, on January 12, 2006 the East County Board of Zoning Adjustments adopted Resolutions Z-06-03 and Z-06-04, respectively approving two Conditional Use Permits, C-8216 and C-8243, allowing continued operation of existing turbines by WindWorks, Inc. (C-8216), and Altamont Infrastructure Company LLC (C-8243) on separate sites in the APWRA, said use permits having not been included in Resolution R-2005-453, but made subject to the same conditions therein by Resolutions Z-06-03 and Z-06-04; and

WHEREAS, Resolutions R-2005-453, Z-06-03 and Z-06-04, among other conditions, established an Avian Wildlife Protection Program and Schedule (AWPPS, Condition 7), with detailed requirements established in Exhibit G to reduce avian mortality by removing turbines identified as hazardous to avian wildlife, removing derelict turbines, shutting down turbines during winter months when bird use increases, and for the purpose of implementing the repowering program, permanently removing 10% of the existing turbines by September 30, 2009, an additional 25% by September 30, 2013, an additional 50% of the original turbines by September 30, 2015, and the remaining 15% of turbines by September 30, 2018; and

WHEREAS, Resolutions R-2005-453, Z-06-03 and Z-06-04 also required the Permittee to sponsor preparation of an Environmental Impact Report (EIR) to evaluate the environmental effects of the repowering program, the phased removal of turbines and existing operations (Condition 8); and

WHEREAS, in 2005 a coalition of five regional Audubon groups (Golden Gate Audubon Society, Ohlone Audubon Society, Mount Diablo Audubon Society, Santa Clara Valley Audubon Society and Marin Audubon Society, collectively Audubon) and CARE petitioned the Alameda County Superior Court to set aside Resolutions R-2005-453, and subsequently Z-06-03 and Z-06-04 on various grounds, including that such action violated the County's General Code and CEQA, whereupon Audubon, CARE, the County and the Wind Power Companies agreed to participate in mediation and negotiations which led to a Settlement Agreement among the petitioners, the County, and three companies (the "Settling Companies") that own turbines in the APWRA but not including Altamont Winds, Inc. (the "Non-Settling Company"), with the objective of achieving a 50 percent reduction in the mortality rates of four avian raptor species (American kestrel, burrowing owl, golden eagle and red-tailed hawk) by November 1, 2009, adding a conservation planning component to the approved CUPs in consultation with the California Department of Fish and Game (CDFG, recently renamed the Department of Fish and Wildlife or CDFW) regarding such a component and enabling other programs and contingency adaptive management measures; and

WHEREAS, on January 11, 2007 the Alameda County Board of Supervisors adopted Resolution R-2007-111, which authorized the County's participation in the Settlement Agreement and amended the CUPs, thereby replacing Exhibit G (Avian Wildlife Protection Program and Schedule) of the prior Resolution R-2005-453, with Exhibit G-2 for the turbines beneficially owned by the Settling Companies (the "Applicable Turbines"), and Exhibit G-2 for turbines beneficially owned by the Non-Settling Company (Altamont Winds, Inc.) which for all intents and purposes was identical to the original Exhibit G, and made other changes to the conditions of approval of the prior Resolutions for the Applicable Turbines of the Settling Companies, including eliminating the requirement for an EIR to be prepared on the specified schedule and certain requirements related to relocation of identified Tier 1 and Tier 2 hazardous turbines; and

WHEREAS, Altamont Winds, Inc. applied in 2011 to modify its sixteen (16) use permits by eliminating selected requirements of Exhibit G-2 of Resolution R-2007-111 for the remaining life of the permit (years six through eight and years nine through thirteen: October 2010 to September 2018) and require termination of the CUPs on December 31, 2015, or more specifically:

- a) Eliminate the requirement for the annual 3½-month winter season shutdown, from November 1 of each year to the following February 15;
- b) Eliminate the requirement for repowering or permanent shutdown of an additional twenty-five (25) percent of currently operating turbines (10 percent of its turbines having been permanently shut down by September of 2009);
- c) Replace the requirement for repowering or permanent shutdown of an additional fifty (50) percent of operating turbines by September 2015 with a requirement that 100

percent of all originally approved turbines be permanently shut down on December 31, 2015; and

- d) Add a requirement that the County consider the human health, wildlife and climate benefits of wind power generated in the APWRA when making regulatory and use permit decisions;

WHEREAS, the Planning Department determined that the proposed permit modifications of 2013 would result in potentially significant adverse environmental impacts and therefore be a project subject to the California Environmental Quality Act (CEQA), and that completion of an Environmental Impact Report (EIR) 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, Altamont Winds Inc. and Windworks Inc. filed the subject application in early 2014 requesting extension of its permits through the end of 2018, which was one of the alternatives considered in the 2013 FEIR (Alternative 3), but for which the Board made findings in July 2013 to reject as infeasible and as likely to result in the next highest level of avian mortality after the proposal to operate without the winter season shutdown, and in order to address continued operations only and not the effects of decommissioning addressed in the 2013 EIR, provide the basis for findings in support of operations through 2018, incorporate new mitigation options and provide for adequate public review, the County required the preparation of a Supplemental Environmental Impact Report (SEIR) ; and

WHEREAS, a Draft SEIR was completed on November 17, 2014, which made the same findings as the original 2013 EIR of significant adverse impacts, either directly or

through habitat modifications, on special-status avian species, and identified the same mitigation measures applicable to ongoing operations as the 2013 EIR but also identified a new Mitigation Measure 17a to provide optional strategies to mitigate impacts on special-status avian species; and

WHEREAS, the East County Board of Zoning Adjustments held a public hearing on said application at the hour of 1:30 p.m. on the 18th day of December, 2014 for the purpose of receiving comments on the Draft SEIR, and again at 1:30 p.m. on the 2nd day of February, 2015 for the purpose of receiving comments on the project proposal, in the City of Pleasanton Council Chambers, 200 Old Bernal Avenue, Pleasanton, California; and

WHEREAS, the Planning Department submitted a Staff Report to the Board 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-XX** on February 2, 2015 to certify that the Final SEIR has been completed in compliance with CEQA, that the Final SEIR was presented to the Board and reviewed and considered the information contained in the Final EIR, that the Final EIR reflects the independent judgment of the Board; and

WHEREAS, the Board has considered Exhibit A (Written Findings of Significant Effects), Exhibit B (Mitigation Monitoring and Reporting Program) and Exhibit C (Statement of Overriding Considerations) of this Resolution, each of which are required by State and Local CEQA Guidelines; and

WHEREAS, East County Board of Zoning Adjustments has determined that extension of the Conditional Use Permits as conditioned herein, including implementation of the Mitigation Monitoring and Reporting Program attached as Exhibit B, would provide for all of the significant effects on the environment to have been eliminated or substantially lessened where feasible, as indicated in the Written Findings of Significant Effects attached as Exhibit A, and that there are remaining significant effects on the environment found to be unavoidable which 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, Z-06-03, Z-06-04 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 East County Board of Zoning Adjustments did hear and consider all said reports, recommendations and testimony as hereinabove set forth;

NOW THEREFORE BE IT RESOLVED, that this East County Board of Zoning Adjustments does hereby find the following with respect to the requested Conditional Use Permit extensions:

1. That the recitals above are accurate and are hereby adopted as findings of this Board of Zoning Adjustments; and

<ol style="list-style-type: none">2. The Board shall require Mitigation Measure 17 to 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;
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<p>OR 2. The Board shall require Mitigation Measure 17 to be implemented on the basis of the average golden eagle fatality rate (0.075) obtained from the Avian Monitoring Reports results for the bird years 2008 to 2012, in recognition that such a rate represents the largest number of years (i.e., more supporting data) during which time the winter season shutdown was in effect;</p>

<p>OR 2. The Board shall require Mitigation Measure 17 to be implemented on the basis of the average golden eagle fatality rates (0.085) obtained from the Avian Monitoring Reports results for the bird years 2005 to 2010, in recognition that such a rate represents the worst-case rate and the worst-case rate available in 2013 used to calculate Mitigation Measure 17 under the 2013 EIR;</p>

BE IT FURTHER RESOLVED that the Board of Zoning Adjustments does hereby amend the subject Conditional Use Permits approved by Resolutions R-2005-453, Z-06-03, Z-06-04, R-2007-111, Z-13-35 and Z-13-36, held in separate files in the offices of the

Community Development Agency, Planning Department, 224 West Winton, Rm. 111, Hayward, CA, 94544), subject to the following amended 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 to 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. Beginning on February 15, 2016, the Permittee shall be limited to operate its wind energy turbine facilities to have an installed total operating capacity of 91.2 MW over three years, either by operating all facilities until June 22, 2017 (i.e., a total of 12-¾ months), or by shutting down 50% of its turbines through October 31, 2018, or in other stages such that the three-year installed or operating capacity may not be greater than 91.2 MWs. The Permittee shall submit its plans to the Planning Director to operate a set number of turbines for a set number of months prior to each February 15 of the years 2016 to 2018, and cease operating all turbines after the installed and operating capacity in these three years reaches 91.2 MWs based on the number and months of operations reported in said plans.
3. By October 31, ~~2015~~ 2013, 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 (~~44~~ 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 ~~44~~ HRT turbine sites shall be fully decommissioned (cleared of equipment and foundations) at the time other turbines owned by the Permittee are fully decommissioned.
4. Unless the Permittee chooses to apply for an eagle take permit as described in Mitigation Measure BIO-17a (and submits a complete draft Eagle Conservation Plan and meets other USFWS requirements for an ETP) within six months of approval of the CUP modifications, the Permittee shall make a deposit to a trust

account of adequate funds prior to the start of each operational year (February 15th of each year, starting in 2016), that are dedicated to implementing Mitigation Measure BIO-17 and/or BIO-17a. Such deposits for the use of power pole retrofits, or contributions to regional conservation of raptor habitat may be adjusted (supplemented with additional funds or refunded) at the end of each operational year (2016 to 2018) based on actual expenditures and power pole retrofits completed.

5. 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 Resolution Z-13-35 this Resolution.
6. Indemnity: The Permittee shall defend, indemnify and hold harmless Alameda County and its agents, officers and employees from any claim, action or proceeding against Alameda County, and/or its agents, 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. 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.
7. Repowering Progress Reporting. The Permittee shall submit a report semi-annually (twice yearly) to the Board of Zoning Adjustments describing, relative to each of the potential obstacles to repowering outlined as "Circumstances Outside of AWI's Control" in the FSEIR.
8. Expiration: This permit shall expire on October 31, 2018 one month after its 13th (thirteenth) anniversary. The Permittee(s) shall have no express or implied right to operate existing turbines under these Permits after October 31, 2018.

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.

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

Exhibit A

Written Findings of Significant Effects

In accordance with State Public Resources Code §21081 and CEQA Guidelines Section 15091, the following findings are made and supporting facts provided for each significant environmental effect that has been identified in the Final Supplemental Environmental Impact Report (final 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 final 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 EBZA bases its decision) and mitigation measures in support of the findings. For specific resource mitigation measures, the section and page number where the full text of the mitigation measure occurs is noted in the 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 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 EBZA relating to the SEIR, the approvals, and the project
- All information (including written evidence and testimony) presented to the EBZA by the environmental consultants who prepared the SEIR or incorporated into reports presented to the EBZA
- 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 EBZA certifies that the SEIR has been completed in compliance with CEQA. The EBZA has independently reviewed the record and the SEIR prior to certifying the SEIR and approving the project. By these findings, the EBZA 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 EBZA. The EBZA recognizes the SEIR may contain clerical errors. The EBZA reviewed the entirety of the SEIR and bases its determination on the substance of the information it contains. The EBZA 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 EBZA 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

The EBZA 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 EBZA 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 EBZA 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 permit approval.

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 Significant Irreversible Changes

CEQA Section 21100(b)(2)(B) requires that an EIR identify any significant effect on the environment that would be irreversible if the project were implemented. Section 15126.2(c) of the State CEQA Guidelines characterizes irreversible environmental changes as those involving a large commitment of nonrenewable resources or irreversible damage resulting from environmental accidents.

The project's significant and irreversible changes are discussed in the 2013 Final EIR beginning at page 5-10. The 2013 Final EIR explains that, although the timing of the proposed project operations and decommissioning would differ from the schedule set forth in the existing CUPs, no new construction or physical changes to the environment not previously contemplated in the CUPs are proposed as part of the CUP modifications; therefore no additional nonrenewable resources would be used in project implementation. Further, the 2013 Final EIR notes that wind turbine facilities are considered temporary uses, subject to eventual removal at the end of their useful lifespan or conclusion of use permits, whichever comes first. In addition to the wind farms, the project area is predominantly used for grazing, which could continue unimpeded. The existing wind turbines and associated facilities would therefore not be considered irreversible uses of the project area.

The project is not expected to result in environmental accidents that would cause irreversible damage. Compliance with required plans, such as the Altamont Pass Wind Farms Fire Requirements, would minimize the potential for accidents that could result in environmental damage.

Findings and Recommendations Regarding Growth-Inducing Impacts

Section 15126.2(d) of the State CEQA Guidelines states that an SEIR should discuss "...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. Production of electricity from the project facilities is ongoing and would not create additional availability of energy resources beyond those already permitted for the facilities.

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
Impact BIO-1: Potential to cause a substantial adverse effect, either directly or through habitat modifications, on a special-status species.	<p>BIO-16: Implement Seasonal Shutdowns to Reduce Avian Fatalities</p> <p>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 until February 15 of the following year. No operational modifications will occur during the February 16 to October 31 period. AWI will notify County CDA each year when turbines have been shut down, and again when they have resumed operating.</p>	November 1 to February 15 of each year	Project Applicant	<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 15</p>

	<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, (together identified as Alternative 1 in the analysis of project alternatives) is projected to result in the fatality of approximately one eagle (cumulatively, and statistically, 0.7-1.0) when compared to the existing avian baseline condition (the No Project Alternative) (2013 FEIR Table 3.2-5). Although the baseline fatality rate is higher, this mitigation measure addresses the impacts of the proposed project (with mitigation), which is approximately one additional eagle fatality. 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 29 utility poles as mitigation for the expected level of eagle fatality from the proposed project. AWI may contract directly with an electrical utility to fund this mitigation; however, a written agreement and evidence of the completion of the retrofits must be provided to the County CDA. USFWS has estimated the cost of retrofits at \$7,500 per pole, and therefore AWI may contribute \$217,500 (\$7,500 x 29 poles) to a third party mitigation account (approved by the County CDA) instead of contracting directly with a utility. The third party mitigation account holder would have the responsibility of completing the mitigation or contracting for the mitigation to be completed. Evidence of completion of mitigation must be provided to the County CDA within one year of approval of the proposed project.</p>	<p>Prior to decommissioning and reclamation activities; after decommissioning and reclamation activities</p>	<p>Project Applicant</p>	<p>Reviewing Party County of Alameda</p> <p>Criteria Check to ensure retrofitting of electrical poles has been conducted</p> <p>Monitoring Action Require measure as part of issuing grading/building permits. Verify compensation after decommissioning and reclamation activities.</p>
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<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 using a balanced mix of the options presented below, as well as considering new options suggested by the growing body of knowledge during the course of the project lifespan, 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>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, 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</p>	<p>Compensation measures as detailed in an approved Special-Status Species Mitigation Plan must be implemented within 60 days of the permit approval.</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.</p> <p>Monitoring Action Require measure as part of issuing grading/building permits. Verify compensation after decommissioning and reclamation activities.</p>
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	<p>Special-Status Species Mitigation Plan must be implemented within 60 days of the permit approval. Special-Status Species Mitigation Plans may be revised—and will be reviewed by the County.</p> <ul style="list-style-type: none"> <p>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.</p> <p>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.</p> 		
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Exhibit C

Statement of Overriding Considerations

Pursuant to the requirements of CEQA Sections 21002, 21002.1, and 21081 and Section 15093 of the State CEQA Guidelines, the EBZA finds that approval of Modifications to the Conditional Use Permits (2013) for Altamont Winds, Inc., the potential environmental impacts of which have been evaluated in the Final Supplemental EIR, and as indicated in the above findings, will result in the occurrence of significant effects which are not avoided or substantially lessened, as described in the Written Findings of Environmental Significance. 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

Further, as required by CEQA Section 21081(b) and State CEQA Guidelines Section 15093, the EBZA finds that the unavoidable significant effects listed above are outweighed by specific findings that the project, as mitigated by the measures identified in the EIR, would provide overriding economic and region-wide and statewide environmental benefits. There are no legal, social, technological or other benefits known to the County, nor are such benefits required to be provided (they are only examples of reasons that may be applicable). Specifically, the project will provide the following benefits:

Economic Benefits

The project will maintain the electrical production from the AWI windfarm as has been in place since the beginning of 2013, or a maximum of 85.8 MW, 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 represents 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 Altamont Winds, Inc. to continue operating at its full capacity through 2018 would also serve to maintain a greater number of jobs and higher tax revenue from the production of electricity.

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 under construction in Hayward) that would in part serve to replace electrical energy production capacity that would be eliminated if the project were not approved.

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 31, 2018 and required removal by 2020 will further assist in these repowering efforts.

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. 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 are limited.

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. 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, to the least acceptable level.



02 February 2015

To: The East County Board of Zoning Adjustment

cc: Sandra Rivera, Assistant Planning Director, Alameda Co.

From: Rick Koebbe, President

Subject: Comments to the Alameda Co. FSEIR staff report and related documents
FSEIR permit (3 yr extension) request
86 MW Altamont wind farms

Altamont Winds Inc. (**Applicant**) has the following comments to the Alameda Co. FSEIR staff report and related documents, dated February 2, 2015, as follows:

1. EXHIBIT A, WRITTEN FINDINGS OF SIGNIFICANT EFFECT, page 3. We propose changing the text, as follows (shown in blue-line ~~strikeout~~/underline):

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 permit ~~approval~~
effectiveness, February 15, 2016.

See attached Exhibit A, showing the entire document, with proposed changes. An explanation is provided below.

1.1 BIO-17a mitigation plan submittal timing is unreasonable. This mitigation plan will require a significant amount of time and effort to complete, probably at least 6 months. It's illogical to require that the applicant provide a plan in 60 days; instead, we propose any mitigation plan is provided 60 days from when the permit approval is implemented, on Feb. 15, 2016.

The remainder of this page left intentionally blank.

2. EXHIBIT B, MITIGATION MONITORING AND REPORTING PROGRAM, page 4. We propose changing the text, as follows (shown in blue-line underline):

The changes in the first section below simply clarifies/corrects typos, to be consistent with the related staff report documents.

FINAL SUPPLEMENTAL MITIGATION MONITORING AND REPORTING PROGRAM

ITAL MITIGATION MONITORING AND REPORTING PRORAM

Proposed Mitigation Measure	Timing
<p>BIO-16: Implement Seasonal Shutdowns to Reduce Avian Fatalities</p> <p>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 until February 15 of the following year. No operational modifications will occur during the February 16 <u>15</u> to October 31 period. 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 <u>until</u> February 15 of each year</p>
<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, (together identified as Alternative 1 in the analysis of project alternatives) is projected to result in the fatality of approximately one eagle (cumulatively, and statistically, 0.7–1.0) when compared to the existing avian baseline condition (the No Project Alternative) (2013 FEIR Table 3.2-5). Although the baseline fatality rate is higher, this mitigation measure addresses the impacts of the proposed project (with mitigation), which is approximately one additional eagle fatality. 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 29 utility poles as mitigation for the expected level of eagle fatality from the proposed project. AWI may contract directly with an electrical utility to fund this mitigation; however, a written agreement and evidence of the completion of the retrofits must be provided to the County CDA. USFWS has estimated the cost of retrofits at \$7,500 per pole, and therefore AWI may contribute \$217,500 (\$7,500 x 29 poles) to a third party mitigation account (approved by the County CDA) instead of contracting directly with a utility. <u>However, the cost of retrofits will be adjusted to the latest PG&E cost estimate or actual costs from October 2014, as provided by written documentation from PG&E, at \$1,069 per power pole retrofit.</u> The third party mitigation account holder would have the responsibility of completing the mitigation or contracting for the mitigation to be completed. Evidence of completion of mitigation must be provided to the County CDA within one year of approval of the proposed project.</p>	<p>Prior to decommissioning and reclamation activities; <u>after decommissioning and reclamation activities</u></p>

See attached Exhibit B, showing the entire document, with proposed changes. An explanation is provided below.

2.1 PG&E power pole retrofit (PPR) costs are lower, at \$1,069 each. Based upon the applicant's installation of five power pole retrofits in 2014, with the services provided by PG&E, the power pole retrofit cost is significantly less than an arbitrary value of \$7,500 shown in the USFWS document.

- > PPR deposit of \$7,500/pole is arbitrary and excessive.
- > USFWS estimates \$7,500/pole, but this value has no basis compared to PG&E's actual costs.
- > PG&E's actual costs in 2014 to retrofit five (5) power poles was an average of **\$1,069/pole**.
- > the County's proposed deposit amount is **7 times** PG&E's actual costs (\$7,500/\$1,069).
- > any mitigation deposits should be based on the best available information, which are the recent 2014 actual PG&E PPR costs.

> Actual PG&E 2014 PPR costs averaged \$1,069/pole

- > total cost to retrofit five (5) power poles: **\$5,343**
- > see attached PG&E PPR contract dated September 10, 2014, attached as Exhibit 2.1.
- > PG&E work performed October 15-16, 2014, 3.5 months ago.

> PG&E cost breakdown:

- engineering & administration:	\$74.00
- materials & field construction ("tie-in / meters"):	\$3,913.56
- federal & state income tax charge ("ITCC"):	<u>\$1,355.77</u>
- Total	\$5,343.33 ÷ 5 poles = \$1,068.67/pole

The applicant paid PG&E in full, in advance, following completion of cost estimate.

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3. STAFF REPORT, pages 12-13. We propose changing the text, as follows (shown in blue-line strikeout/underline):

PLANNING CONSIDERATIONS

Firstly, with respect to the primary request to operate the full 828-turbine, 85.8 MW wind farm for the three years between February 15, 2016 and October 31, 2018, for a cumulative three-year installed capacity of 182.4 MWs, County staff recommend that the use permits be extended ~~but to allow no more than one-half of the MWs to be operated within that period, which may be either operated fully until June 22, 2017 (i.e., a total of 12 ¾ months out of the applicant's requested extension to allow 25 ½ months of operation, with winter season shutdown as provided by Mitigation Measure 16), at 50% at 100% capacity for all three years through October 31, 2018, or in other stages such that the three-year installed or operating capacity of AWI's entire windfarm operations, with or without an asset exchange, may not be greater than 91.2 MWs, or one-half of 182.4 MWs. The result of such a reduction in MWs would proportionally reduce the number of golden eagle, other raptors and avian species fatalities. The East County Board of Zoning Adjustments may specify that the CUPs will expire on June 22, 2017, or another later date if the applicant requests to operate fewer turbines over a longer period of time.~~

~~Planning staff consider this reduced level of operations to be somewhat comparable to, but notably more liberal than reverting back to the original 2005 CUP conditions, in which only 15 percent of the turbines were allowed to be operating between 2016 and 2018. It would provide for a total operational output in MWs from October 2013 to October 2018 of 220.0 MW, when compared to the other alternatives considered in the 2013 FEIR and as represented in Table 3-2 of the FSEIR (page 33). It is moderately more MWs of allowed output than Alternative 2 considered in the 2013 FEIR (30.5 more MW, compared to 189.5 under Alternative 2, which provided for cessation of operations after October 31, 2016).~~

Fourthly, the Board should agree on a fatality rate to be used for projecting the total number of golden eagle fatalities anticipated to result from the project, from among the three principal options: a) 0.061 based on the monitoring years 2008-2010; ~~b) 0.071 based on monitoring years 2008-2012; or c) 0.085 using monitoring years 2005-2010.~~ The fatality rate will then be used to determine the number of power pole retrofits to be required under Mitigation Measure BIO-17 (and as adjusted by half, assuming the first recommendation above is required). Further, this fatality rate shall be adjusted for any clean wind power climate benefits and background mortality, with use of best available information, and implemented under adaptive management techniques.

~~Finally, unless the applicant chooses to apply for an eagle take permit as described in Mitigation Measure BIO-17a (and submits a complete draft Eagle Conservation Plan and meets other USFWS requirements for an ETP) within six months of approval of the CUP modifications, the applicant should make a deposit of adequate trust funds prior to the start of each operational year (February 15th of each year, starting in 2016) that are dedicated to implementing Mitigation Measure BIO-17 and/or BIO-17a. Such deposits~~

for the use of power pole retrofits, or contributions to regional conservation of raptor habitat could be adjusted at the end of each operational year (2016 to 2018) based on actual expenditures and power pole retrofits completed, subject to approval by a Technical Advisory Committee (TAC) as will be structured under the APWRA Repowering Program EIR. However, the TAC is not required to approve accounting refunds from expenditures from power pole retrofits, if any.

Finally, the applicant will provide progress reports, on a semi-annual (twice yearly) basis, regarding the installation of its power pole retrofits (as it did with its power pole retrofits in 2014).

See attached Staff Report, showing the entire document, with proposed changes. An explanation is provided below.

3.1 Extend permits for 3 years. Since we're substantially mitigating the avian issues, we should be able to operate the project for 3 years (100%), until Oct. 31, 2018, as long as we provide the mitigation, not 50% as proposed by the Planning Dept. In addition, such extension is consistent with the County's Staff Report, Statement of Overriding Considerations, Exhibit C.

3.2 Use the lower fatality rate 0.061. We propose using the lower fatality rate of 0.061, because:

- (a) the higher rates do not accurately include significant background mortality;
- (b) the higher rates do not include any climate benefits (from the displacement of 609 million lbs of greenhouse gases and toxic air pollution) of clean wind power, which saves 952 birds (derived via McCubbin-Sovacool report);
- (c) historically inconsistent and varied avian monitoring data sets prior to 2008; and
- (d) removing 21 Hazardous Ranked Turbines (HRTs) ranked greater than 8.5 is "double dipping" on the fatality rate, i.e., the fatality rate includes HRTs, so the fatality rate would be lower with less HRTs.

3.3 Applicant does not need to advance funds to the County for power pole retrofits. It's a huge financial burden on the applicant to submit power pole retrofit funds to the County in advance of the actual work, at roughly \$1 million per year. The funds should be efficiently managed and conducted/spent by the applicant, not controlled by the County. County-controlled funds will burden and delay implementation of this mitigation. Instead, we propose semi-annual reports to show progress with PG&E. The County cannot implement power pole retrofits any faster than the applicant, under any circumstance. Such funds must be paid from the applicant to PG&E in advance, once they provide an estimate for the work, with any adjustment accounting thereafter.

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4. DRAFT RESOLUTION NO. Z-15-XX, pages 6-8. We propose changing the text, as follows (shown in blue-line strikeout/underline):

2. Beginning on February 15, 2016, the Permittee shall **not** be limited to operate its wind energy turbine facilities to have an installed total operating capacity of 91.2 MW over three years, either by operating all facilities until June 22, 2017 (i.e., a total of 12 3/4 months), or by shutting down 50% of its turbines through October 31, 2018, or in other stages such that the three year installed or operating capacity may not be greater than 91.2 MWs. The Permittee shall submit its plans to the Planning Director to operate a set number of turbines for a set number of months prior to each February 15 of the years 2016 to 2018, and cease operating all turbines after the installed and operating capacity in these three years reaches 91.2 MWs based on the number and months of operations reported in said plans.
4. Unless the Permittee chooses to apply for an eagle take permit as described in Mitigation Measure BIO 17a (and submits a complete draft Eagle Conservation Plan and meets other USFWS requirements for an ETP) within six months of account of adequate funds prior to the start of each operational year (February 15th of each year, starting in 2016), that are dedicated to implementing Mitigation Measure BIO 17 and/or BIO 17a. Such deposits for the use of power pole retrofits, or contributions to regional conservation of raptor habitat may be adjusted (supplemented with additional funds or refunded) at the end of each operational year (2016 to 2018) based on actual expenditures and power pole retrofits completed.

See attached Draft Resolution No. Z-15-XX, showing the entire document, with proposed changes.

These changes are consistent with our comments above.

Exhibit A

Written Findings of Significant Effects

In accordance with State Public Resources Code §21081 and CEQA Guidelines Section 15091, the following findings are made and supporting facts provided for each significant environmental effect that has been identified in the Final Supplemental Environmental Impact Report (final 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 final 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 EBZA bases its decision) and mitigation measures in support of the findings. For specific resource mitigation measures, the section and page number where the full text of the mitigation measure occurs is noted in the 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 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 EBZA relating to the SEIR, the approvals, and the project
- All information (including written evidence and testimony) presented to the EBZA by the environmental consultants who prepared the SEIR or incorporated into reports presented to the EBZA
- 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 EBZA certifies that the SEIR has been completed in compliance with CEQA. The EBZA has independently reviewed the record and the SEIR prior to certifying the SEIR and approving the project. By these findings, the EBZA 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 EBZA. The EBZA recognizes the SEIR may contain clerical errors. The EBZA reviewed the entirety of the SEIR and bases its determination on the substance of the information it contains. The EBZA 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 EBZA 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

The EBZA 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 EBZA 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 EBZA 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 permit [approval effective date, February 15, 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 Significant Irreversible Changes

CEQA Section 21100(b)(2)(B) requires that an EIR identify any significant effect on the environment that would be irreversible if the project were implemented. Section 15126.2(c) of the State CEQA Guidelines characterizes irreversible environmental changes as those involving a large commitment of nonrenewable resources or irreversible damage resulting from environmental accidents.

The project's significant and irreversible changes are discussed in the 2013 Final EIR beginning at page 5-10. The 2013 Final EIR explains that, although the timing of the proposed project operations and decommissioning would differ from the schedule set forth in the existing CUPs, no new construction or physical changes to the environment not previously contemplated in the CUPs are proposed as part of the CUP modifications; therefore no additional nonrenewable resources would be used in project implementation. Further, the 2013 Final EIR notes that wind turbine facilities are considered temporary uses, subject to eventual removal at the end of their useful lifespan or conclusion of use permits, whichever comes first. In addition to the wind farms, the project area is predominantly used for grazing, which could continue unimpeded. The existing wind turbines and associated facilities would therefore not be considered irreversible uses of the project area.

The project is not expected to result in environmental accidents that would cause irreversible damage. Compliance with required plans, such as the Altamont Pass Wind Farms Fire Requirements, would minimize the potential for accidents that could result in environmental damage.

Findings and Recommendations Regarding Growth-Inducing Impacts

Section 15126.2(d) of the State CEQA Guidelines states that an SEIR should discuss "...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. Production of electricity from the project facilities is ongoing and would not create additional availability of energy resources beyond those already permitted for the facilities.

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 PROGRAM

Impact	Proposed Mitigation Measure	Timing	Implementation	Monitoring
Impact BIO-1: Potential to cause a substantial adverse effect, either directly or through habitat modifications, on a special-status species.	<p>BIO-16: Implement Seasonal Shutdowns to Reduce Avian Fatalities</p> <p>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 until February 15 of the following year. No operational modifications will occur during the February 15 to October 31 period. AWI will notify County CDA each year when turbines have been shut down, and again when they have resumed operating.</p>	November 1 to February 15 of each year	Project Applicant	<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 15</p>

	<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, (together identified as Alternative 1 in the analysis of project alternatives) is projected to result in the fatality of approximately one eagle (cumulatively, and statistically, 0.7-1.0) when compared to the existing avian baseline condition (the No Project Alternative) (2013 FEIR Table 3.2-5). Although the baseline fatality rate is higher, this mitigation measure addresses the impacts of the proposed project (with mitigation), which is approximately one additional eagle fatality. 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 29 utility poles as mitigation for the expected level of eagle fatality from the proposed project. AWI may contract directly with an electrical utility to fund this mitigation; however, a written agreement and evidence of the completion of the retrofits must be provided to the County CDA. USFWS has estimated the cost of retrofits at \$7,500 per pole, and therefore AWI may contribute \$217,500 (\$7,500 x 29 poles) to a third party mitigation account (approved by the County CDA) instead of contracting directly with a utility. However, the cost of retrofits will be adjusted to the latest PG&E cost estimate or actual costs from October 2014, as provided by written documentation from PG&E, at \$1,069 per power pole retrofit. The third party mitigation account holder would have the responsibility of completing the mitigation or contracting for the mitigation to be completed. Evidence of completion of mitigation must be provided to the County CDA within one year of approval of the proposed project.</p>	Prior to decommissioning and reclamation activities; after decommissioning and reclamation activities	Project Applicant	<p>Reviewing Party County of Alameda</p> <p>Criteria Check to ensure retrofitting of electrical poles has been conducted</p> <p>Monitoring Action Require measure as part of issuing grading/building permits. Verify compensation after decommissioning and reclamation activities.</p>
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	<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 using a balanced mix of the options presented below, as well as considering new options suggested by the growing body of knowledge during the course of the project lifespan, 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>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, 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</p>	<p>Compensation measures as detailed in an approved Special-Status Species Mitigation Plan must be implemented within 60 days of the permit approval.</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.</p> <p>Monitoring Action Require measure as part of issuing grading/building permits. Verify compensation after decommissioning and reclamation activities.</p>
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EXHIBIT 2.1

PG&E power pole retrofit (PPR) costs

- > **Actual PG&E 2014 PPR costs averaged \$1,069/pole**
- > total cost to retrofit five (5) power poles: **\$5,343**
- > PG&E work performed October 15-16, 2014, 3.5 months ago.

- > **PG&E cost breakdown:**
 - engineering & administration: \$74.00
 - materials & field construction ("tie-in / meters"): \$3,913.56
 - federal & state income tax charge ("ITCC"): \$1,355.77
 - Total** $\$5,343.33 \div 5 \text{ poles} = \textbf{\$1,068.67/pole}$

The PG&E PPR contract dated September 10, 2014, is shown on the following pages.



September 9, 2014

WILLIAM DAMON
WINDWORKS INC, A ID CORPORATION
15850P JESS RANCH RD
TRACY, CA 95377

RE: Contract ID: 1179257: ALONG PATTERSON PASS

Dear WILLIAM DAMON,

Enclosed are gas and/or electric agreements for your project located at:

PATTERSON PASS & MIDWAY, TRACY, 94550

This letter summarizes the agreements for this project.

	Non-Refundable Payment	Refundable Option*	50% Discount Option*
Relocation / Rearrangement Costs	\$5,343.33	\$0.00	\$0.00
Less Credit (Engineering Advance, etc.)	\$0.00	\$0.00	\$0.00
TOTAL **	\$5,343.33	\$0.00	\$0.00
TOTAL PAYMENT DUE	\$5,343.33	OR	\$5,343.33

* Only applies to Rule 15 Refundable Amounts. Amount shown is less credit for associated Applicant work.

** The Income Tax Component of Contribution (ITCC) is included in the above charges when applicable.

Please sign both copies of the agreement and return one copy of the agreement to the address below along with your payment and retain one copy for your records. If the agreement is not returned to PG&E within 90 days of the date of this letter, the proposed agreement is canceled and PG&E may need to re-estimate the job.

Changes to the agreement, either to any of the terms or to the amount owing, are not permitted, and any change or interlineations voids the agreement. The payment of any amount less than the full amount shown will be deposited by PG&E, but PG&E will not begin any work on this contract until the amount is paid in full. The contract shall be deemed effective the date a fully executed copy is received by PG&E. Please allow 30 days from PG&E's receipt of the Agreement for construction to commence.

PG&E is committed to providing timely and efficient service and we look forward to continuing to work with you on this and future projects.

Should you have any questions regarding these contracts, please contact your project manager Christopher Callas at 209-942-1618 or CRCC@pge.com.

Please send the executed Agreements and payment to:

PG&E CFM/PPC DEPARTMENT
PO BOX 997340
Sacramento, CA 95899-7340

Sincerely,

Candace Briskey

Candace Briskey
Service Planning Supervisor



108888785E

Ref: Contract ID: 1179257: PATTERSON PASS & MIDWAY, TRACY, 94550



**Pacific Gas and Electric Company
Agreement to Perform
Tariff Schedule Related Work**

DISTRIBUTION:

- ☐ APPLICANT (Original)
☐ DIVISION (Original)
☐ ACCTG. SVCS.

REFERENCES:

Notification # 108888785
Contract # 1179257
ERR-PM # 31099739
GRR-PM #

WINDWORKS INC, A ID Corporation (Applicant) has requested PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (PG&E), to perform the tariff schedule related work as located and described in paragraph 3 herein. PG&E agrees to perform the requested work and furnish all necessary labor, equipment, materials and related facilities required therefor, subject to the following conditions:

1. Whenever part or all of the requested work is to be furnished or performed upon property other than that of Applicant, Applicant shall first procure from such owners all necessary rights-of-way and/or permits in a form satisfactory to PG&E and without cost to it.
2. Applicant shall indemnify and hold harmless PG&E, its officers, agents and employees, against all loss, damage, expense and liability resulting from injury to or death of any person, including but not limited to, employees of PG&E, Applicant or any third party, or for the loss, destruction or damage to property, including, but not limited to property of PG&E, Applicant or any third party, arising out of or in any way connected with the performance of this agreement, however caused, except to the extent caused by the active negligence or willful misconduct of PG&E, its officers, agents and employees. Applicant will, on PG&E's request, defend any suit asserting a claim covered by this indemnity. Applicant will pay all costs that may be incurred by PG&E in enforcing this indemnity, including reasonable attorneys' fees.
3. The location and requested work are described as follows: (Describe in detail the materials and facilities to be furnished and/or work to be performed by PG&E. If more space is required, use other side and attach any necessary drawings as Exhibits A, B, C, etc):

LOCATION: PATTERSON PASS & MIDWAY TRACY, 94550

DESCRIPTION OF WORK: Retrofit five (5) power poles to reduce electrocution risk to golden eagles

		Electric	Gas
Engineering & Administrative Cost		<u>\$74.00</u>	<u>\$0.00</u>
Value of Applicant Design Work	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Additional Applicant Design Plan Checks	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Facilities (Cable, Transformers / Gas Pipe)	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Trench, Conduits & Substructures	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Tie-In / Meters	(+)	<u>\$3,913.56</u>	<u>\$0.00</u>
Trench Permits & Land Rights	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Inspection Fees	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Sub Total	(=)	<u>\$3,987.56</u>	<u>\$0.00</u>
plus ITCC @ 34.0% Electric 0.0% Gas	(+)	<u>\$1,355.77</u>	<u>\$0.00</u>
plus Non Taxable Work	(+)	<u>\$0.00</u>	<u>\$0.00</u>
D.0405055 Line Extension Costs - Residential	(+)	<u>\$0.00</u>	<u>\$0.00</u>
D.0405055 Line Extension Costs - Non-Residential	(+)	<u>\$0.00</u>	<u>\$0.00</u>
less Value of Relocation Applicant Design Work	(-)	<u>\$0.00</u>	<u>\$0.00</u>
less Work Provide by Applicant	(-)	<u>\$0.00</u>	<u>\$0.00</u>
less Salvage	(-)	<u>\$0.00</u>	<u>\$0.00</u>
Total Payment	(=)	<u>\$5,343.33</u>	<u>\$0.00</u>



108888785E

4. Applicant shall pay to PG&E, promptly upon demand by PG&E, as the complete contract price hereunder, the sum of Five Thousand Three Hundred Forty-Three Dollars And Thirty-Three Cents (\$5,343.33)

Upon completion of requested work, ownership shall vest in: ☒ PG&E ☐ Applicant

Executed this 10th day of September, 2014

WINDWORKS INC, A ID Corporation

Applicant

By:

William L. Damon

WILLIAM DAMON

Print/Type/Name

PACIFIC GAS & ELECTRIC COMPANY

By:

Candace Briskey

Candace Briskey

Title: Vice President

Title:

Service Planning Supervisor

Mailing Address: 15850P JESS RANCH RD
TRACY, CA 95377



108888785E

WINDWORKS INC.

PG&E Agreement to Perform Tariff Schedule Related Work
Contract No. 1179257, ERR-PM No. 31099739, dated September 10, 2014
Retrofit five (5) power poles, Patterson Pass Road and Midway Road, near Tracy, CA

WindWorks Inc.
15850P JESS RANCH ROAD
TRACY, CA 95377

PAY
TO THE
ORDER
OF

Five Thousand Three Hundred Forty Three and 33/100 dollars

DATE
10 September 2014

AMOUNT
\$5,343.33

Pacific Gas and Electric Company
CFM/PPC Department
PO Box 997340
Sacramento, California 95899-7340

William Z. Damof

Details on back
Security Features included.

WINDWORKS INC.

PG&E Agreement to Perform Tariff Schedule Related Work
Contract No. 1179257, ERR-PM No. 31099739, dated September 10, 2014
Retrofit five (5) power poles, Patterson Pass Road and Midway Road, near Tracy, CA



**ALAMEDA COUNTY CDA
PLANNING DEPARTMENT**

STAFF REPORT

TO: EAST COUNTY BOARD OF ZONING ADJUSTMENTS
HEARING DATE: FEBRUARY 2, 2015

GENERAL INFORMATION

**APPLICATION: MODIFICATIONS TO 16 EXISTING CONDITIONAL USE PERMITS
(APPROVED YEAR 2005, AS MODIFIED IN 2013), PLN2014-00028**

APPLICANT: ALTAMONT WINDS, INC.

REQUEST: To extend 16 conditional use permits (CUPs) for three (3) years, through October 31, 2018, under specified conditions, beyond their current expiration date of October 31, 2015, for operation of an estimated 828 existing utility-scale wind turbines with a combined existing (current) generation capacity of 85.8 megawatts (MW).

LOCATION, SPECIFIC PERMITS, OPERATORS, PROPERTY OWNERS AND PARCEL NUMBERS: The existing turbines are located throughout the approximately 14,436-acre Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), in the eastern portion of Alameda County, bisected by Interstate I-580, on up to 58 parcels bearing 58 separate Assessor's Parcel Numbers.

Conditional Use Permit Numbers, Facility Permittee/Land Owner family names and Assessor's Parcel Numbers (APNs) as follows:

C-8036, Altamont Infrastructure Company/Frick & Costa, APN: 099B-5680-015-00;
C-8037, Altamont Infrastructure Company/Pombo, APNs: 099B-6300-002-01, 099B-6300-002-02, 099B-6325-002-03, 099B-6325-002-04 and 099B-6425-001-06;
C-8134, Altamont Infrastructure Company/Rooney, APN: 099B-6125-002-00;
C-8137, Altamont Infrastructure Company/Mulqueeney, APNs: 099A-1800-002-03, 99A-1800-002-04, 99b 7890-002-04, 99B-7890-002-05, 99B-7900-001-05, 99B-7900-001-07, 99B-7910-001-01, 99B-7925-001-03, 99B-7925-001-04, 99B-7925-002-04, 99B-7925-002-05, 99B-7975-001-00, 99B-7980-001-00, 99B-7985-001-03, 99B-7985-001-04, 99B-7985-001-05, 99B-7985-001-06 and 99B-8050-001-00;
C-8191, WindWorks Inc./Mulqueeney, APN: 099B-7910-001-01;
C-8216, WindWorks Inc./Alameda County Waste Management Authority, APN: 099A-1810-001-00;
C-8232, Altamont Infrastructure Company/ 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/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 and 099B-7300-001-05;
C-8241, Altamont Infrastructure Company/Walker Family Trust, APNs: 099B-6100-002-10, 099B-6100-002-12, 099B-6100-002-12, 099B-6100-003-10, 099B-6100-003-11, and 099B-6100-003-13;
C-8242, Altamont Infrastructure Company/Marie Gomes Farms, APNs: 099B-6150-

Proposed changes to staff report

preliminary draft

see handout...

1. Provide more time for alternative BIO-17a (Exh. A)

- > the 60-day submittal milestone date, to provide a special-status species mitigation plan, should be changed to the permit implementation date (Feb. 15, 2016), not the permit approval date (today)
- > such a plan would take many months to prepare, so it's not reasonable to require a plan to be submitted within 60 days of permit approval

2. Correct the text in BIO-16 to be consistent (Exh. B)

- > the text should allow us to operate on Feb. 15, like we've done historically, and as shown in other places in the staff report docs

3. Include climate benefits of clean wind power to wildlife

- > require the County's IE to derive the wildlife benefits from the best available information
- > McCubbin-Sovacool report derives saving 952 birds (2016-2018), from the displacement of 609 million lbs of greenhouse gases and toxic air pollution
- > McCubbin-Sovacool report has been peer reviewed and published in 3 professional journals, including the Journal of Integrative Environmental Sciences
- > the SEIR over-estimates the project impacts and mitigation
- > use the results under adaptive management, which is required anyway
- > if not, make wind uneconomical, then build more fossil-fired plants

Proposed changes to staff report

preliminary draft

4. Remove the mitigation requirements for background mortality

- > various studies show background mortality anywhere from roughly 30% to 60%
- > our Altamont projects see a significant quantity of background mortality (off v. on-season) 47%
- > use the results of the SRC background mortality study, which should be done this month
- > the SEIR over-estimates the project impacts and mitigation
- > use the results under adaptive management, which is required anyway

5. Use the lower eagle fatality rate 0.061

- > the higher rates do not fully include background mortality
- > the higher rates do not include any climate benefits of clean wind power, which saves 952 birds
- > historically, the avian monitoring data sets, with higher rates, were inconsistent and varied prior to 2008
- > removing additional 21 HRTs > 8.5 is "double dipping" on the fatality rate, i.e., the fatality rate includes HRTs > 8.5, so the fatality rate would be lower with less HRTs

Proposed changes to staff report

preliminary draft

6. Allow AWI, not the County, to manage the power pole retrofits funds

- > huge financial burden to provide funds before they're needed
- > the funds should be efficiently managed by AWI
- > we propose administering this program with PG&E, like we successfully did in 2014
- > as a compromise, we propose semi-annual progress reports
- > the funds are provided to PG&E, in advance, after the cost estimate
- > there's no way that the County can implement power retrofits faster that we can

7. PPR cost at \$7,500/PP in inaccurate

- > there's no basis for the USFWS power pole retrofit (PPR) cost of \$7,500
- > PG&E installed 5 PPR in 2014 for us, at an ave. cost of \$1,069 each (PG&E docs attached)
- > \$7,500 x 322 PP = \$2.4 million v. \$1,069 x 322 PP = \$344,000 (OOM 7X)
- > we propose using the best available info, the most accurate, actual recent PG&E costs

8. Extend our permits 3 yrs, to Oct. 31, 2018

- > repowering requires more time than mid-2017
- > since we're providing substantial mitigation, why limit permits to 50% (1.5yrs), mid-2017?
- > extend our permits for the full 3 yrs, as requested, and consistent with the County's

Statement of Overriding Considerations

Estimated Golden Eagle Fatalities

source: *fatality rates are from the 2013 FEIR*

$$\text{fatalities} = \text{installed capacity} \times \text{fatality rate}$$

Units:

- > Fatalities = total eagles over 3-year life of project
- > Installed capacity = MW-years
- > Fatality rates = eagles per MW-years

3

Estimated Golden Eagle Fatalities

source: *fatality rates are from the 2013 FEIR, years 2008-2010*

Inputs:

- > installed capacity = 182 MW-years
- > fatality rate = 0.061 eagles per MW-years

Results:

$$11.1 \text{ eagles} = (182 \text{ MW} - \text{years}) \times (0.061 \text{ eagles per MW} - \text{years})$$

4

DWR Prey Poisoning along the Aqueducts in the Altamont

- > in 2014, avian fatalities were up – why?
- > not caused by WTs, less WTs were operating
- > so, we investigated...
- > we suspect DWR poison in the avian food chain via contaminated prey animals
- > contributes to avian background mortality
- > why doesn't the regulatory agencies and avian advocates do something? fairness?

5

DWR Prey Poisoning in the Altamont



Climate & Air Quality Benefits

from continued operations

source: *Health, Wildlife and Climate Benefits of the 580 MW Altamont Wind Farms Altamont Pass, California* (135 pages), December 2011, Don McCubbin, Ph.D. and Ben Sovacool, Ph.D.
preliminary draft

Over the 3 yr (2016-2018) extended term of the CUPs, AWI's Altamont wind farms will offset/avoid:

- ▶ NO_x 252,000 lbs
- ▶ SO₂ 2,500 lbs
- ▶ PM 25,000 lbs
- ▶ CO₂ 609,000,000 lbs



7

Human Health & Avian Benefits

from continued operations

preliminary draft

The offsetting of toxic air pollution provides benefits to humans and wildlife, including birds.

From 2016-2018, the 86 MW wind farm will save/avoid:

- > heart attacks, premature mortality, and asthma, among other illnesses (most significant impacts children & elderly)
- > **952 avian deaths AVOIDED/SAVED**

8

Avian Net Impact Analysis over 3 yrs (2016-2018)

preliminary draft

- > **climate benefits**
 - = 609 million lbs toxic air pollution avoided
 - = 952 birds, including eagles SAVED
- > **avian background mortality, incl. DWR poisoning**
 - = 47% = 5.2 eagles BLAMED
- > **eagle mitigation**
 - = 322 power pole retrofits = 11.1 eagles SAVED
- > **NET EAGLE IMPACTS**
 - = -11.1 proj impact + 5.2 + 11.1 ≥ **5.2 eagles SAVED**

operations in a financially feasible manner beyond 2015, and thereby approve the project as proposed. County staff recognize that there are certain overriding considerations, as described in Exhibit C to the draft Resolution, related to local jobs and renewable energy. Alternatively, the Board may consider Planning staff's following recommendations:

Firstly, with respect to the primary request to operate the full 828-turbine, 85.8 MW wind farm for the three years between February 15, 2016 and October 31, 2018, for a cumulative three-year installed capacity of 182.4 MWs, County staff recommend that the use permits be extended ~~but to allow no more than one half of the MWs to be operated within that period, which may be either operated fully until June 22, 2017 (i.e., a total of 12 3/4 months out of the applicant's requested extension to allow 25 1/2 months of operation, with winter season shutdown as provided by Mitigation Measure 16), at 50% at 100% capacity for all three years through October 31, 2018, or in other stages such that the three-year installed or operating capacity of AWI's entire windfarm operations, with or without an asset exchange, may not be greater than 91.2 MWs, or one half of 182.4 MWs. The result of such a reduction in MWs would proportionally reduce the number of golden eagle, other raptors and avian species fatalities. The East County Board of Zoning Adjustments may specify that the CUPs will expire on June 22, 2017, or another later date if the applicant requests to operate fewer turbines over a longer period of time.~~

~~Planning staff consider this reduced level of operations to be somewhat comparable to, but notably more liberal than reverting back to the original 2005 CUP conditions, in which only 15 percent of the turbines were allowed to be operating between 2016 and 2018. It would provide for a total operational output in MWs from October 2013 to October 2018 of 220.0 MW, when compared to the other alternatives considered in the 2013 FEIR and as represented in Table 3-2 of the FSEIR (page 33). It is moderately more MWs of allowed output than Alternative 2 considered in the 2013 FEIR (30.5 more MW, compared to 189.5 under Alternative 2, which provided for cessation of operations after October 31, 2016).~~

Secondly, staff believes the applicant should be required to shutdown all turbine sites it currently operates or could operate after the asset exchange, with an HRT rating of 8.5 or greater. The elimination of hazardous-rated turbines (HRTs) has been shown by the preponderance of evidence over many years to reduce the number of avian fatalities, and has been part of the conditions of approval in various forms for the CUPs since 2005.

Thirdly, in order to assure the applicant honors its statements that it is taking all possible steps to engage in repowering of its APWRA assets except under specific conditions that it contends are outside of its control, the applicant should be required to submit a report semi-annually (twice yearly) to the Board of Zoning Adjustments describing, relative to each of the potential obstacles to repowering outlined as "Circumstances Outside of AWI's Control" in the FSEIR (page 25).

Fourthly, the Board should agree on a fatality rate to be used for projecting the total number of golden eagle fatalities anticipated to result from the project, from among the three principal options: a) 0.061 based on the monitoring years 2008-2010; ~~b) 0.071 based on monitoring years 2008-2012; or c) 0.085 using monitoring years 2005-2010.~~ The fatality rate will then be used to determine the number of power pole retrofits to be required under Mitigation Measure BIO-17 (and as adjusted by half, assuming the first recommendation above is required). Further, this fatality rate shall be adjusted for any clean wind power climate benefits and background mortality, with use of best available information, and implemented under adaptive management techniques.

~~Finally, unless the applicant chooses to apply for an eagle take permit as described in Mitigation Measure BIO-17a (and submits a complete draft Eagle Conservation Plan and meets other USFWS requirements for an ETP) within six months of approval of the CUP modifications, the applicant should make a deposit of adequate trust funds prior to the start of each operational year (February 15th of each year, starting in 2016)~~

~~that are dedicated to implementing Mitigation Measure BIO-17 and/or BIO-17a. Such deposits for the use of power pole retrofits, or contributions to regional conservation of raptor habitat could be adjusted at the end of each operational year (2016 to 2018) based on actual expenditures and power pole retrofits completed, subject to approval by a Technical Advisory Committee (TAC) as will be structured under the APWRA Repowering Program EIR. However, the TAC is not required to approve accounting refunds from expenditures from power pole retrofits, if any.~~

Finally, the applicant will provide progress reports, on a semi-annual (twice yearly) basis, regarding the installation of its power pole retrofits (as it did with its power pole retrofits in 2014).

DRAFT RESOLUTION NO. 15-XX
AWI PERMIT MODIFICATIONS, PLN2014-00028
FEBRUARY 2, 2015
PAGE 6

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, Z-06-03, Z-06-04 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 East County Board of Zoning Adjustments did hear and consider all said reports, recommendations and testimony as hereinabove set forth;

NOW THEREFORE BE IT RESOLVED, that this East County Board of Zoning Adjustments does hereby find the following with respect to the requested Conditional Use Permit extensions:

1. That the recitals above are accurate and are hereby adopted as findings of this Board of Zoning Adjustments; and

2. The Board shall require Mitigation Measure 17 to 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;

~~OR 2. The Board shall require Mitigation Measure 17 to be implemented on the basis of the average golden eagle fatality rate (0.075) obtained from the Avian Monitoring Reports results for the bird years 2008 to 2012, in recognition that such a rate represents the largest number of years (i.e., more supporting data) during which time the winter season shutdown was in effect;~~

~~OR 2. The Board shall require Mitigation Measure 17 to be implemented on the basis of the average golden eagle fatality rates (0.085) obtained from the Avian Monitoring Reports results for the bird years 2005 to 2010, in recognition that such a rate represents the worst case rate and the worst case rate available in 2013 used to calculate Mitigation Measure 17 under the 2013 EIR;~~

BE IT FURTHER RESOLVED that the Board of Zoning Adjustments does hereby amend the subject Conditional Use Permits approved by Resolutions R-2005-453, Z-06-03, Z-06-04, R-2007-111, Z-13-35 and Z-13-36, held in separate files in the offices of the

DRAFT RESOLUTION NO. 15-XX
AWI PERMIT MODIFICATIONS, PLN2014-00028
FEBRUARY 2, 2015
PAGE 7

Community Development Agency, Planning Department, 224 West Winton, Rm. 111, Hayward, CA, 94544), subject to the following amended 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 to 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. Beginning on February 15, 2016, the Permittee shall not be limited to operate its wind energy turbine facilities to have an installed total operating capacity of 91.2 MW over three years, either by operating all facilities until June 22, 2017 (i.e., a total of 12 ½ months), or by shutting down 50% of its turbines through October 31, 2018, or in other stages such that the three-year installed or operating capacity may not be greater than 91.2 MWs. The Permittee shall submit its plans to the Planning Director to operate a set number of turbines for a set number of months prior to each February 15 of the years 2016 to 2018, and cease operating all turbines after the installed and operating capacity in these three years reaches 91.2 MWs based on the number and months of operations reported in said plans.
3. By October 31, 2015 ~~2013~~, 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 (44 ~~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 ~~44~~ HRT turbine sites shall be fully decommissioned (cleared of equipment and foundations) at the time other turbines owned by the Permittee are fully decommissioned.
4. Unless the Permittee chooses to apply for an eagle take permit as described in Mitigation Measure BIO-17a (and submits a complete draft Eagle Conservation Plan and meets other USFWS requirements for an ETP) within six months of account of adequate funds prior to the start of each operational year (February 15th of each year, starting in 2016), that are dedicated to implementing Mitigation Measure BIO-17 and/or BIO-17a.

DRAFT RESOLUTION NO. 15-XX
AWI PERMIT MODIFICATIONS, PLN2014-00028
FEBRUARY 2, 2015
PAGE 8

~~Such deposits for the use of power pole retrofits, or contributions to regional conservation of raptor habitat may be adjusted (supplemented with additional funds or refunded) at the end of each operational year (2016 to 2018) based on actual expenditures and power pole retrofits completed.~~

5. 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 Resolution ~~Z-13-35~~ this Resolution.
6. Indemnity: The Permittee shall defend, indemnify and hold harmless Alameda County and its agents, officers and employees from any claim, action or proceeding against Alameda County, and/or its agents, 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. 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.
7. Repowering Progress Reporting. The Permittee shall submit a report semi-annually (twice yearly) to the Board of Zoning Adjustments describing, relative to each of the potential obstacles to repowering outlined as "Circumstances Outside of AWI's Control" in the FSEIR.
8. Expiration: This permit shall expire on October 31, 2018 one month after its 13th (thirteenth) anniversary. The Permittee(s) shall have no express or implied right to operate existing turbines under these Permits after October 31, 2018.

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.

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

To: Sandra Rivera, Planning Department, Hayward, CA
From: Bob Cooper, resident of Dyer Rd. (bobcooperhorse@gmail.com)
Subject: Windmills on Dyer Rd.
Date: October 5, 2014

I'm writing this to call attention to the decrepit condition of the windmills on the ridge west of Dyer Rd. From my property (4000 Dyer Rd.), I can clearly see about 20 windmills. In the past year and a half, most of them have started to leak large amounts of oil from their central hubs. Below is a recent picture that shows obvious streaks of oil running from the central hub, along the blade, and then into the air. Both sides of the blade are similarly streaked. These windmills are owned and maintained by Altamont Winds Inc. (AWI)

Obviously, these windmills are polluting the environment. Their operation should cease immediately and not be put back into service until repaired. Fines seem appropriate.

Leaking oil is only a recent symptom of the age of these windmills. A safety issue is the condition of the large electric cables. They were initially installed in the late 1980's and have endured the harsh Altamont sun for over 27 years. Their insulation has developed substantial cracks. The cables' condition has also been hurt because they are severely twisted by the operation of the windmills. These cables carry 480 volts of electricity.

Additionally, windmill towers have failed; one transformers is leaking; most transformers are rusting; and blades brake.

AWI has requested that Alameda County modify AWI's Conditional Use Permit (CUP) to allow AWI to run 800 windmills an additional three years beyond the current end of operation in 2015. Considering the age of these windmills, their current decrepit condition, and evidence of insufficient/neglectful maintenance, County of Alameda should deny AWI's request for their CUP's extension.



To: Sandra Rivera, Planning Department, Hayward, CA
From: Bob Cooper, resident of Dyer Rd. (bobcooperhorse@gmail.com)
Subject: Draft Supplemental EIR for Altamont Winds Inc.
Date: December 21, 2014 - updated January 20, 2015

I'm Bob Cooper and I live at 4000 Dyer Dr., Livermore, CA. From the back of my five-acre property looking to the west, I can clearly see about 30 of AWI's windmills.

Altamont Windmills, Inc. (AWI) is requesting a modification of their CUP to run about 850 windmills for an additional three years, 2016 to 2018. The three year extension will mean that AWI's windmills will kill many more raptors and other birds than their current CUP would allow. For this reason I oppose the CUP modification.

I attach a photo of a Golden Eagle that was caught off Dyer Rd. It's left wing was broken most like by a windmill blade. It is in a large dog kennel. It was taken to Lindsey Wildlife Museum. Sadly, it could not be save and was euthanized.

Bob Cooper
bobcooperhorse@gmail.com



Young, Andrew, CDA

From: Robert Cooper [bobcooperhorse@gmail.com]
Sent: Tuesday, January 20, 2015 12:49 PM
To: William Damon
Cc: Rivera, Sandra, CDA; Young, Andrew; CDA; Mike Langeloh; Rick Koebbe; Morgan McGovert
Subject: Re: Cooper 111915 site visit invitation
Attachments: WindmillInput141222up.doc; DSC02502.jpg

Hi Sandra, et al-

I request that my input to the DSEIR for Altamont Winds Inc. dated January 11, 2015 be removed from the DSEIR document for the reasons stated below. I also request if possible that my input dated December 21, 2014 be replaced with the attached document and picture. If this replacement is not possible, I request it be removed from the DSEIR. I finally request that this email be included in the DSEIR.

Bill Damon and Mike Langeloh gave me a tour of the windmills today. They provided me with much information about AWI's turbine generators, maintenance and general operation. They answered my many questions in full. The information they gave me persuaded me that the dark stains on the windmills that I saw from my house were indeed rust stains, that maintenance of the turbines is being performed adequately, and that there is no evidence of the environmental pollution about which I was concerned.

I thank AWI for the personal tour. In the future I will direct my concerns to AWI staff first. I apologize for the trouble I have caused and I am grateful for the information that addressed my concerns.

Sincerely
-Bob Cooper

On Mon, Jan 19, 2015 at 4:17 PM, William Damon <wd@powerworks.com> wrote:

Mr. Bob Cooper,

You have recently submitted comments to Alameda County raising concerns about possible oil leakage from, and the general condition of, our wind turbines in connection with the Draft Supplemental EIR for our wind farm permit extension application. We would like to invite you to join us for a tour of our wind turbines on the ridgeline directly west of your residence on Dyer Road, where we will be pleased to show you that no oil from our wind turbines is polluting the environment, and that we maintain our equipment in good operating condition.

Our Windplant Manager, Mr. Mike Langeloh, would lead you on this tour and answer whatever questions you may have. Mr. Langeloh just phoned and left you a message this afternoon, inviting you to visit our site yet this afternoon or tomorrow. Please contact Mr. Langeloh xxxxxxxxxxxxxxxx (cell), if you accept our invitation, to confirm your availability to schedule the visit.

We look forward to hearing from you and for the opportunity to show you our wind turbines.

Alameda Co. EBZA hearing Permit C-8236

I am Jay Dunton - my wife and I own the property covered by conditional use permit C-8236 and request the Board approve the 3-year permit extension request by Altamont Winds.

My wife's Great Grand Father, Hans Nissen, came to Livermore (then known as Ladsville) in 1868. In the late 1880's he bought the property covered by this permit extension request and it has stayed in the family ever since. Life in Alameda County was good to the family and so far to me and my wife. Some of you may know of the Mae Nissen Park in Livermore, she was Hans Nissen daughter and my wife's Great Aunt. This bit of history establishes our ties to the history and growth of Alameda County.

The income provided to us by the Wind Farm on our property has given us the opportunity to continue the family tradition of giving back to Alameda County. The family gave to found the hospital in Livermore and when it expanded to Valley Care Hospital in Pleasanton, my wife and I were able to fund two rooms, one for us and the other for my wife's parents.

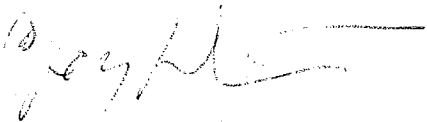
With the founding in 2004 of George Mark Children's House in San Leandro we became a major donor to that facility. GMCH is the first independent pediatric palliative care center in the United States. GMCH provides state- of- the-art medical and support services for children facing life-limiting illness. Without the Wind Power income this level of giving would not be possible

Your decision To approve or disapprove Altamont Winds permit extension will not and should not be made on my ability to continue be a major donor to two important Alameda County health organizations but to let you know wind power income does some good.

I am offended by people and organizations that do not live or are headquartered in Alameda County, pay no Alameda County taxes nor support Alameda charities but want to tell us what we should and should not do.

As an Alameda County resident and tax payer I request you vote to extend Altamont Winds permit request.

C. Jay Dunton

A handwritten signature in dark ink, appearing to read "C. Jay Dunton", with a horizontal line extending to the right.

Subject:

E-mail for the 2 Feb 2015 EBZA Meeting.

To the East County Board of Zoning Adjustments (EBZA),

My name is John Humphrey and I urge the Alameda County East County Board of Zoning Adjustments (EBZA) to recommend the approval of the Conditional Use Permits (CUP) submitted by Altamont Winds Inc. (AWI). I am a member of a trust which has full ownership of the Rooney property (CUP # C-8134, Assessor's Parcel # 99B-6125-2) and a fractional ownership in the Egan property (CUP # C-8232, Assessor's Parcel # 99B-6125-3). My family has owned the parcels identified above for well over 120 years and have always made it a priority to engage in ecologically intelligent sustainable land management practices. Through the generations we have sought out partners from livestock owners to renewable energy partners that share in this vision. AWI has demonstrated to be worthy partners who continually engage in mitigation efforts to reduce avian fatalities. Wind generation facilities, like those operated by AWI, complement and guarantee our ability to maintain agricultural operations. This partnership has allowed my siblings and me to continue efforts to maintain environmentally conscious ranching and wind generation practices and ensure continued open space and ownership by our family for generations to come.

After reading through the January 2015 Final Supplemental Environmental Impact Report (FSEIR) pertaining to this project I would urge you to certify this analysis and move this report forward. I also read the correspondence Alameda County received from federal agencies, state agencies, and private citizens. As a life-long environmental steward and now property owner of the properties detailed above, I respectfully disagree with their bleak assertions of the project. It is my belief that the avian population has improved since the early 1990s, due to the increasing number of sightings of Golden Eagles and Red Tail Hawks on areas of the property distanced from the turbines. Again, I attribute this, in large part, to the mitigation efforts by AWI.

AWI continues to show diligent actions of compliance with mitigation efforts laid out in the 2013 FEIR and now the 2015 FSEIR. They work with the county to comply with the seasonal shutdowns as recommended in the 2013 FEIR CEQA Alternatives. The extension of the CUPs are merely a stop-gap measure until AWI is able to fully execute re-powering efforts in the area in question.

It is imperative that AWI's application for extending the CUPs is approved. It is a critical time in California to continue to expand the availability of renewable energy in the supply market. Alameda County continues to be a leader in offering the renewable wind generated energy to the people of California. Additionally, supporting the approval of these CUPs is responsive to Governor Brown's environmental goals to achieve 50% of California's energy from renewable sources.

Very Respectfully,

John Humphrey



Edmund G. Brown Jr.
Governor

STATE OF CALIFORNIA
Governor's Office of Planning and Research
State Clearinghouse and Planning Unit



Ken Alex
Director

Memorandum

Date: December 30, 2014
To: All Reviewing Agencies
From: Scott Morgan, Director
Re: SCH # 2014092057
Modifications to Existing Conditional Use Permits – Altamont Winds Inc.

Pursuant to the attached letter, the Lead Agency has *extended* the review period for the above referenced project to **January 12, 2015** to accommodate the review process. All other project information remains the same.

cc: Sandra Rivera
County of Alameda Comm. Dev. Agency
244 West Winton Avenue, Room 11
Hayward CA 94544

Notice of Completion & Environmental Document Transmittal

Mail to: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044 (916) 445-0613
 For Hand Delivery/Street Address: 1400 Tenth Street, Sacramento, CA 95814

SCH # 2014092057

Project Title: Modifications to Existing Conditional Use Permits - Allamont Winds Inc.

Lead Agency: County of Alameda Community Development Agency

Contact Person: Sandra Rivera

Mailing Address: 224 West Winton Ave., Rm. 111

Phone: 510-670-5400

City: Hayward

Zip: 94544

County: Alameda

Project Location: County: Alameda

City/Nearest Community: Livermore

Cross Streets: Project is bisected by Interstate I-580,

Zip Code:

Longitude/Latitude (degrees, minutes and seconds): " N / " W Total Acres: 14,196

Assessor's Parcel No.: 96-5080-15 915-600-21

Section:

Twp.:

Range:

Base:

Within 2 Miles: State Hwy #: Interstate I-580 bisects site

Waterways:

Airports:

Railways:

Schools:

Document Type:

CEQA: ☐ NOP
☐ Early Cons
☐ Neg Dec
☐ Mit Neg Dec

☐ Draft EIR
☒ Supplement/Subsequent EIR
☐ (Prior SCH No.)
 Other:

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 NOV 17 2014
 STATE CLEARINGHOUSE

Other: ☐ Joint Document
☐ Final Document
☐ Other:
☐ FONSI

Local Action Type:

☐ General Plan Update
☐ General Plan Amendment
☐ General Plan Element
☐ Community Plan

☐ Specific Plan
☐ Master Plan
☐ Planned Unit Development
☐ Site Plan

☐ Prezone
☒ Use Permit
☐ Land Division (Subdivision, etc.)

☐ Annexation
☐ Redevelopment
☐ Coastal Permit
☐ Other:

Development Type:

☐ Residential: Units _____ Acres _____
☐ Office: Sq.ft. _____ Acres _____ Employees _____
☐ Commercial: Sq.ft. _____ Acres _____ Employees _____
☐ Industrial: Sq.ft. _____ Acres _____ Employees _____
☐ Educational: _____
☐ Recreational: _____
☐ Water Facilities: Type _____ MGD _____

☐ Transportation: Type _____
☐ Mining: Mineral _____
☒ Power: Type Wind MW 85.8
☐ Waste Treatment: Type _____ MGD _____
☐ Hazardous Waste: Type _____
☐ Other:

Project Issues Discussed in Document:

☐ Aesthetic/Visual
☐ Agricultural Land
☐ Air Quality
☐ Archeological/Historical
☒ Biological Resources
☐ Coastal Zone
☐ Drainage/Absorption
☐ Economic/Jobs

☐ Fiscal
☐ Flood Plain/Flooding
☐ Forest Land/Fire Hazard
☐ Geologic/Seismic
☐ Minerals
☒ Noise
☐ Population/Housing Balance
☐ Public Services/Facilities

☐ Recreation/Parks
☐ Schools/Universities
☐ Septic Systems
☐ Sewer Capacity
☐ Soil Erosion/Compaction/Grading
☐ Solid Waste
☒ Toxic/Hazardous
☐ Traffic/Circulation

☐ Vegetation
☐ Water Quality
☐ Water Supply/Groundwater
☐ Wetland/Riparian
☐ Growth Inducement
☐ Land Use
☒ Cumulative Effects
☐ Other:

Present Land Use/Zoning/General Plan Designation:

Large Parcel Agriculture

Project Description: (please use a separate page if necessary)

The proposed project consists of modifications to AWI's existing CUPs, as amended in July 2013, for continued wind power operation and maintenance activities within the Alameda County portion of the APWRA through October 31, 2018. As amended in 2013, the wind power operations were scheduled to terminate on October 31, 2015, subject to new and revised conditions. A Notice of Preparation was previously circulated with details and background information on the proposed changes. Comments on the Draft Supplemental EIR will be accepted between November 17, 2014 and January 2, 2015. Copies of the Draft Supplemental EIR will be available for review at the Permit Center of the County Planning Department, 399 Elmhurst Avenue, Hayward, CA 94544 and the Livermore Public Library, 1188 S. Livermore Ave, Livermore, CA 94550.

State Clearinghouse Contact:

(916) 445-0613

State Review Began: 11-17-2014

SCH COMPLIANCE 1-12-15

12-31-2014

Extend Review

Please note State Clearinghouse Number (SCH#) on all Comments

2014092057

SCH#:

Please forward late comments directly to the Lead Agency

AQMD/APCD 2

(Resources: 11/22)

Project Sent to the following State Agencies

☒ Resources
☐ Boating & Waterways
☐ Coastal Comm
☐ Colorado Rvr Bd
☒ Conservation
☒ CDFW # 3
☐ Delta Protection Comm.
☐ Cal Fire
☐ Historic Preservation
☒ Parks & Rec
☐ Central Valley Flood Prot.
☐ Bay Cons & Dev Comm.
☐ DWR
☐ OES
☐ Resources, Recycling and Recovery

CalSTA

☐ Aeronautics
☒ CHP
☒ Caltrans # 4
☐ Trans Planning

Other

☐ HCD
☐ Food & Agriculture

State/Consumer Svcs

☐ General Services
☐ Cal EPA
☒ ARB: ALL Other Projects
☐ ARB: Transportation Projects
☐ ARB: Major Industrial/Energy
☐ SWRCB: Div. of Drinking Water
☐ SWRCB: Div. Financial Assist.
☐ SWRCB: Wtr Quality
☐ SWRCB: Wtr Rights
☒ Reg. WQCB # 3
☐ Toxic Sub Ctrl-CTC

Yth/Adlt Corrections

☐ Corrections

Independent Comm

☒ Energy Commission
☒ NAHC
☒ Public Utilities Comm
☐ State Lands Comm
☐ Tahoe Rgl Plan Agency

Conservancy

Other:



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

Chris Bazar
Agency Director

Albert Lopez
Planning Director

224
West Union Ave
Room 111

Hayward
California
94544

phone
510.670.5400
fax
510.765.6793

www.acgov.org/cda

PROJECT REFERRAL

Date: February 17, 2015

RE: Case No. PLN2014-00028

Conditional Use Permit

Due Date: March 10, 2015

ACPWA BUILDING DEPARTMENT
ACPWA JOHN ROGERS

ALAMEDA CO. FIRE DEPT.
ACPWA LAND DEVELOPMENT

The following application is referred to you for your information and recommendation
Modifications to existing wind farm CUPs to extend the permanent cease of
operation of existing wind turbines from October 31, 2015 to October 31, 2018,
located at Goecken Rd (Unincorporated), various parcels (16 owners total); also
allowing for a potential transfer of assets involving other property owners, yet to be
specified.

See attachments for APNs, owners, etc.

Supplemental EIR required. Certified on Feb. 2, 2015 by East Co. BZA

Receipt of your comments by the indicated due date will enable the inclusion of
relevant information in the preparation of a written staff report; otherwise, please
initial and date below that your organization, department or agency has no comment
and return this notice by the indicated due date.

**The certification of the Supplemental EIR, and the denial of the Project is scheduled to
be heard on appeal on March 10, 2015 by the Board of Supervisors.**

If you have any questions, please contact me at the above number.

Sincerely,

Andrew Young
Development Planning Division
andrew.young@acgov.org

_____ No Comment - Date _____

Attachments



Altamont Winds Inc.

29 December 2014

Alameda County Community Development Agency
Planning Department
224 West Winton Avenue, Room 111
Hayward, California 94544
e-mail: sandra.rivera@acgov.org

Attention: Ms. Sandra Rivera, Assistant Planning Director

Subject: Response to the USFWS comments on AWI's DSEIR Conditional Use Permit Extension, 86 MW Altamont wind farms

Dear Ms. Rivera,

Altamont Winds Inc. ("AWI") would like to address inaccurate assertions made in the December 10, 2014 comment letter submitted by Ms. Jill Birchell of the U.S. Fish and Wildlife Service ("USFWS"), provided in response to Alameda County's notice of availability of AWI's DSEIR. We believe the USFWS letter mischaracterizes AWI's commitment to conservation and mitigation, as well as, ignores the ongoing correspondence between AWI and USFWS regarding this issue.

This letter will address the specific issues and arguments raised in the USFWS letter, regarding AWI's requested extension of its Alameda County Conditional Use Permits ("CUPs") for up to three years. As a counterpoint to USFWS' assertions, the specific steps taken and policies implemented by AWI over the past few years to mitigate the effect of its wind farm operations on the surrounding environment, while maximizing the production of clean, renewable energy and its attendant benefits, will also be addressed.

1. AWI is in the process of creating an Eagle Conservation Plan, and has committed to filing for an Eagle Take Permit. It's incorrect for the USFWS to state they have not been advised that AWI is working on an Eagle Conservation Plan ("ECP"), which is a first step towards attaining an Eagle Take Permit ("ETP"). First, representatives of AWI and its environmental consultant, Power Engineers, Inc., met on October 27, 2014 concerning the ECP/ETP process with the following USFWS representatives: Ms. Amedee Brickey, Ms. Heather Beeler, Mr. Dan Crum, and Mr. Greg Burgess. For reference, see the meeting confirmation e-mail attached as Exhibit A. One point of discussion at this meeting was that preparing an ECP, collecting data for mortality estimates, and risk assessment are necessary initial steps to apply for an ETP; and that AWI would gather and summarize the fatality data

already collected by the Alameda County-led monitoring efforts to begin a dialogue with the USFWS on the sufficiency of this data in the preparation of the ECP. This was confirmed by AWI in an e-mail dated November 4, 2014 summarizing the key points of the meeting, which is attached hereto as Exhibit B. Within this e-mail, AWI noted that compiling, assembling and evaluating the data was a process that could take several weeks to complete due to the coordination required between multiple entities. While AWI has not yet applied for an ETP, pending dissemination and initial discussions on the first-step data collection and ECP, AWI has committed to filing for an ETP, as also stated in its November 4 e-mail. Contrary to Ms. Birchell's comment letter, AWI is committed to working on an ECP and attaining an ETP.

2. AWI has taken, and continues to take, substantive action of avian mitigation, and to repower. A principal argument made by the USFWS in opposition to AWI's application to extend its Alameda County CUPs is that AWI continues to demonstrate reluctance to take substantive action to avoid, minimize or mitigate unavoidable impacts to protected avian species, and that AWI is not taking actions to repower (or replace old generation) wind turbines, as are other wind farm operators. This couldn't be farther from the truth.

Since 2007, AWI has incurred over \$14 million in mitigation expenses. The result of AWI's avoidance and mitigation efforts has been that, according to the raw field data collected by Alameda County's monitoring team, golden eagle fatalities found near AWI's turbines have decreased by 60% average between 2007 and June 30, 2014. AWI's considerable mitigation efforts are summarized in its "Avian Conservation & Mitigation Program" document dated October 16, 2014, which was sent to the USFWS on the same date, and discussed directly with USFWS personnel at the October 27 meeting, in a form substantially similar to the attached Exhibit C. As stated in this document, AWI has taken significant actions to reduce avian fatalities, including:

- > permanent shut down and removal of 10% of AWI's wind turbine fleet, totaling 92 turbines, including those turbines deemed to pose the highest risk to birds;
- > installation of visual deterrents (blade painting) on 55 turbines to date;
- > annual winter seasonal shutdown (from Nov. 1 to Feb. 15) since 2005; and
- > previously retrofitted 94 power poles to reduce the risk to raptors of electrocution, with five more power poles recently retrofitted in October 2014.

Furthermore, as part of the CUP extension proposal, AWI has committed to retrofitting one hundred and seven (107) power poles per year, which is the sole mitigation measure that USFWS recognizes to offset golden eagle fatalities.

In addition, AWI is committed to repowering its Altamont Pass wind farms as soon as possible. As further detailed in AWI's Avian Conservation & Mitigation Program, Exhibit C, AWI has made significant progress in a number of repowering development activities, including:

- > executed repower land owner land leases;
- > completed repower project layout and design;
- > filed CAISO transmission-interconnection application, with studies ongoing;
- > executed contract with Suzlon to buy new 2.1 MW wind turbines;
- > performed environmental field surveys (by independent consultant, Power Engineers), including wetlands, botanical and wildlife habitat;
- > making significant progress on project-specific EIR preparation; and
- > initiated some consultations with various stakeholders and agencies.

The facts provided above demonstrate that AWI has taken, and continues to take, significant actions to avoid, minimize and mitigate unavoidable impacts to avian species, and to repower its wind farms, contrary to the statements made by the USFWS.

3. AWI has researched the use and possible adverse effects of rodenticide on raptors in the Altamont Pass, which has been ignored by the agencies. Notably, above and beyond the requirements of mitigation, AWI researched and presented to USFWS findings regarding the use of rodenticide by the California Dept. of Water Resources (“DWR”) in the Altamont Pass, which has been completely ignored by the regulatory agencies to date, including the USFWS. Rodenticide is likely a contributing factor to eagle fatalities in the Altamont Pass, currently attributed to the wind farms without substantiation. AWI provided USFWS a copy of its report, “Prey Poisoning by the California DWR Contributes to Golden Eagle Fatalities in the Altamont Pass Wind Resource Area,” dated September 5, 2014, attached hereto as Exhibit D, in hopes that action would be taken to discontinue the use of such rodenticide in favor of more environmentally conscious alternatives.

4. There are significant benefits to continued operation of AWI’s wind farms. Absent from the USFWS comment letter is any recognition of the significant environmental benefits of wind energy facilities. It’s a fact that AWI’s wind farms reduce massive amounts of toxic air pollution and climate change-causing greenhouse gases by offsetting the use of fossil fuels to generate electrical power. All means of generating electricity have environmental effects, yet wind energy satisfies the societal need for electrical power at one of the lowest overall impact levels to human and animal health and to the overall environment. Specifically, wind power produces no air or water pollution and delivers a net reduction in such externalities by offsetting toxic pollutants that would otherwise be generated by extracting, transporting, and burning fossil fuels. Compared to other forms of power generation, wind energy has the lowest lifecycle greenhouse gas emissions of any electricity source.¹

In a real and quantifiable way, AWI’s wind farms mitigate the negative environmental impacts of electricity generation generally, and, in doing so, AWI’s operations help prevent respiratory and cardiovascular disease, cancer, and premature death in humans and animals, including birds. While certain poorly-sited wind turbines can pose an unacceptable risk to individual birds in certain areas of the Altamont Pass, studies have shown that the wind farms prevent a large number of birds that are at risk from other harmful anthropogenic impacts.

A study conducted by McCubbin and Sovacool in 2011 on the air quality benefits of Altamont Pass Wind Resource Area (“APWRA”) wind farms estimates that the replacement of regional natural gas-fired power generation has offset enough air pollution to prevent over 45,000 premature bird deaths from 1986 to 2006.² Extrapolating from these results, AWI’s portion of environmental benefits equate to the **prevention of 31 premature bird deaths every month over the 20-year period from 1986-2006.**³ More broadly, AWI’s wind farms, over the past 20 years, considering both human and avian, have ***avoided or saved***:

¹ Mark. Z. Jacobson, “Review of Solutions to Global Warming, Air Pollution, and Energy Security,” *Energy & Environmental Science* 2 (2009): 148-173.

² McCubbin and Sovacool *Health, Wildlife and Climate Benefits of the 580 MW Altamont Pass Wind Farms, Altamont Pass, California*, December 2011, at 56.

³ According to McCubbin (Dec. 2011), note 25, the 580 MW APWRA wind farms avoided more than 45,000 avian deaths over 20 years (240 months), which equals 187 avian deaths avoided per month. AWI’s portion alone is estimated to avoid approx. 31 bird deaths per month.

- > 10 premature deaths
- > 7 heart attacks
- > 102 asthma attacks
- > 721 lost work/sick days
- > 4,259 restricted activity days
- > \$78 million in health costs
- > **over 7,000 bird deaths**

The results of this study have been cited in numerous peer-reviewed journals, including the Journal of Integrative Environmental Sciences.⁴

Finally, we submit this letter for the record, in response to comments under Alameda County's notice of availability of AWI's DSEIR, dated November 17, 2014.

Please contact us if you have any questions.

Sincerely,

Altamont Winds Inc.



Ashley Brown
Legal Counsel

⁴ Sovacool, BK. "The Avian and Wildlife Costs of Fossil Fuels and Nuclear Power," *Journal of Integrative Environmental Sciences* 9(4) (December, 2012), pp. 255-278; McCubbin, D and BK Sovacool. "The Hidden Factors That Make Wind Energy Cheaper than Natural Gas in the United States," *Electricity Journal* 24(9) (November, 2011), pp. 84-95; Sovacool, BK. "The Avian Benefits of Wind Energy: A 2009 Update," *Renewable Energy* 49 (January, 2013), pp. 19-24; McCubbin, D and BK Sovacool. "Quantifying the Health and Environmental Benefits of Wind Power to Natural Gas," *Energy Policy* 53 (February, 2013), pp. 429-441.

EXHIBIT A
USFWS Meeting Confirmation 10/27/14

Rick Koebbe

Subject: USFWS 082014 meeting setup
Location: 2800 Cottage Way W 2606, Sacramento, CA 95825

Start: Mon 10/27/2014 2:30 PM
End: Mon 10/27/2014 5:30 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Andrew Roth

We look forward to meeting with everyone in October.

From: Heather Beeler [mailto:heather_beeler@fws.gov]
Sent: Wednesday, August 20, 2014 1:40 PM
To: Rick Koebbe; Amedee Brickey; Daniel Crum
Cc: Joe Platt; Dave Dean; Andrew Roth; wd@powerworks.com; McGovert Morgan
Subject: RE: USFWS 082014 meeting setup

Hi Rick,

I checked with my team and we can make Oct 27th at 1:30 work. I'll reserve a room for three hours although I assume we should only need about 2. Do you want to send out a calendar invitation to everyone?

Let me know.

Thanks,

Heather

Heather Beeler
Eagle Permit Coordinator
USFWS Pacific Southwest Region
2800 Cottage Way W-2606
Sacramento, CA 95825
(916) 414-6651
(916) 414-6486 (fax)

EXHIBIT B
E-mail 11/04/14 to USFWS regarding ECP and ETP

From: Andrew Roth <ajr@powerworks.com>
Sent: Tuesday, November 04, 2014 4:40 PM
To: heather_beeler@fws.gov; amedee_brickey@fws.gov; Daniel Crum
Cc: Rick Koebbe; 'McGovert Morgan'; wd@powerworks.com
Subject: USFWS 110414 next steps, ECP & ETP

We appreciate your time spent meeting with us on Oct. 27 at your offices in Sacramento. As stated during our meeting, AWI is committed to filing for an Eagle Take Permit for existing operations and repowering, likely as a joint undertaking.

To begin, we propose to summarize the avian fatality and use data already collected by the various County-led monitoring efforts. We'll then present this summary to the USFWS to begin a discussion regarding the sufficiency of such existing data for use in preparing an Eagle Conservation Plan. Because this effort requires coordination with Alameda County and its monitoring consultant, ICF, we expect that it could take weeks to gather, assemble, and preliminarily evaluate this data.

Please let us know if you have any further suggestions or comments regarding our plans discussed above for this Eagle Take Permit application process.

As we briefly discussed in our meeting, Alameda County's cost of avian mitigation has cost us over \$14 million since 2007. Due to the high cost of avian mitigation, our operating Altamont wind farms are economically marginal, which means we cannot afford to implement two separate costly avian mitigation plans—one for the County and one for the USFWS—that continues to increase avian mitigation costs beyond our means. Therefore, we need to consolidate and work closely with both entities, if possible, to see if there's common ground to allow us to keep operating. If not, we will need to shut down our wind farms.

Please contact us if you have any questions.

Andrew J. Roth, General Counsel
Altamont Winds Inc.
Tracy, California
Office: 925-455-7251
Cell: 516-770-7009

EXHIBIT C
Avian Conservation & Mitigation Program



Altamont Winds Inc.



**Avian Conservation & Mitigation Program
86 MW Altamont Wind Farms
Altamont Pass, California**

16 October 2014

15850P Jess Ranch Road • Tracy, California 95377
phone 925.455.7251 • e-mail ajr@powerworks.com • www.powerworks.com

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1. INTRODUCTION

Since the 1980's, wind farms in California's Altamont Pass have powered more than 150,000 California homes and businesses with clean, renewable energy. While some poorly sited wind turbines may have disproportionately impacted native wildlife, an objective, holistic view of the scientific evidence regarding the impacts and benefits of wind energy shows that the operation of wind farms in Altamont Pass results in a net positive benefit to human health, wildlife and climate, including a net reduction in avian deaths.

This report, Avian Conservation and Mitigation Measures, describes the considerable achievements and investments by Altamont Winds Inc. ("AWI") already made in reducing the avian impact of its wind power facilities, while maximizing the production of clean, renewable energy and its attendant benefits. Also detailed are the specific steps taken and policies implemented by AWI over the past several years to mitigate the effect of its wind farm operations on local avian populations. Issues related to repowering existing wind facilities are also discussed.



2. DOCUMENTED AVIAN FATALITY REDUCTION

Avian conservation and mitigation measures undertaken in the Altamont Pass primarily serve the purpose of reducing the number of avian fatalities, particularly fatalities of the so-called "**focal species**", namely, the red-tailed hawk, the golden eagle, the burrowing owl, and the American kestrel.

By a number of measures, avian fatalities documented in the Altamont Pass have declined significantly since intensive study of the impact of the wind facilities began. The Alameda County Conditional Use Permits ("**CUPs**"), issued in 2005, set forth the goal of "progressive and substantial reductions in avian mortality and injuries."¹ As discussed below, that goal has been achieved.

2.1 AWI has Reduced Golden Eagle Fatalities by 60%. The raw field data collected by Alameda County's ("**County**") independent monitoring team shows that the number of golden eagle fatalities found near AWI's wind turbines decreased by 60% between 2007 (the first year of consistent data collection) and June 30, 2014, as illustrated in [Exhibit 1](#).

2.2 50% APWRA-Wide Avian Fatality Reduction. According to data collected by the County's avian monitoring consultant, ICF International, Altamont Pass wind operators achieved a greater than 50% reduction in focal species fatalities compared to benchmark figures set by the Scientific Review Committee ("**SR**C"). (See [Exhibit 2](#).) Golden eagle and burrowing owl

¹ CUP, *Avian Wildlife Protection Program & Schedule*, Exhibit G-2, page 1.

fatalities in particular have seen significant reductions. A formal report analyzing this reduction was released in November 2012.²

3. WIND TURBINE SHUTDOWN AND REMOVAL

The Altamont Pass Wind Resource Area (“**APWRA**”) has been producing wind-generated electricity since the early 1980s. At its peak, the Altamont Pass contained over 5,000 wind turbines with an operating capacity of approximately 580 MW. Of that number, AWI originally operated 920 wind turbines consisting of 900 x 100 kW KCS56 turbines and 20 x 250 kW WEG turbines, operating at a total capacity of 95 MW.

Since 2005, AWI has permanently shut down and removed 92 turbines, or 10% of its total fleet in the Altamont Pass, representing 9.2 MW of generation potential, resulting in its current operating capacity of 85.8 MW. Further, 100% of AWI’s WTs are shut down for 3.5 months each winter. The details of these wind turbine (“**WT**”) removals and shutdowns are discussed below.

3.1 Winter Seasonal Shutdown. AWI participates in the County-mandated annual Winter Seasonal Shutdown (“**WSSD**”), a period during which WTs are shut down based on the theory that non-operating WTs are less harmful to birds. The WSSD was first implemented in the winter of 2005/2006, requiring 50% of non-repowered APWRA WTs in a defined region be shut down from November 1 through December 31. The remaining 50% of non-repowered WTs were shut down from January 1 through February 28, 2006. The order of the shutdown reversed the following winter. A two-month APWRA-wide shutdown was implemented in the winter of 2007/2008, beginning November 1, and the shutdown period was extended to three months in 2008/2009, and then finally extended to three and one half months beginning in 2009/2010, which is the duration currently in effect.

AWI continues to participate in the annual WSSD, despite the fact that the magnitude of the effect of the seasonal shutdown on fatality rates in the APWRA cannot be clearly quantified or isolated from other mitigation measures. For example, an analysis of all reported golden eagle finds at AWI turbines shows that only slightly more carcasses are discovered in the summer than in the winter (see Exhibit 4). And despite six years of progressively increased winter shutdown intensity, there has been no evidence of a commensurate fatality reduction (see Exhibit 5).

What is known with certainty, however, is that the economic consequences of the WSSD to AWI alone totals more than \$5 million in lost revenues (see Exhibit 3).

3.2 “Hazardous” Wind Turbine Removals. Over the years, the SRC and various wildlife consultants have examined the APWRA and attempted to identify those WTs that pose a disproportionate risk to avian species. Several different models have been proposed for identification of high-risk WTs.

AWI’s CUPs require that it remove and/or relocate all “Tier 1 hazardous turbines” by October 31, 2005, followed by removals of one quarter of “Tier 2” WTs each year over a subsequent

² ICF International. 2012. *Altamont Pass Wind Resource Area Bird Fatality Study, Bird Years 2005-2010*. November. M87. Sacramento, CA. Prepared for Alameda County Community Development Agency, Hayward, CA.

four-year period, ending September 30, 2010.³ The CUPs define BioResource Consultants Inc.'s research for the California Energy Commission ("CEC") as the source of those wind turbine classifications,⁴ but the SRC subsequently directed that "BioResource Consultants, Inc." be replaced with "Smallwood and Spiegel, June 2005,"⁵ referencing an unpublished CEC staff report, *Combining biology-based and policy-based tiers of priority for determining wind turbine relocation/shutdown to reduce bird fatalities in the APWRA*. The June 2005 report is one in a series of 2005 reports in which Smallwood and Spiegel discussed a system by which they believed the hazardousness of a WT could be assessed.⁶ Turbines were classified in "Tiers", numbered 1 through 6, with 1 considered the most hazardous. The scheme relied on what the authors believed were a number of characteristics that made an individual WT dangerous to raptors, but the reports did not clearly identify those specific WTs considered to be hazardous, nor was a list of ranked WTs initially provided to AWI. In response, AWI and the other wind companies operating in the APWRA consulted with Western EcoSystems Technology Inc. ("WEST") to help identify those turbines which would be of a Tier 1 or Tier 2 hazard ranking utilizing the Smallwood and Spiegel scheme, or otherwise deemed hazardous based on historical fatality data. In accordance with the information prepared by WEST, AWI promptly shut down 18 WTs identified as hazardous. AWI presented this information to the SRC at their August 20-22, 2007 meeting.⁷

In 2007, AWI received a second list prepared by WEST, purportedly based upon the Smallwood and Spiegel assessment identifying AWI's Tier 1 and Tier 2 WTs. At that time, AWI learned that, by following the 2005 WEST classifications, it had shut down seven out of nine Tier 1 WTs and five of 19 Tier 2 WTs. AWI subsequently shut down the two remaining Tier 1 WTs⁸ on October 15 and 19, 2007, respectively. All of AWI's Tier 1-ranked WTs remain permanently shut down.

Unlike Tier 1 WTs, the CUPs required those WTs ranked Tier 2 to be shut down in quarter phases over the four-year period from September 2007 to September 2010.⁹ As above, AWI had already shut down and removed five Tier 2 WTs, more than 25% of AWI's total number of Tier 2 WTs, before September 30, 2007 as part of the 2005 shutdown it initiated in consultation with WEST. The second quarter of Tier 2 WTs slated to be shut down were timely removed on September 30, 2008.¹⁰

The Tier Classification system was abandoned in 2007 after the author of the scheme informed the SRC that the "removal of dangerous turbines would also create new configurations of wind turbines that could conceivably pose more risk than was eliminated."¹¹ The Tier Classification system was thus replaced with the SRC's High Risk Turbine classification system ("HRT"),

³ CUP, Exhibit G-2, Year One, Condition 1; Years Two & Three, Condition 5; Years Four & Five, Condition 1.

⁴ *Id.*

⁵ SRC Document P21, p. 1.

⁶ S. Smallwood & L. Spiegel, *Assessment To Support An Adaptive Management Plan for the APWRA* (January 2005); *Partial Re-Assessment of an Adaptive Management Plan for the APWRA: Accounting for Turbine Size* (March 2005); *Combining biology-based and policy-based tiers of priority for determining wind turbine relocation/shutdown to reduce bird fatalities in the APWRA* (June 2005), Unpublished CEC staff reports, available at http://www.altamontsrc.org/alt_tc.php.

⁷ SRC Document P53, p. 12; SRC Document P51, Status and Tier Classifications of AWI Wind Turbines.

⁸ Wind Turbines 1396 and 0089.

⁹ CUP, Exhibit G-2, page 3, sections 5 & 1.

¹⁰ Tower numbers 1380, 1400, 1538, 1539, 1540

¹¹ SRC Document P67, at 2.

which ranked WTs on a scale of 1 to 10, with 10 presumed to be the most hazardous.¹² In a September 2009 phone conversation with the Alameda County Planning Department, later confirmed in writing, AWI shut down six HRT-10 WTs in lieu of the five Tier 2 WTs required to be shut down under Exhibit G-2 by September 30, 2009.¹³ AWI notified the County of the shutdown of the final four Tier 2 WTs on September 16, 2010.¹⁴ Again, HRT-10 WTs were shut down in lieu of Tier 2 WTs.

In compliance with its CUPs, AWI has permanently shut down and removed all required Tier 1 and Tier 2 WTs (or HRT 10 WTs in lieu of Tier 2 WTs).

Most recently, as a condition of modifying the project shutdown timeline contained in the CUPs, AWI removed an additional 14 wind turbines from those locations deemed under the HRT system to be the most hazardous in AWI's remaining fleet.¹⁵ AWI reported/confirmed removal of these turbines on October 31, 2013.¹⁶

3.3 Removal of Unproductive Turbines and Towers. Exhibit G-2 of AWI's CUPs requires the removal of "derelict and non-operating turbines."¹⁷ At the issuance of the CUPs on September 22, 2005, however, the term "derelict and non-operating" had not yet been defined, nor could the SRC provide a definition because it had not yet been empaneled. Notwithstanding, upon the *issuance* of the CUPs on September 22, 2005, AWI reported to the County that it had removed 12 of what it considered "derelict" wind turbines.¹⁸ AWI reported to and discussed these removals with the SRC at the December 4, 2006 SRC meeting.¹⁹ AWI made a further good-faith effort to remove additional WTs it believed were "derelict" during 2007, 2008 and 2009.

In a September 30, 2009 letter, the County recommended that "derelict and non-operating turbines" be defined as (a) turbines that have remained non-operational for 12 consecutive months and (b) turbine sites with towers only. (Prior to this, the County had provided AWI with a draft definition in the proposed revision of Exhibit G-2 from April 23, 2009.) The County also recommended that all of AWI's "derelict and non-operating" WTs which have been inoperative for 12 months or more as of September 30, 2009 be removed by February 28, 2010. In its February 2, 2010 letter to the County, AWI confirmed removal of all its "derelict and non-operating" WTs as on January 26, 2010.

3.4 Additional Wind Turbine Removals. In addition to those WTs identified as "hazardous" or derelict, AWI has also removed and relocated additional WTs it has considered high risk.

Internal efforts to identify hazardous WTs. For years, AWI has proactively compiled and analyzed avian fatality data for its WT fleet in an effort to identify WTs that appear to pose an

¹² Note that of the 124 AWI WTs the SRC rated as hazardous under the new system (ratings 7 to 10), 81 (or 65%) were originally ranked as low risk (Tiers 4-6).

¹³ AWI letter to County, October 2, 2009, indicating shut down of tower nos. 6527-6532.

¹⁴ Tower numbers 1596, 6512, 6513, and 6514

¹⁵ Tower number 6-12, 43, and 4463-4468

¹⁶ AWI letter to County, October 31, 2013.

¹⁷ Exhibit G-2, page 1, section 2 b.

¹⁸ AWI removed wind turbine towers 1390-1391, 5151-5154, and 6035-6040 before March 22, 2006.

¹⁹ See SRC Compliance Reporting Table dated November 30, 2006, later assigned SRC Document No. P5 and updated/re-dated February 19, 2007.

unacceptable risk to birds. In 2009, AWI identified 19 sites it deemed high risk based on fatality data and relocated those WTs to other existing tower locations posing minimal avian risks.

10% WT removal. Exhibit G-2 of the CUPs also required shutdown of 10% of existing WTs by September 30, 2009.²⁰ AWI reported its compliance with this provision of the CUPs to the County on October 2, 2009, and it remains in compliance to date.

In total, AWI's lost revenues due to avian-related permanent wind turbine removals total approximately \$6.4 million for the period of 2007-2013. (See Exhibit 3).

4. SELF-MITIGATING ENVIRONMENTAL BENEFITS OF WIND POWER

All means of generating electricity have environmental effects, and wind energy satisfies the societal need for electrical power at one of the lowest overall impact levels to human and animal health and to the environment.²¹ Specifically, wind power produces no air or water pollution and delivers a net *reduction* in such externalities by offsetting toxic pollutants that would otherwise be generated by extracting, transporting, and burning fossil fuels. In a real and quantifiable way, AWI's Altamont Pass wind power facilities mitigate the negative environmental impacts of electricity generation generally, and in doing so, AWI's operations help prevent respiratory and cardiovascular disease, cancer, and premature death in both humans and animals, including birds.

This section aims to broadly identify the climate, wildlife, and human health benefits of AWI's operations, as well as, wind energy facilities in general.

4.1 Avoided Emissions and Climate Benefits. The fundamental benefit of AWI's Altamont Pass wind farms is the massive reduction of toxic air pollution and climate change-causing greenhouse gases, achieved by offsetting (or avoiding) the use of fossil fuels to generate electrical power. In the absence of AWI's Altamont Pass wind farms, enormous amounts of fossil fuels, mostly natural gas, would be extracted, transported and burned to generate electricity. Each stage in this process produces significant toxic emissions into area air and water. Comparatively, wind energy has the lowest lifecycle greenhouse gas emissions of any electricity source.²²

According to a study conducted on the combined 580 MW APWRA wind farms, it would take more than 3.3 billion cubic feet of natural gas per year to produce the same amount of electrical power that the combined 580 MW APWRA wind farms produce each year.²³ A 2011 study published in *The Electricity Journal* found that over 40 years, based on the natural gas figure



²⁰ Exhibit G-2, page 4, section 6.

²¹ Benjamin K. Sovacool (2012): The avian and wildlife costs of fossil fuels and nuclear power, *Journal of Integrative Environmental Sciences*, 9:4, 255-278.

²² Mark. Z. Jacobson, "Review of Solutions to Global Warming, Air Pollution, and Energy Security," *Energy & Environmental Science* 2 (2009): 148-173, 154.

²³ Based on the APWRA's 20-year historical total production of 19,900,000,000 kWh, as cited in Donald McCubbin and Benjamin Sovacool, *Health, Wildlife and Climate Benefits of the 580 MW Altamont Pass Wind Farms, Altamont Pass, California*, December 2011, at 18.

above, APWRA wind power operations have offset and will continue to avoid/save a total estimated:

- > 78.8 billion lbs of greenhouse gas emissions, such as CO₂,
- > 328,000 lbs of SO₂,
- > 20.7 million lbs of NO_x, and
- > 3.15 million lbs of fine particulate matter (PM_{2.5}).²⁴

These toxic emissions, and the resulting climate change effects, pose population-level threats to numerous species, including birds and bats, and the human health costs are staggering, as discussed in greater detail in subsequent sections. Resulting climate change damages also have hidden economic costs, and those damages offset by the APWRA wind farms (measured in 2010 dollars) are estimated to be \$2.21 billion over 40 years.²⁵

4.2 Benefits to Avian and Other Wildlife. While certain poorly-sited WT's can pose an unacceptable risk to individual birds in the area of the Altamont Pass, studies have shown that the APWRA wind farms save avian lives.

Avian fatalities related to wind turbines have received far more attention and scrutiny than avian and other wildlife fatalities resulting from other forms of electricity generation, most likely because the fossil-fuel plant impacts on avian life are often remote and difficult to quantify and visualize. Avian deaths at traditional fossil-fired power plants result from a number of factors, including acid rain, smokestack collisions, mercury poisoning and contamination, and habitat destruction related to fuel extraction. For example, mountain top removal in just four states in the eastern U.S., for the purpose of coal extraction, destroyed more than 387,000 acres of mature, forested avian habitat, causing the death of nearly 200,000 Cerulean Warblers.²⁶



Most significantly, climate change effects caused by the toxic byproducts of fossil-fired forms of electricity generation pose population-level threats to numerous wildlife species, including birds and bats, both locally and worldwide. One study estimates, based on midrange predictions of climate warming, 15%-37% of species will be "committed to extinction" by 2050 due to rising

²⁴ Donald McCubbin and Benjamin K. Sovacool, *The Hidden Factors That Make Wind Energy Cheaper than Natural Gas in the United States*, *The Electricity Journal*, Volume 24, Issue 9, November 2011, at 87.

²⁵ *Id.*, at 93. Erratum in *The Electricity Journal*, Volume 25, Issue 1, January/February 2012, at 8.

²⁶ Gerald Winegrad, "Wind Turbines and Birds." In Susan Schwartz (Ed.), *Proceedings of the Wind Energy and Birds/Bats Workshop: Understanding and Resolving Bird and Bat Impacts* (Washington, DC: Resolve, September, 2004), pp. 22-28.

sea levels and habitat destruction.²⁷ For avian species, climate change and resulting habitat loss could devastate between 950 and 1800 bird species by the end of the century.²⁸

As discussed above, APWRA wind farms displace over 3.3 billion cubic feet of natural gas every year, which offsets and avoids tens of billions of pounds of toxic air pollutants throughout their life cycle. The only study conducted on the benefits of APWRA wind farms to avian populations estimates that this reduction in natural gas usage has prevented over 45,000 premature bird deaths over the past 20 years from reduced exposure to air pollutants and through reduction of climate change effects.²⁹ Extrapolated over the next 20 years, that figure rises to nearly 129,000 avoided avian deaths. Assuming AWI's climate benefits are proportional to the capacity of its projects, **AWI's WT's alone are estimated to have prevented 31 premature bird deaths every month over the 20-year period from 1986-2006.**³⁰

4.3 Human Health Benefits. Numerous studies have also found an acute link between the inhalation of air pollutants, particularly fine particulate matter (PM_{2.5}), and a number of human illnesses, including cardiovascular disease and stroke.³¹ In 2010, the American Heart Association published a Scientific Statement providing a consensus opinion that, among other conclusions, short- and long-term PM_{2.5} exposure reduces life expectancy.³²



One recent study analyzing the human health benefits of Altamont Pass wind power found that, by offsetting the harmful pollutants discussed above, APWRA wind farms prevent thousands of cases of disease, death, and unproductivity due to ill health, as shown in Table 4.3.

Average Health Impact Savings, 40 yr period, 1987-2006 & 2012-2031	40 yr period	per year	cost (40 yr period)
deaths	168	4.2	\$1,393,000,000
heart attacks	108	2.7	\$14,600,000
hospital admis., cardiovascular	29	0.7	\$940,000

²⁷ Chris D. Thomas et al., *Extinction Risk from Climate Change*, 427 *Nature* 145, 147 (2004).

²⁸ Walter Jetz et al., *Projected Impacts of Climate Change and Land-Use Changes on the Global Diversity of Birds*, 5 *PLoS Biology* 1211, 1213 (2007).

²⁹ McCubbin and Sovacool (Dec. 2011), *supra* note 19, at 56.

³⁰ According to McCubbin (Dec. 2011), note 25, the 580 MW APWRA wind farms avoid 45,610 avian deaths over the 20-year from 1985 through 2006 (240 months), which equals 190 avian deaths avoided per month. Pro-rated for AWI's 95 MW, AWI's operations alone are estimated to have avoided 31 bird deaths per month over the 20-year period analyzed.

³¹ See e.g., Jaana Kettunen, MSc, et al., *Associations of Fine and Ultrafine Particulate Air Pollution With Stroke Mortality in an Area of Low Air Pollution Levels*, *Stroke*; 38: 918-922 (2007); Robert D. Brook, MD et al., *Inhalation of Fine Particulate Air Pollution and Ozone Causes Acute Arterial Vasoconstriction in Healthy Adults*, *Circulation*; 105: 1534-1536 (2002); Jonathan M. Samet, M.D., Francesca Dominici, Ph.D., Frank C. Currier, Ph.D., Ivan Coursac, M.S., and Scott L. Zeger, Ph.D., *Fine Particulate Air Pollution and Mortality in 20 U.S. Cities, 1987-1994*, *N Engl J Med* 2000; 343:1742-1749 (2000).

³² Robert D. Brook, M.D. et al., *AHA Scientific Statement: Particulate Matter Air Pollution and Cardiovascular Disease, an Update to the Scientific Statement from the American Heart Association*, *Circulation*, 121: 2331-2378 (2010).

hospital admis., respiratory	14	0.3	\$216,000
asthma ER visits	30	0.8	\$11,500
acute bronchitis	142	3.6	\$65,000
lower respiratory	1,650	41.3	\$33,500
upper respiratory	1,245	31.1	\$40,000
asthma	1,625	40.6	\$93,500
lost work days	11,250	281.3	\$1,045,000
minor restricted activity days	68,000	1700.0	\$4,630,000
TOTAL			\$1,414,674,500

Table 4.3. Summary of Health & Climate Benefits of Altamont Pass^{33 34}

Also shown in Table 4.3, air pollution's impact on human health places an enormous, yet obscured, economic burden on society. Air pollution created by fossil fuel-fired power generation has been shown to lead to increased hospital admissions and lost work days resulting from heart attacks, lung cancer, asthma attacks, and other respiratory illnesses that may result in premature death. All told, the avoidance of fossil fuel-related pollutants by APWRA wind farms saves \$1.4 billion in human health care costs over 40 years.³⁵

5. ADDITIONAL WILDLIFE PROTECTION MEASURES

AWI is pursuing a number of additional measures, most still ongoing, to reduce avian fatalities in the APWRA, including the following:

5.1 Repowering. Repowering, the process of replacing existing WTs with newer, larger ones, is regarded by many APWRA stakeholders as the most effective long-term means of reducing avian collision fatalities in the Altamont Pass. AWI is committed to completely repowering its APWRA projects as soon as possible, perhaps as early as 2016. In pursuit of this goal, we have made significant progress in a number of development activities, including:

- > executed repower land owner land leases;
- > completed repower project layout and design;
- > filed CAISO transmission-interconnection application;
- > executed contract with Suzlon to buy 2.1 MW wind turbines;
- > retained Mr. Shawn Smallwood to prepare initial avian micrositeing study;
- > performed repower environmental field studies (performed by Power Engineers), including wetlands, botanical and wildlife habitat surveys;
- > made significant progress on project-specific EIR preparation;
- > some consultation has begun with various stakeholders and agencies.

Also significant, AWI has made substantial progress towards reaching a final agreement with NextEra Energy Resources/Green Ridge Power LLC who, through its affiliates, operates a

³³ McCubbin (Dec. 2011), Tables 18 and 19, pg. 28-29

³⁴ Nationwide information about the health burdens caused by fossil fuel power plant emissions was recently published by Scientific American, available at:

<http://www.scientificamerican.com/article.cfm?id=graphic-science-health-care-burden-of-fossil-fuels>

³⁵ McCubbin and Sovacool (Dec. 2011), *supra* note 20, at 56.

number of wind projects in the APWRA. This agreement will allow AWI to extricate itself from a shared common infrastructure arrangement between AWI and NextEra, involving power contracts, master land easements, substations, etc.

Despite our repowering progress, many challenges remain that could delay repowering beyond 2016 mentioned above. For example, the federal Production Tax Credit (“PTC”), which currently provides an income tax credit of 2.3 cents per kilowatt-hour for the production of electricity from wind farms, expired on December 31, 2013. Despite extensive lobbying, the wind industry has been unable to secure extension of the PTC in the current political environment; however, the wind industry is hopeful that the PTC could be extended during the upcoming lame-duck session of Congress, at the end of 2014 or early 2015.

Compounding the potential unavailability of the PTC, PG&E and other California utilities are offering dramatically lower wholesale power prices for electricity from new generation sources, such as, a repowered APWRA wind farm. Repowering cannot occur if the utility does not accept an economically viable purchase price for the electricity produced by wind farms. Even more critical, PG&E has decided not to extend or enter into any bilaterally negotiated renewable power purchase contracts, so AWI is required to compete in the open market against all other new renewable developments/projects. Considering the extensive mitigation and permitting costs in the APWRA, AWI’s power price bid to PG&E is necessarily higher than many other locations, thereby reducing AWI’s chances of success in competitive bid processes.

Another obstacle to repowering is the limited cash flow available from existing APWRA wind farm operations, which is needed to help fund repowering permitting and development costs. AWI’s wind farms are already operating on a restricted cash flow basis due to extensive County-imposed avian mitigation measures (as discussed herein), and any increased regulatory costs would only impede repowering. Average County-imposed mitigation expenses for all wind operators in the APWRA total a staggering \$104,265 per megawatt of installed capacity, including direct expenses and lost revenues through 2013 for all affected wind companies (\$60,473,822 / 580 megawatts = \$104,265 per megawatt; see Exhibit 3 for reference). AWI’s own mitigation costs average \$147,000 per megawatt of original installed capacity since 2007.

AWI relies on current operating revenues to cover repowering permitting and development costs. The more than \$14 million AWI has already spent on avian mitigation, monitoring, and avian protection measures since 2007, including lost revenues, has significantly depleted available cash flow. If forced to continue to shut down existing turbines prior to repowering, the further loss of operating revenue could severely stifle AWI’s ability to repower. Further, AWI is unique among operators in the APWRA in terms of its small company size and focus in California, and AWI cannot draw upon out-of-state cash reserves to maintain operations in the event of a premature shutdown of WTs.

5.2 Power Pole Retrofitting. The CUPs require that electrical power poles and lines be retrofitted, according to the Avian Power Line Interaction Committee (“**APLIC**”) practices, within 180 days of permit approval (March 21, 2006) to prevent avian electrocutions.³⁶ AWI has complied with this CUP requirement.

Beginning in 1998, AWI and its affiliates and its predecessors have taken numerous steps to prevent electrocution by contact with high voltage transmission and collection infrastructure,

³⁶ CUP, Exhibit G-2, pg. 1, ¶2.a.

including installation of wildlife boots and upgraded insulation, replacement of non-insulated jumper cables, replacement of aluminum cross arms with fiberglass, and the removal or relocation of thousands of feet of overhead power lines. Numerous precautions have also been taken to prevent perching on horizontal surfaces of riser poles.

AWI owns a minority interest in Altamont Infrastructure Company LLC (“AIC”), a company that manages common infrastructure for several of the wind companies throughout APWRA. AIC performs all APLIC retrofitting work on behalf of AWI. AIC began APLIC retrofitting in 1999 and it continues to this day, as new standards and policies are published. APLIC continually revises its standards and publishes periodic updates of its suggested practices, the most recent being in 2006, meaning the retrofitting work will never be truly “completed,” but rather up-to-date or “current.” In February 2006, AIC purchased materials to upgrade the insulation on corner poles. By November 15, 2006, 94 poles (79 corner poles and 15 other types of poles) were retrofitted with the new insulation materials, the work having been delayed due to weather conditions and contractor availability. AIC continues to perform maintenance on the APLIC-related equipment, take corrective action when avian electrocutions occur, and monitor APLIC suggested practices and the infrastructure to determine if further system modifications are needed.³⁷ As new information and products become available, AIC modifies equipment with a strong view towards eliminating bird electrocutions.

In 2013, as a condition of AWI’s recently-modified CUPs, AWI was required by Alameda County to retrofit five electrical power poles near the project area that posed an electrocution risk to eagles. These retrofits were completed on October 16, 2014.

In the event repowering does not occur prior to the end of 2015, and if AWI continues to operate its Altamont wind farms, the avian impacts of those extended operations will be fully mitigated through the retrofitting of power poles that pose a risk of electrocution to golden eagles, which will be included in the Alameda Co. permits. At present, this is the only means of compensatory mitigation accepted by the USFWS.

5.3 Visual Deterrents – Black Blade Technology.

In April 2005, an affiliate of AWI entered into a research and license agreement with the University of Maryland to allow field testing of patented blade painting patterns as a visual deterrent to raptors. WT blade painting and installation commenced in 2005 for the purpose of testing the effectiveness of the 1-black blade and 2-white blades pattern in reducing avian collisions with WTs, known as Black Blade Technology. As of the end of September 2014, AWI has installed painted blade sets on 55 WTs (see photo below).

Black Blade Technology originated from research conducted by the National Renewable Energy Laboratory and the University of Maryland, with the intent to develop blade patterns to minimize avian interactions with WTs. Laboratory simulations



³⁷ AIC e-mailed the County on March 22, 2007 a report with exhibits describing AIC’s APLIC-related actions for avian electrocution prevention. This was shared with the SRC at its April 9-11, 2007 meeting (SRC Document P28, p. 10).

suggested that a single, solid-black blade, paired with two white blades, increases the visibility of the WT's blades to birds.

This black blade configuration is believed to reduce avian collision rates by decreasing "motion smear," the phenomenon whereby an object in motion appears blurred, even deceptively transparent. Similar to a human, a raptor's perception of spinning turbine blades degrades as the rotational velocity of the blades increases, with the image transmitted to the brain losing resolution until it becomes a transparent blur. Motion smear increases not only at higher spinning velocities but also as the observer approaches the blades. If a bird is unable to see wind turbine blades clearly due to motion smear, it may interpret the blade-swept area as a safe place to fly, putting it at risk of collision.

Encouraged by reports of promising laboratory testing, AWI proposed a formal study plan to Alameda County and the SRC on August 21, 2007 to formally field test a wider study sample and prove the theory that avian collisions with WTs can be reduced by painting one blade solid black. AWI's study proposal involved 305 of its WTs. After receiving comments from the SRC, AWI revised and resubmitted its Black Blade Study Plan on October 19, 2007, incorporating changes in sample size and the random selection of treated and control WTs as recommended by the SRC. Permission to implement the study, however, was never granted by the County nor the SRC.

However, AWI continues to install black blade sets on its WTs operating in the Altamont Pass, particularly on WTs where golden eagle collisions are thought to have occurred, as an adaptive management technique, to help prevent avian collisions.

5.4 Raptor Prey Reduction/Ground Squirrel Live Trapping Test. In May - June 2008, AWI implemented a pilot ground squirrel live-trapping field test to determine the effectiveness of prey reduction on avian fatalities in the APWRA.

After a field evaluation of rodent activity, AWI identified an area around two WTs exhibiting significant levels of ground squirrel activity to serve as a test site to measure the effectiveness of ground squirrel live trapping. An outside trapping company – Eagles Wildlife Services ("EWS") of Newman, California – set up eight traps in two different areas (four traps per area) around ground squirrel burrows near the test site. EWS set up industry standard, non-lethal rectangular cage traps along the paths on which squirrels were believed to travel between burrows. A plastic covering was placed on the top of each trap to reduce the risk of overhead raptors seeing the trapped ground squirrels, as well as, to shield any trapped animals from direct exposure to the sun. An AWI field employee conducted daily trap inspections, typically completed early in the morning. If a squirrel was found caught in a trap, the trap location was communicated to EWS, who would then visit the trap, collect the animal, and reset the trap. If a non-target animal (e.g., cottontail rabbit) was caught in a trap, it would be released by the field employee.

Over the three-week study period, three squirrels and three cottontail rabbits were caught. Based on these results, AWI concluded that employing a live-trapping prey management strategy would not remove sufficiently large numbers of prey from the APWRA to have an effect on avian fatalities. The project was abandoned following the field trial period.

5.5 Wildlife Response and Reporting System. AWI also continues to participate in and fund the Wildlife Response and Reporting System (“**WRRS**”), managed by AIC. Implemented in the 1980s, the WRRS is an additional program through which avian injuries and fatalities in the APWRA are monitored and analyzed, and through which injured birds are collected and provided veterinary care. WRRS personnel also provide injury and fatality reports to the U.S. Fish and Wildlife Service (“**USFWS**”), preserve and store/deliver certain carcasses, under USFWS’ direction, and train wind operator staff on the protocols for reporting carcasses or injured birds found in the course of wind turbine maintenance.

5.6 Continued Funding for Monitoring and Scientific Review Committee. AWI has contributed substantial financial resources to monitoring the avian impacts of its operations. AWI participates in and contributes to the APWRA-wide monitoring effort conducted by the County consultant, an exercise that typically costs about \$1 million each year, of which AWI pays a pro-rata share along with other APWRA wind operators. AWI also funds the wages, meetings, studies, and related expenses of the SRC, as well as, additional permitting and avian program review expenses. (See Exhibit 3.)

Considering the above costs, taken together with the costs of WT shutdowns and removals, including revenue lost from permanently removed WTs and seasonal shutdowns, AWI has incurred over \$14 million in mitigation expenses since 2007, or \$147,000 per megawatt of original installed capacity.³⁸ The aggregate cost through 2013 for all APWRA wind operators exceeds \$60 million. (See Exhibit 3.) No other wind farm in the world has invested so extensively in avian conservation and mitigation.

5.7 Wind Turbine Sales Reduce Fleet Size. AWI markets/sells 100 kW wind turbines both domestically and internationally. To supply these sales, AWI remanufactures turbines, from its existing Altamont Pass fleet, to a like-new condition. Generally, each 100 kW wind turbine sale will result in the removal of a wind turbine from AWI’s Altamont Pass fleet, which, in turn, reduces avian impacts. Currently, AWI is marketing to over 50 countries across the globe. To date, AWI has sold and installed about 30 wind turbines outside of California. In addition, AWI is currently pursuing international sales, potentially consisting of hundreds of turbines from the Altamont Pass. Further, proceeds from the sale of wind turbines helps fund AWI’s repowering efforts in the Altamont Pass.

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³⁸ Monitoring costs and SRC expenses are borne entirely by the wind companies. These costs are paid after other beneficiaries of the wind farms, including landowners and federal, state and local governments, receive payments (rents, taxes, or fees) based on gross revenues, calculated before mitigation costs.

6. CONTRIBUTING CAUSES OF RAPTOR MORTALITY

6.1 DWR Prey Poisoning. AWI recently learned that the California Department of Water Resources (“DWR”) has implemented a widespread program of rodent poisoning along its aqueducts and reservoirs located in the APWRA. Every year, a large number of avian carcasses are found within the APWRA wind farms for which the avian monitoring team cannot discern a cause of death or the carcass is found in a whole and intact condition. AWI suspects that poison dispersed by DWR is entering the raptor food chain through the ingestion of contaminated prey animals and directly causes the death for many of these birds. Other raptors ingesting sub-lethal doses of poison may become sick and weakened from contaminated prey, increasing the risk that such birds will accidentally collide with nearby wind turbines. The wind turbines have historically been blamed for the vast majority of bird deaths found within the APWRA.

The DWR has placed bait stations filled with anticoagulant rodenticide along the South Bay Aqueduct near Dyer Reservoir and the California Aqueduct near Bethany Reservoir within the APWRA (see [Figure 6.1](#)), located in the proximity of wind turbines. A closer view showing individual bait stations (locations approximate, based upon AWI field inspections) south of the Dyer Reservoir, as indicated by the circular black and red points, is shown in [Figure 6.2](#). A high level of eagle presence has been observed in the areas around these reservoirs and aqueducts, and eagle fatalities have been found near wind turbines not far from these DWR poison bait stations.



Figure 6.1 General locations of DWR Baiting Areas in the APWRA, located near wind turbines

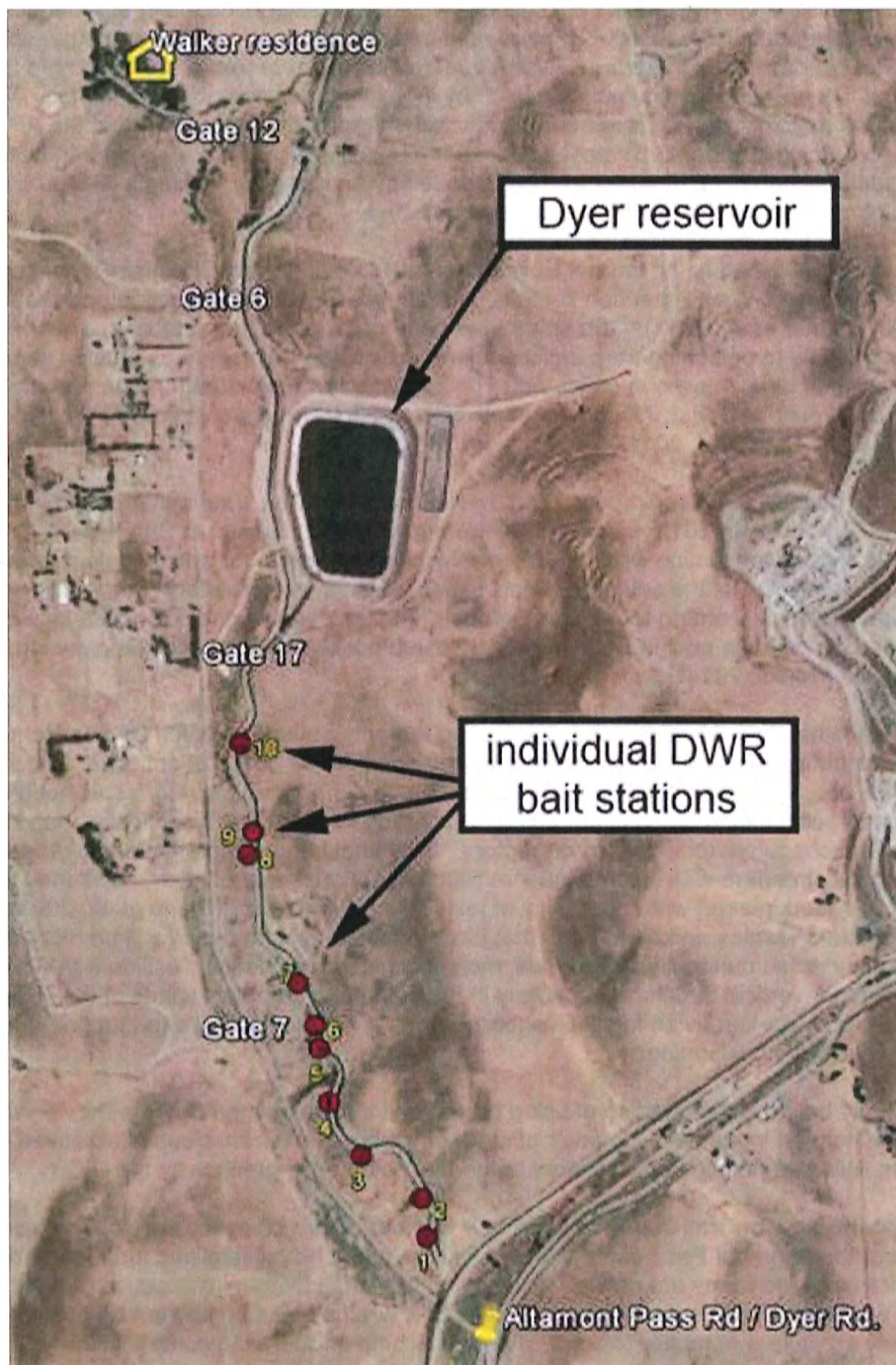


Figure 6.2 DWR Bait Stations (approximate) along Dyer Reservoir Canal, located near wind turbines

Secondary poisoning of non-target animals is a well-documented side effect of rodenticide use, and raptors are particularly at risk. Raptors hunt and scavenge on rodents and other small mammals abundant throughout the APWRA and ingest whatever toxins are present in the food chain, and it is possible to accumulate poison by ingesting multiple poisoned animals. While it appears that no toxicity tests have been conducted on raptor carcasses found in the APWRA specifically (most likely because stakeholders were unaware of DWR's wide-spread use of rodenticide until recently), the risks to raptors posed by anticoagulant rodenticides poison, such as the diphacinone used by DWR, are widely published.

A 2011 study published in the journal *Environmental Toxicology and Chemistry* researched the toxicity of diphacinone on American kestrels, a raptor present in abundance in and around the APWRA. (Rattner et al., 2011). The study's lead author reported that raptors are over 20 times more susceptible to poisoning from anticoagulant rodenticide than previous studies done on other species of birds may have indicated. The study further estimated that "an endangered hawk or owl would be at risk if it consumed as little as 3 to 4 grams of liver from a poisoned rodent." (Wiley-Blackwell, 2011).

Secondary rodenticide poisoning of raptors has been found to be a serious problem in the San Francisco Bay Area. In 2012, a non-profit wildlife rehabilitation center in San Rafael, California tested 138 rodent-consuming wildlife, 43% of which were raptors, for anticoagulant rodenticide poisoning. Over 75% of the subject animals tested positive for secondary rodenticide poisoning. (WildCare, 2014). According to the same group, "[i]n 2007, two juvenile Cooper's Hawks were found dead in a wading pool in Berkeley. Both tested positive for rodenticide poisoning." (Hungry Owl Project, 2014).

Ingesting a lethal dose of poison may also not be the only means by which DWR rodenticide use is contributing to avian mortality in the APWRA. Sublethal doses of anticoagulant rodenticide cause internal bleeding and dehydration, making an animal more susceptible to disease and accidents. (Lemus et al., 2011). According to one study specifically analyzing the effects of anticoagulant rodenticides on raptors, "Sublethal hemorrhage [caused by rodenticide ingestion] may interfere with locomotion, predisposing animals to predation, accidental trauma, and reduced food intake," with "possibility of toxic injury to the liver." (Stone et al., 2003). In this weakened state, eagles and other birds that have ingested poisoned prey will be more likely to become disoriented during flight, and thus, more inclined to accidentally collide with a wind turbine or other vertical structure, especially in the commonly turbulent winds of the Altamont Pass. In this way, even avian fatalities showing signs of collision with a wind turbine may be indirectly caused by poisoning.

AWI strongly believes the practice of using poison bait stations by the DWR in the APWRA should be stopped immediately in favor of more environmentally conscious alternatives. However, AWI has no legal or regulatory authority to stop such practice by the DWR.

6.2 Inability to Confirm Cause of Death. A number of bird carcasses are discovered throughout the Altamont Pass each year, but it is likely that not all fatalities found at or near the Altamont Pass wind farms are caused by the wind turbines. Determining cause of death can be difficult, and even where a carcass shows signs of a turbine strike, it may not be possible to definitively attribute that fatality to a specific wind turbine or operating company.

Every year a number of avian fatalities reported near wind turbines in the Altamont Pass are found as complete, intact carcasses. In the APWRA, the blade tip speed of the 100 kW wind

turbine is approximately 150 mph. Common sense would dictate that an intact carcass, showing little or no outward physical damage, died from something other than a collision with a turbine blade. Further, each year the monitoring team finds a significant quantity of bird remains (including approximately 14% of all eagle fatalities recovered) during the winter off-season when wind turbines are not operating (Nov. 1 through Feb. 15). Yet historically, the vast majority of bird fatalities known or estimated to occur within the APWRA have been attributed to the wind farms.

Birds die from natural causes, of course, and a number of direct and indirect environmental factors unrelated to the wind farms may also cause or contribute to avian fatalities in the APWRA. Ingestion of rodenticide poison, lead ammunition or other environmental toxins, as described earlier in this report, could directly cause mortality, and even sub-lethal doses of ingestion of toxins can cause weakness, debilitation or disorientation that increases the likelihood a bird will collide with a wind turbine. Predation by other animals, including other birds, is another direct cause of mortality. The most recent report released by the independent avian monitoring team found that "predation is likely a significant driver of fatality rates for small birds in general and in particular for burrowing owl and (to a lesser extent) American kestrel."³⁹

Where bird carcasses are found near turbines that do show signs of trauma, it cannot always be said with certainty which turbine caused the accidental death of that bird. Wind turbines owned and operated by different companies are intermingled throughout the APWRA. Turbines are generally ordered in strings that run along ridgelines, and several strings contain adjacent turbines owned by different operators. In some instances, strings run parallel to one another with limited distance between. A bird could easily strike one turbine but found close to another.

Figures 6.3 and 6.4 illustrate this uncertainty for two golden eagle carcasses recovered in the field near AWI wind turbines. In both instances, the fatality was attributed to the nearest wind turbine, but factors such as wind speed and direction, relocation by scavenger animals, and projectile force by turbine blades are not taken into account.

³⁹ ICF International. 2014. *Altamont Pass Wind Resource Area Bird Fatality Study, Bird Years 2005-2012*. Page 4-2. June. Final. M101. Sacramento, CA. Prepared for the Alameda County Community Development Agency, Hayward, CA.

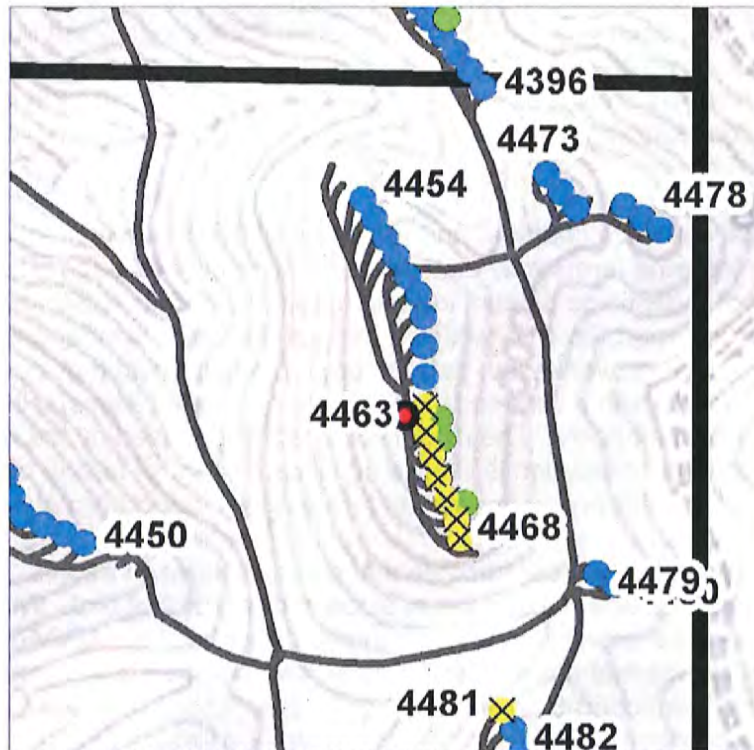


Figure 6.3 Location of Golden Eagle Carcass Found Between Turbines Owned by Different Operators

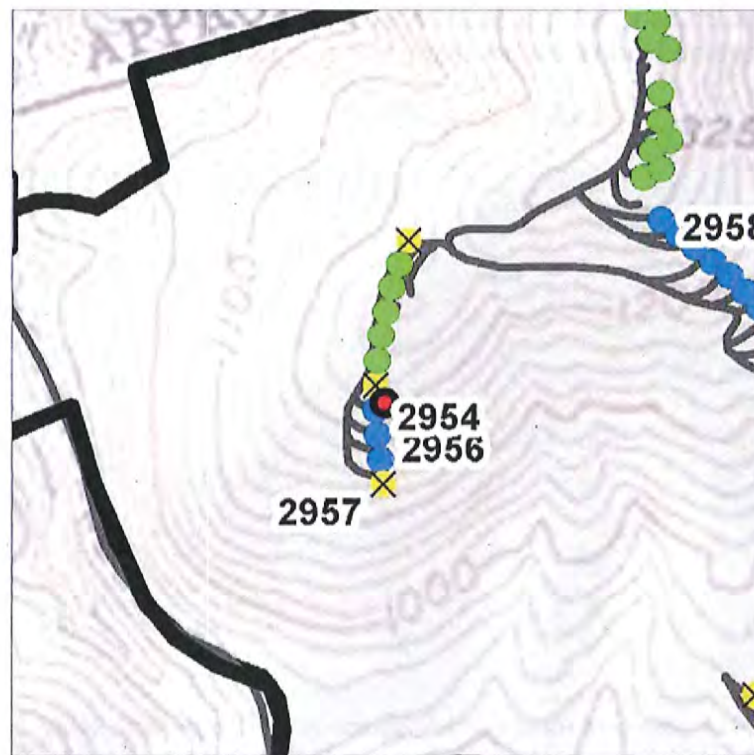


Figure 6.4 Location of Golden Eagle Carcass Found

Between Turbines Owned by Different Operators

7. CONCLUSION

In summary, AWI has taken significant and costly actions to reduce avian fatalities, including:

1. permanent shut down and removal of 10% of AWI's wind turbine fleet, totaling 92 turbines, including those turbines deemed to pose the highest risk to birds;
2. visual deterrents (blade painting) installed on 55 turbines;
3. annual winter seasonal shutdowns since 2005;
4. 94 power poles retrofitted, including five retrofitted in October 2014;
5. operations beyond 2015 will mitigate impacts to eagles by retrofitting approx. 107 power poles per year;
6. SRC funding and monitoring program participation;
7. wind turbine sales to expedite additional turbine removals.

This totality of this mitigation has come at considerable cost to AWI — over **\$14 million in mitigation expenses since 2007, or \$147,000 per megawatt** — and considering the other APWRA wind operators, the total combined cost is over \$60 million through 2013.⁴⁰

The mitigation measures discussed in this report also demonstrate the significant achievements AWI has made to reduce the impact of its wind farm operations on the surrounding environment. The result of these efforts is an unequivocal and substantial reduction in focal species fatalities in the APWRA.

Further, the less visible health, wildlife and climate benefits of AWI's wind farms demonstrate that the result of operating wind farms in Altamont Pass is a net positive benefit to human health, wildlife and climate, including a net reduction in avian deaths. Additional environmental mitigation requirements ignore the mitigation strategies already implemented and the self-mitigating impacts of wind power operations. A comprehensive consideration of all environmental impacts of APWRA wind facilities, as well as, continued investigation into additional contributing causes of raptor mortality, will help ensure that clean, renewable wind energy remains a part of the Bay Area energy solution.

⁴⁰ Monitoring costs and SRC expenses are borne entirely by the wind companies. These costs are paid after other beneficiaries of the wind farms, including landowners and federal, state and local governments, receive payments (rents, taxes, or fees) based on gross revenues, calculated before mitigation costs.

CONFIDENTIAL

Change in Golden Eagle Fatalities

Altamont Pass, California

30 Jun 2014

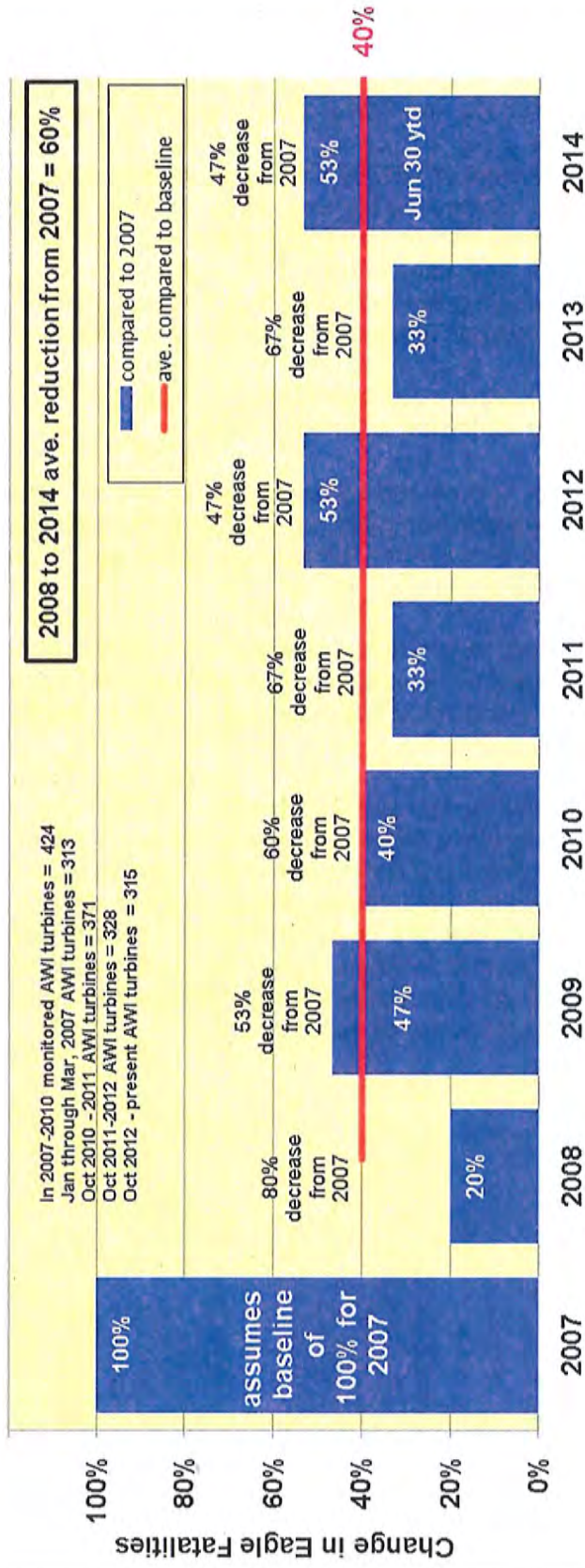


EXHIBIT 2**APWRA-wide 50% Reduction of Focal Species Fatalities**

Source: Altamont Pass Wind Resource Area Bird Fatality Study, Bird Years 2005-2010 (presented at the February 2012 Scientific Review Committee Meeting, Feb. 16, 2012)

Preliminary Measures of Progress Toward Reduction of Focal Species Fatalities in the APWRA

Species	Settlement Agreement	Three-Year Rolling Average Baseline	2010 Estimated Total Fatalities	Percent Reduction from 3-Year Rolling Average to 3-Year Rolling Average	Percent Reduction from 3-Year rolling Average to 2010 Bird Year Estimate	Percent Reduction from Settlement Agreement to 3-Year Rolling Average	Percent Reduction from Settlement Agreement to 2010 Bird Year Estimate
American kestrel	NA	402	251	38%	48%	NA	NA
Burrowing owl	NA	647	209	68%	78%	NA	NA
Golden eagle	NA	74	21	72%	77%	NA	NA
Red-tailed hawk	NA	224	77	66%	60%	NA	NA
Total focal species	1,130	1347	559	59%	66%	51%	59%

EXHIBIT 3 **Avian Mitigation Costs, 2007 – June 2014**

AVIAN CONSERVATION & MITIGATION PROGRAM BUDGET, Altamont Pass wind farms **AVIAN EXPENSES & LOST REVENUES, AWM + GRP & others**

	1	2	3	HISTORIC	5	6	7	8	
	2007	2008	2009	2010	2011	2012	2013	2014	Total
AVIAN PERMIT OPERATING COSTS									
scientific review committee wages	240,303	283,303	132,193	219,739	166,906	105,926	78,699	80,000	1,310,069
SRF facilitator	88,174	90,008	61,902	82,827	81,071	56,276	71,889	70,000	600,528
avian monitoring program (ICF)	386,475	1,724,152	1,538,610	1,104,040	1,125,575	1,027,032	720,691	589,000	8,215,667
operating EIR	0	0	0	0	0	95,838	139,300	0	285,136
Total Expenses	712,952	2,098,263	1,732,705	1,406,406	1,373,552	1,288,061	1,060,360	739,000	10,411,299
PERMIT REPOWERING COSTS									
NCCP/HCP	0	0	454,626	294,379	167,693	75,055	0	0	991,754
programmatic EIR	0	0	0	0	0	0	234,220	200,000	494,220
permitting consulting fees	0	0	0	0	0	0	0	0	0
Total Expenses	0	0	454,626	294,379	167,693	75,055	234,220	200,000	1,485,974
Total Avian Permit Costs	712,952	2,098,263	2,187,331	1,700,785	1,541,245	1,363,116	1,354,580	939,000	11,897,273
Altamont Lost Revenues (all wind companies)									
total kWh for year	882,124,371	750,098,281	790,277,746	841,838,180	851,850,507	713,583,628	732,618,322	714,045,580	5,866,436,616
percentage kWh lost to perm shutdowns (after seasonal)	2.13%	2.63%	3.13%	10%	10%	10%	10%	10%	
percentage kWh lost to seasonal shutdowns	3.67%	4.37%	5.18%	6.12%	6.12%	6.12%	6.12%	6.12%	
kWh lost to permanent shutdowns	18,717,598	20,220,878	25,492,631	71,315,353	72,427,824	79,287,070	81,402,036	79,338,398	448,202,298
kWh lost to seasonal shutdowns	32,848,584	34,278,209	43,129,275	41,828,116	42,480,612	46,503,714	47,744,191	46,533,819	336,346,820
PG&E FPA price	0.0807	0.0816	0.0822	0.0825	0.0799	0.0702	0.0713	0.0723	
lost revenues to permanent shutdowns	1,510,235	1,649,031	2,095,511	5,860,985	5,790,459	5,593,303	5,800,854	5,734,491	34,030,669
lost revenues to seasonal shutdowns	2,650,380	2,795,419	3,545,226	3,449,334	3,396,239	3,263,007	3,405,738	3,363,413	25,068,757
Total Lost Revenues	4,160,616	4,444,451	5,640,737	9,330,319	9,186,698	8,826,310	9,212,392	9,097,904	59,899,426
total expenses	712,952	2,098,263	1,732,705	1,406,406	1,373,552	1,288,061	1,060,360	739,000	10,411,299
total lost revenues	4,160,616	4,444,451	5,640,737	9,330,319	9,186,698	8,826,310	9,212,392	9,097,904	59,899,426
TOTAL Expenses & Lost Revenues	4,873,568	6,542,713	7,373,442	10,736,725	10,560,250	10,114,371	10,272,752	9,836,904	70,310,725
cumulative expenses & lost revenues	4,873,568	11,416,281	18,789,724	29,526,449	40,086,699	50,201,070	60,473,822	70,310,725	

AVIAN EXPENSES & LOST REVENUES, AWM 86 MW Altamont wind farms

	ICF Costs	AI Co Costs
AWM turbines	22.74%	20.15%
other Altamont pass wind turbines	77.26%	79.85%
Total Turbines	100%	100%

	1	2	3	HISTORIC	5	6	7	8	
	2007	2008	2009	2010	2011	2012	2013	2014	Total
AWM Expenses									
AVIAN PERMIT OPERATING COSTS									
scientific review committee wages	48,421	57,086	26,637	44,277	33,632	21,949	15,858	16,120	263,979
SRF facilitator	17,364	18,298	12,473	16,649	16,338	11,340	14,441	14,105	121,006
avian monitoring program (ICF)	77,875	347,417	310,030	222,464	226,803	206,945	145,219	118,684	1,655,437
operating EIR	0	0	0	0	0	95,838	139,300	0	285,136
Total Expenses	143,660	422,800	349,140	283,391	276,771	336,069	364,619	148,909	2,325,558
PERMIT REPOWERING COSTS									
NCCP/HCP	0	0	103,382	66,942	38,133	17,068	0	0	225,525
programmatic EIR	0	0	0	0	0	0	66,906	45,480	112,386
Summit project EIR	0	0	0	0	0	0	0	195,993	195,993
permitting consulting fees	0	0	0	0	0	0	0	66,600	66,600
power pole retrofits	0	0	0	0	0	0	0	5,000	5,000
Total Expenses	0	0	103,382	66,942	38,133	17,068	66,906	313,073	605,503
Total Avian Permit Costs	143,660	422,800	452,522	350,333	314,904	353,137	431,724	461,981	2,931,061
AWM Lost Revenues									
total kWh for year	196,047,082	170,572,349	179,709,180	145,954,002	148,230,805	182,286,917	188,597,407	182,373,985	1,331,753,686
percentage kWh lost to perm shutdowns (after seasonal)	2.13%	2.63%	3.13%	10%	10%	10%	10%	10%	
percentage kWh lost to seasonal shutdowns	3.67%	4.37%	5.18%	6.12%	6.12%	6.12%	6.12%	6.12%	
kWh lost to permanent shutdowns	4,256,450	4,598,228	5,797,070	16,217,111	16,470,089	18,029,880	18,510,823	18,041,552	101,921,202
kWh lost to seasonal shutdowns	7,469,836	7,794,865	9,807,597	9,511,714	9,860,091	10,574,945	10,857,029	10,581,790	76,257,867
PG&E FPA price	0.0807	0.0816	0.0822	0.0825	0.0799	0.0702	0.0713	0.0723	
lost revenues to permanent shutdowns	343,428	374,990	476,519	1,337,336	1,316,750	1,265,095	1,320,433	1,304,032	7,738,574
lost revenues to seasonal shutdowns	602,696	635,678	806,194	784,379	772,305	742,008	774,465	764,040	5,892,555
Total Lost Revenues	946,124	1,010,668	1,282,704	2,121,715	2,089,055	2,007,103	2,094,898	2,068,063	13,621,129
total expenses	143,660	422,800	452,522	350,333	314,904	353,137	431,724	461,981	2,931,061
total lost revenues	946,124	1,010,668	1,282,704	2,121,715	2,089,055	2,007,103	2,094,898	2,068,063	13,621,129
TOTAL Expenses & Lost Revenues	1,089,784	1,433,468	1,735,226	2,472,047	2,403,959	2,360,240	2,526,622	2,530,044	16,552,190
cumulative expenses & lost revenues	1,089,784	2,523,252	4,258,478	6,730,525	9,134,484	11,494,724	14,021,346	16,552,190	

EXHIBIT 5

Ineffective Winter Seasonal Shutdown;

Excerpt from ICF International, *Altamont Pass Wind Resource Area Bird Fatality Study*, pages 4-2 – 4-3, December 2010.

Assessment of the Effectiveness of the Seasonal Shutdown

Because the winter shutdown occurred only during the current study, the consistent decrease in the average annual percentage of mortality occurring during the winter period for the four focal species using the common strings dataset indicates a possible beneficial effect of the seasonal shutdown. However, the size of the treatment effect generally increased each year of the current study, and yet

Altamont Pass Wind Resource Area Bird Fatality Study

4-2

December 2010
ICF 00904.08

Alameda County Community Development Agency

Discussion

there was no consistent decrease in the percentage of mortality occurring during the winter for any of the four focal species. In fact, the percentage of annual mortality occurring during the winter for American kestrel and burrowing owl generally increased over the course of the current study, indicating a potential adverse effect of the winter shutdown. However, the positive relationship between the estimates of total adjusted annual fatalities and the percentage of fatalities that occur during the winter period also indicate a beneficial effect of the winter shutdown on American kestrel. The increasing percentage of total annual mortality occurring during the winter period may therefore be an anomaly.

EXHIBIT D
Prey Poisoning by the California DWR



Prey Poisoning by the California DWR Contributes to Golden Eagle Fatalities in the Altamont Pass Wind Resource Area

05 September 2014 **DRAFT**

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EXHIBIT A - DWR Rodent Poison Use in the APWRA

1. INTRODUCTION

The California Department of Water Resources (“DWR”) is using poison to kill rodents and other animals in a practice that is widespread along its aqueducts running through the Altamont Pass Wind Resource Area (“APWRA”), located between the cities of Livermore and Tracy, California. (See [Figure 1](#), location of the APWRA.) Golden eagles and other raptors are plentiful in the APWRA, and these birds prey upon the abundant small animal populations in the area, particularly ground squirrels.

This report discusses the issue of poison being dispersed by the DWR and entering the raptor food chain through the ingestion of contaminated prey animals, which directly causes sickness and death in golden eagles and other raptors. Further, when raptors become sick and weakened from contaminated prey, there is an increased risk that such birds will accidentally collide with nearby wind turbines. Such deaths, while historically blamed on the wind turbines, may instead be the result of DWR poisoning.



Figure 1. Location of the APWRA

2. AVIAN FATALITY MONITORING IN THE APWRA

The Altamont Pass wind farms began operation in the late 1980s and contained more than 5,000 wind turbines installed at peak capacity (with the majority consisting of 100 kW wind turbines), operating in a vast area of over 75 square miles. However, due largely to measures taken to reduce avian mortality, roughly only 3,000 of these turbines still operate today.

Since 1989, various entities have tracked and recorded avian fatalities, and nearly all fatalities found are presumed to be related to the wind turbines. Historically, the wind companies used the Wildlife Reporting and Response System (“WRRS”), which relied on wind farm staff to find and report bird deaths. Beginning around 2005, County and State authorities set aggressive mortality reduction targets, and the need arose for implementation of a systematic fatality monitoring program to collect data to be used to assess the wind farm operators' progress toward reducing the number of avian fatalities. In response, Alameda County empaneled a Scientific Review Committee (“SRC”) to design and lead an avian fatality monitoring program, funded by the wind companies. Under this program, several full-time field biologists (the “**Monitoring Team**”) conduct year-round carcass search surveys of a large sample of all wind turbines in the APWRA, at times exceeding 50% of all operating turbines.

With each carcass found, the Monitoring Team will attempt to identify a cause of death based on the location and condition of the carcass. According to the Monitoring Team's “valid fatalities” spreadsheet (see SRC website: <http://www.altamontsrc.org/index.html>), looking at all avian fatalities from January 1989 through June 2014, the cause of death is listed as “unknown” in nearly 80% of cases. Despite no discernible cause of death, these fatalities are taken into account when assessing the wind farms mortality reduction milestones. As such, the wind farms are required to reduce and mitigate for these “unknown cause” fatalities.

Moreover, a number of eagle fatalities reported near wind turbines were found as complete, intact carcasses. In the APWRA, the blade tip speed of the 100 kW wind turbine is approximately 150 mph. Common sense would dictate that an intact carcass, showing little or no outward physical damage, died from something other than a collision with a turbine blade. Further, a significant quantity of raptor fatalities (including eagles) are found each year by the Monitoring Team during the winter off-season when wind turbines are NOT operating (i.e., each year from Nov. 1 thru Feb. 15). Such fatalities could be caused by rodent poisoning.

3. DWR POISON BAIT STATIONS ARE IN AREAS OF HIGH EAGLE USE

The DWR manages both the South Bay Aqueduct near Dyer Reservoir and the California Aqueduct near Bethany Reservoir (see [Figure 3.1](#)), within the APWRA. Presumably in an effort to protect the canals and reservoirs from damage due to burrowing rodents, bait stations filled with anticoagulant rodenticide poison (see [Exhibit A](#) for more details) have been placed in these areas, as shown in [Figure 3.2](#). A closer view showing individual bait stations (locations approximate, based upon AWI field inspections) south of the Dyer Reservoir, as indicated by the circular black and red points, is shown in [Figure 3.3](#).

A high level of eagle presence has been observed in the areas around these reservoirs and aqueducts, and eagle fatalities have been found near wind turbines not far from these DWR poison bait stations. What appears to be a raptor's nest can be seen adjacent to one such bait station in [Figure 3.4](#), with easy access by raptors to poisoned rodents, which is a significant concern. Further, bait stations do not appear to be neatly maintained, and bait can be seen dispersed several feet from the station (see [Figure 3.5](#)), thereby allowing other animals free

access to the poison. Other sources of poisoning, besides the DWR, may also be possible. In past decades, cattle grazing has been a common farming activity on the lands within the APWRA, alongside the wind turbines. Historically, farmers in the APWRA used poison to kill ground squirrels and other rodents in an effort to reduce foot and leg injuries to their cattle caused by stepping into rodent burrows. However, we are not aware of any recent rodent poisoning by farmers within the APWRA.



Figure 3.1 DWR Sign Along the Dyer Reservoir Canal



Figure 3.2 DWR Baiting Areas (locations approximate) in the APWRA

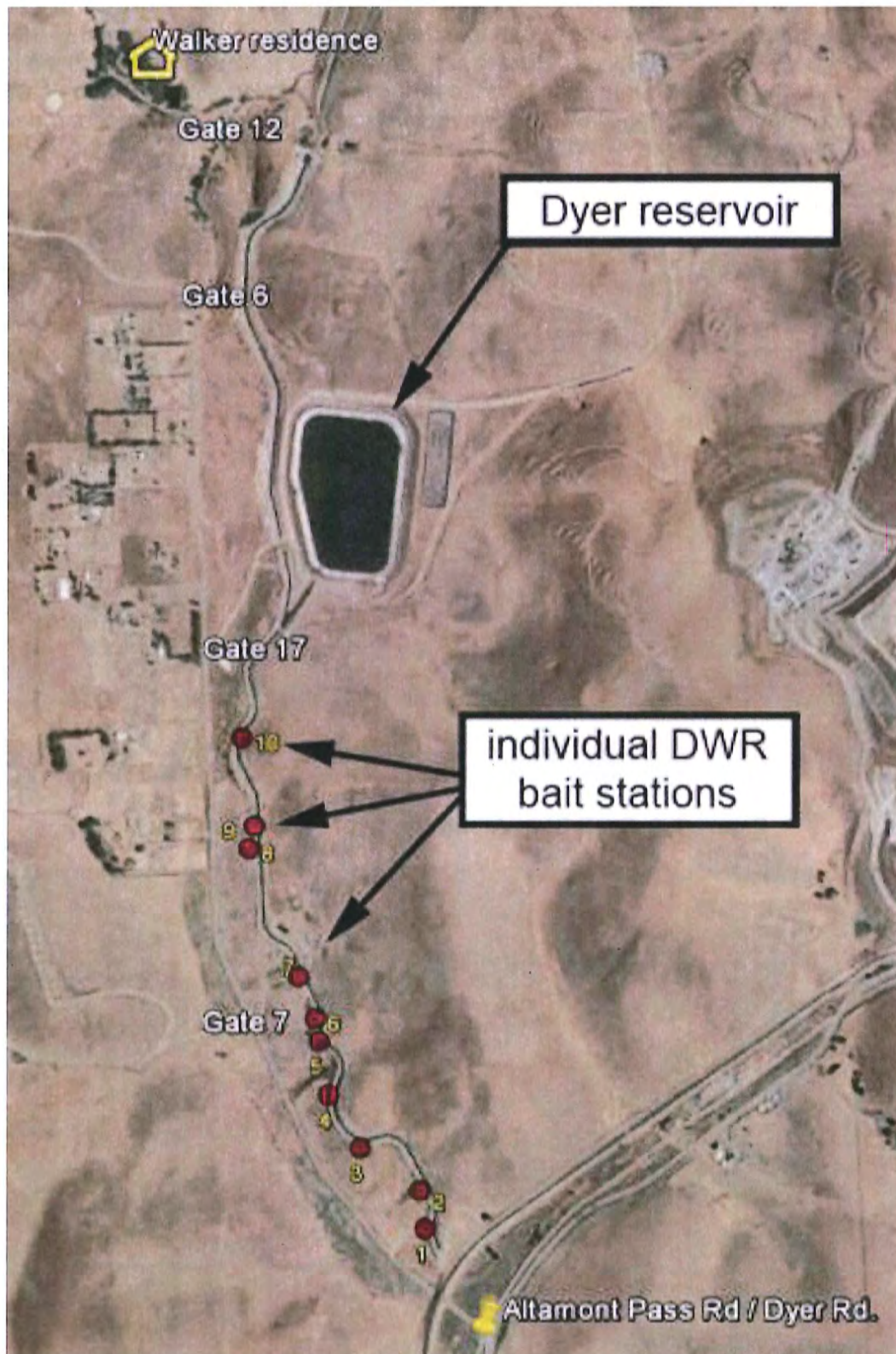


Figure 3.3 DWR Bait Stations (approximate) along Dyer Reservoir Canal

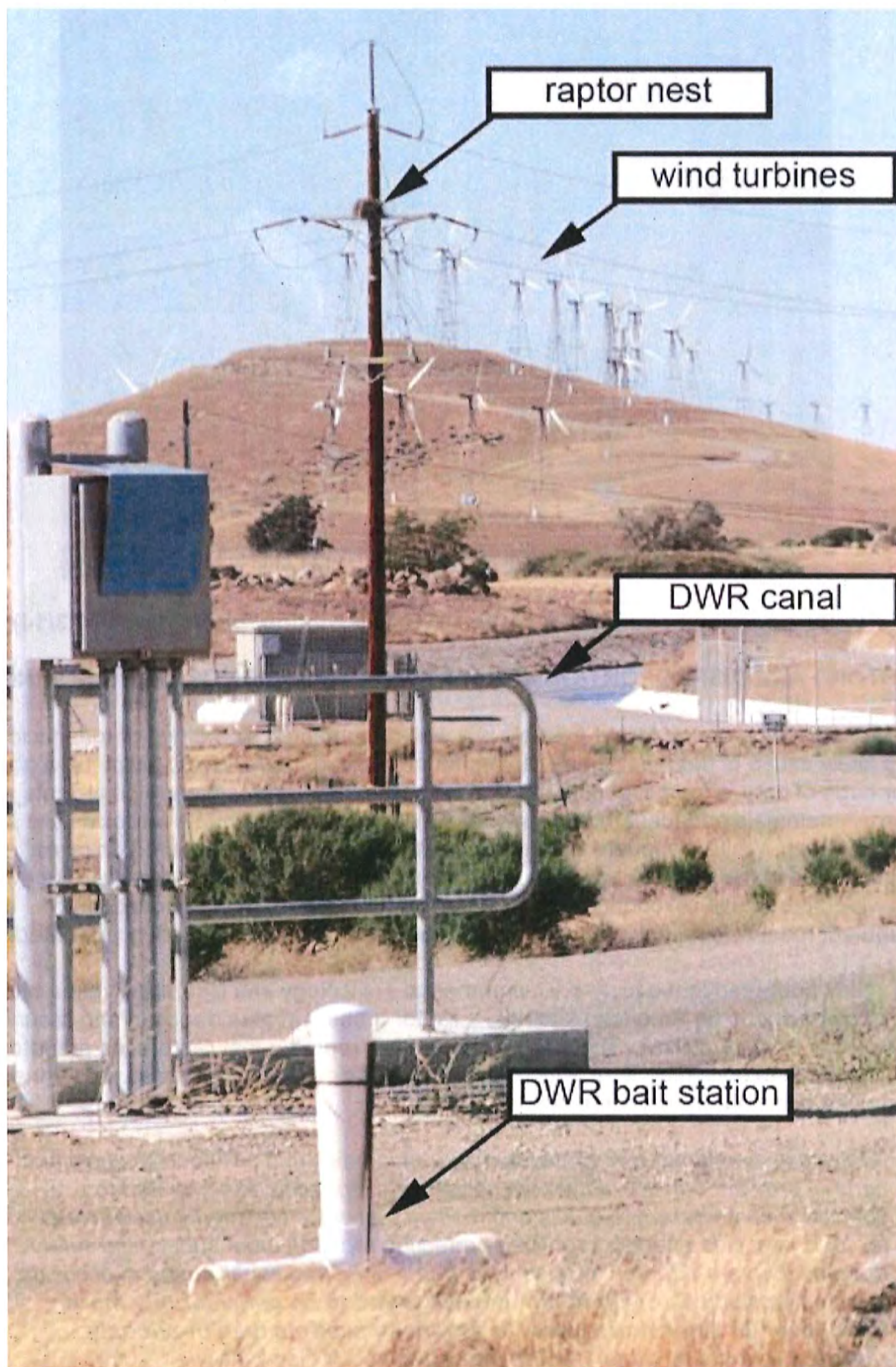


Figure 3.4 Typical DWR Dyer Canal Bait Station (photo date 07/22/14)



Figure 3.5 Poison Falling Out of the DWR Bait Station (photo date 07/23/14)

4. RAPTORS ARE DISPROPORTIONATELY AT RISK TO RODENTICIDE POISONING

Secondary poisoning of non-target animals is a well-documented side effect of rodenticide use that is a likely cause of death for many raptors found dead in the APWRA. Raptors, a general term for birds of prey, such as, eagles, hawks, and owls, hunt and scavenge on rodents and other small mammals abundant throughout the APWRA and ingest whatever toxins are present in the food chain. While it appears that no toxicity tests have been conducted on raptor carcasses found in the APWRA specifically (most likely because stakeholders were unaware of DWR's wide-spread use of rodenticide until recently), the risks to raptors posed by anticoagulant rodenticides, such as the diphacinone used by DWR, are widely published.

A 2011 study published in the journal *Environmental Toxicology and Chemistry* researched the toxicity of diphacinone on American kestrels, a raptor present in abundance in and around the APWRA. (Rattner et al., 2011). The study's lead author reported that raptors, as predators, are more susceptible to poisoning from anticoagulant rodenticide than previous studies done on other species of birds may have indicated:

*"Our study, combined with previous research in hawk and owl species show that birds of prey are considerably more sensitive to diphacinone compared to species such as bobwhite quails and mallards [species commonly used in tests for toxic pesticide effects]. . . . Their protection requires more substantial safety margins than are afforded to species of game birds traditionally used in pesticide registration studies. . . . **Diphacinone was found to be considerably more toxic [over 20 times more toxic] to American kestrels than previously reported in tests of other wildlife test species.**" (Wiley-Blackwell, 2011 (emphasis added)).*

The study further estimated that “an endangered hawk or owl would be at risk if it consumed as little as 3 to 4 grams of liver from a poisoned rodent.” (Wiley-Blackwell, 2011).

In 2012, a non-profit wildlife rehabilitation center in San Rafael, California tested 138 rodent-consuming wildlife, 43% of which were raptors, for anticoagulant rodenticide poisoning. (Figure 4.1 below shows a map of locations where tested animals were recovered.) Over 75% of the subject animals tested positive for secondary rodenticide poisoning. (WildCare, 2014). According to the same group, “[i]n 2007, two juvenile Cooper’s Hawks were found dead in a wading pool in Berkeley. Both tested positive for rodenticide poisoning.” (Hungry Owl Project, 2014).

In one extreme case study, owls feeding on rodents were monitored following the implementation of a program of anticoagulant rodenticide baiting to control vole populations in an apple orchard. (Hegdal and Colvin, 1988). According to the study, when more than 20% of the foraging range was treated with anticoagulant rodenticide, minimum owl mortality increased to 58%. If less than 10% of the foraging area had been treated, mortality fell to 17%. (Hegdal and Colvin, 1988).

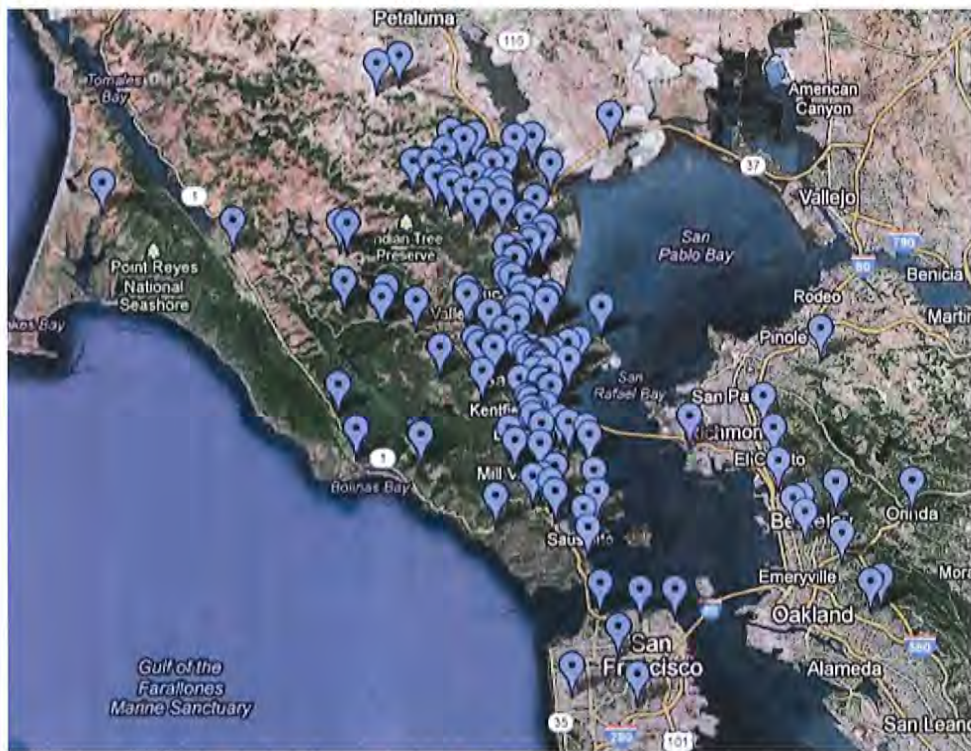


Figure 4.1 Map showing the location where rodenticide-positive animals tested by the WildCare animal center were found (source: WildCare, 2014).

Regulatory agencies in California have taken notice of the dangers of anticoagulant rodenticides to non-target animals and birds. In a 2013 memorandum from the California Department of Pesticide Regulation (“CDPR”), its assessment and peer review of anticoagulant rodenticide restrictions, explains: “Exposure of non-target wildlife to brodifacoum and bromadiolone [anticoagulant rodenticides], particularly avian and mammalian predators and scavengers, is widespread in California and elsewhere,” and “recent work has indicated that birds of prey have an increased sensitivity compared to other avian species.” (CDPR, 2013). The California

Department of Fish and Wildlife (“**CDFW**”) also clearly notes on the agency’s website that “[t]hroughout California, the use of poison baits to control rodents has injured and killed numerous wild animals and pets. This is because predatory and scavenging birds and mammals, like owls, hawks, raccoons, bobcats, mountain lions, foxes, skunks and coyotes that eat dead or dying rodents that have consumed these baits, will also be poisoned.” (CDFW, 2014).

Ingesting a lethal dose of poison may also not be the only means by which DWR rodenticide use is contributing to avian mortality in the APWRA. Sublethal doses of anticoagulant rodenticide cause internal bleeding and dehydration, making an animal more susceptible to disease and accidents. (Lemus et al., 2011). According to one study specifically analyzing the effects of anticoagulant rodenticides on raptors, “Sublethal hemorrhage [caused by rodenticide ingestion] may interfere with locomotion, predisposing animals to predation, accidental trauma, and reduced food intake,” with “possibility of toxic injury to the liver.” (Stone et al., 2003). In this weakened state, eagles and other birds that have ingested poisoned prey will be more likely to become disoriented during flight, and thus, more inclined to accidentally collide with a wind turbine or other vertical structure. In this way, even avian fatalities showing signs of collision with a wind turbine may be indirectly caused by poisoning.

5. ALTERNATIVES TO THE USE OF RODENTICIDES

Simple, cost-effective alternative means of rodent deterrence are available and could replace the use of lethal animal poisoning along DWR projects in the APWRA. One potential alternative is the use of wire mesh placed as a vertical and/or horizontal barrier, just beneath the surface of the ground immediately adjacent to critical aqueduct and reservoir areas susceptible to damage caused by ground squirrels, as shown in [Figure 5.1](#). Installation of a concrete barrier is another effective method to prevent rodent tunneling. The availability of relatively simple, cost-effective solutions to potential rodent damage makes DWR’s use of rodenticide unjustifiable and indefensible, especially considering the substantial risk to raptors, including eagles



Figure 5.1 Wire mesh barriers to protect from for rodent damage

6. CONCLUSION

DWR's widespread use of anticoagulant rodenticide in the APWRA is very likely to be a direct and indirect cause of death in non-target wildlife, including golden eagles and other protected raptors, from secondary poisoning. Recent studies have shown that raptors are particularly susceptible to poisoning by anticoagulant rodenticides, the ingestion of which can result in death or debilitation. The number of intact bird carcasses found through the APWRA avian fatality monitoring program suggests a cause of death for many birds that is unrelated to wind turbine strikes, despite the attribution of these fatalities to the wind farms. Further, even recovered carcasses showing evidence of a turbine collision may have been debilitated or otherwise impaired due to the ingestion of rodenticide poison, indirectly contributing to death.

In addition, a significant quantity of raptors (including eagles) are found each year during the winter off-season when wind turbines are NOT operating (i.e., each year from Nov. 1 thru Feb. 15), which provides credence to this evidence of poisoning impacts. Such avian finds are wrongly attributed to wind turbines, when instead may be the result of DWR poisoning.

In conclusion, the practice of using poison bait stations by the DWR in the APWRA should be stopped immediately in favor of more environmentally conscious alternatives. We have requested that the DWR provide us with information about their poisoning program within the APWRA, but thus far we have not received any documentation.

7. REFERENCES

California Department of Fish and Wildlife (CDFW), Rodenticides can harm wildlife; please use carefully, available at <https://www.dfg.ca.gov/education/rodenticide/> (accessed July 31, 2014).

California Department of Pesticide Regulation (CDPR), Summary of Second Generation Anticoagulant Rodenticides Assessment Peer Review Comments and Responses, June 27, 2013, available at http://www.cdpr.ca.gov/docs/registration/reevaluation/chemicals/brodifacoum_final_peer_review_cmmnts.pdf (accessed July 31, 2014).

Hungry Owl Project. Information: Rodenticides, available at <http://www.hungryowl.org/information/rodenticides.html> (accessed July 31, 2014).

J.A. Lemus, C. Bravo, M. Garcia-Montijano et al., Side effects of rodent control on non-target species: rodenticides increase parasite and pathogen burden in great bustards, *The Science of the Total Environment*, Oct. 2011, abstract available at <http://www.ncbi.nlm.nih.gov/pubmed/21889190> (accessed August 4, 2014).

William Quarles, *Protecting Raptors from Rodenticides*, Bio-Integral Resource Center-Common Sense Pest Control Quarterly XXVII(1-4), 2011, available at <http://www.birc.org/RaptorQ.pdf> (accessed August 4, 2014).

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W.B. Stone, J.C. Okoniewski, JR Stedelin, Anticoagulant rodenticides and raptors: recent findings from New York, 1998-2001, *Bulletin of Environmental Contamination and Toxicology*, Jan. 2003.

WildCare, *Is rat poison a problem in YOUR neighborhood?*, available at http://www.wildcarebayarea.org/site/PageServer?pagename=Animal_Emails_Rodenticide_Results_February_2013 (accessed August 4, 2014).

Wiley - Blackwell. (2011, March 10). American birds of prey at higher risk of poisoning from pest control chemicals. Science Daily, *available at* www.sciencedaily.com/releases/2011/03/110310070457.htm (accessed July 31, 2014).

EXHIBIT A

DWR Rodent Poison Use in the APWRA

Diphacinone is an anticoagulant rodenticide poison known to be harmful to raptors, including eagles. A 2011 study published in the journal *Environmental Toxicology and Chemistry* studied the effects of diphacinone on American kestrels in the laboratory. Kestrels were over 20 times more sensitive to the lethal effects of diphacinone than those species of birds used in EPA tests to determine the toxic effects of diphacinone. The same study estimated that a raptor would be at risk if it consumed as little as 3 to 4 grams of liver from a poisoned rodent.

The DWR manages both the South Bay Aqueduct near Dyer Reservoir and the California Aqueduct near Bethany Reservoir (see [Figure 3.1](#) above), within the APWRA. The photos in [Figures A.1 – A.3](#) below were taken by AWI personnel during field inspections along the DWR aqueducts in July 2014.



Figure A.1 DWR Bait Station Poison Warning Label (photo date 07/18/14)

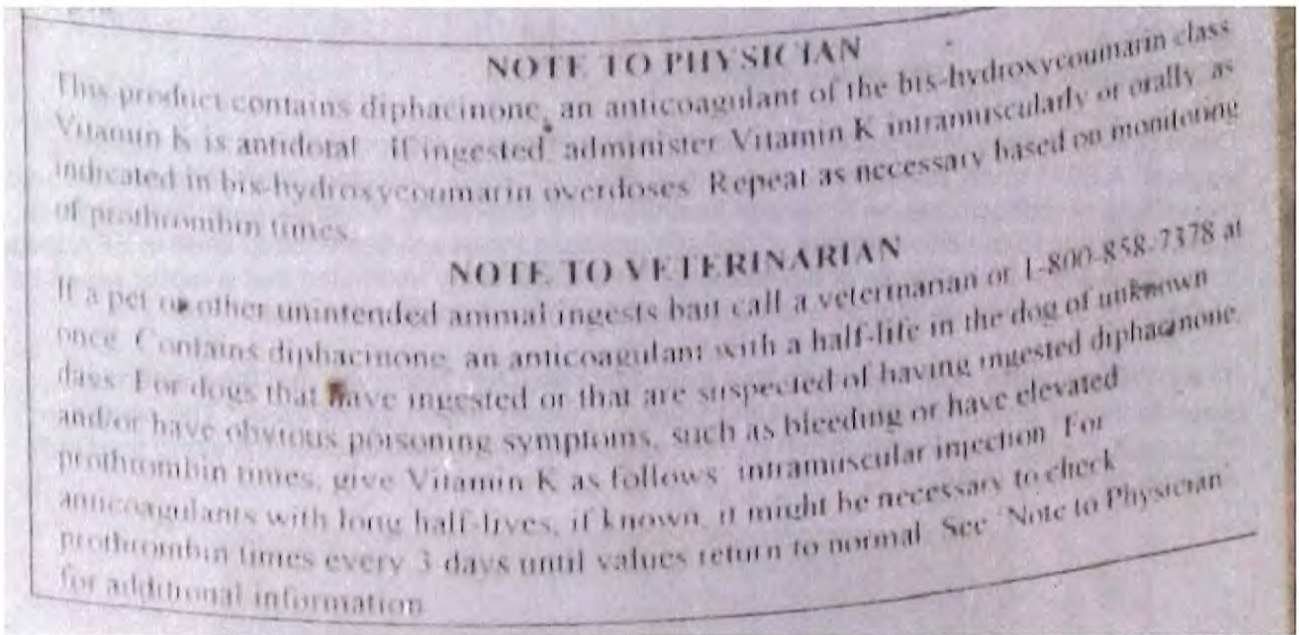


Figure A.2 DWR Bait Station Warning Label Detail (photo date 07/18/14)
As evidenced by [Figure A.3](#), these DWR bait stations are active and contain diphacinone, an anticoagulant rodenticide. Such rodenticide poison is often colored blue to warn against human and pet ingestion.



Figure A.3 Close Up of DWR Poison (photo date 07/23/14).

NOTICE OF PUBLIC HEARING
to Consider Appeals Regarding
CERTIFICATION OF THE SUPPLEMENTAL
ENVIRONMENTAL IMPACT REPORT for
CONDITIONAL USE PERMIT, PLN2014-00028:
MODIFICATIONS TO EXISTING CONDITIONAL USE
PERMITS (Extension To 2018) – ALTAMONT WINDS INC.
and
DENIAL OF SAID MODIFICATIONS
Said actions made by the Alameda County (East) Board of
Zoning Adjustments on February 2, 2015

NOTICE IS HEREBY GIVEN that the Alameda County Board of Supervisors will hold a public hearing to consider the appeal of Audubon California and affiliated regional chapters of the decision of the East County Board of Zoning Adjustments (EBZA) on February 2, 2015 (Resolution Z-15-03) to certify the Final Supplemental Environmental Impact Report, prepared to evaluate Conditional Use Permit PLN2014-00028, an application to modify 16 existing Conditional Use Permits (extension to October 31, 2018, of permits set to expire on October 31, 2015), for 828 turbines owned and operated by Altamont Winds Inc. in the Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), with a rated capacity of approximately 85.8 megawatts (MW).

NOTICE IS HEREBY ALSO GIVEN that said public hearing will consider the appeal of Altamont Winds, Inc., of the EBZA on February 2, 2015 (Resolution Z-15-04) to deny Conditional Use Permit PLN2014-00028.

IF YOU CHALLENGE the County's action in court, you may be limited to only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board of Supervisors at or prior to the public hearing.

SAID PUBLIC HEARING will be held on Tuesday, March 10, 2015 beginning at 1:00 p.m., in the Board Chambers of Alameda County Board of Supervisors, 1221 Oak Street, fifth floor, Oakland, California.

ALL PERSONS INTERESTED in this matter may appear and be heard at this hearing. If you have any questions please contact the Planning Department at (510) 670-5400.

ANIKA CAMPBELL-BELTON
CLERK OF THE BOARD OF SUPERVISORS



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

December 30, 2014

Chris Bazar
Agency Director

Albert Lopez
Planning Director

224
West Winton Ave
Room 111

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California
94544

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**AMENDED* Notice of Availability of a
Draft Supplemental Environmental Impact Report for
Modifications to Existing Conditional Use Permits –
Altamont Winds Inc. (AWI): 2018 CUP Extension
Amended Notice to Extend the Comment Period
Planning Case PLN2014-00028 / SCH# 2014092057**

SUMMARY:

Notice is hereby given by the County of Alameda, Community Development Agency, Planning Department, as the lead agency pursuant to the California Environmental Quality Act (CEQA), that the above-named Draft Supplemental Environmental Impact Report (DSEIR) is available for public review and comment. Comments on the DSEIR will be received for a 45-day period, **plus an additional 10 (ten) days** between ~~November 18, 2014 and January 2, 2015~~ **and January 12, 2015**, after which a Final SEIR will be prepared containing comments and responses to comments, that together with the DSEIR will form the Final SEIR. The Final SEIR will be used by the East County Board of Zoning Adjustments in its consideration of approval of the proposed CUP modifications, described below.

PROJECT LOCATION:

Within the approximately 14,436-acre Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), in the eastern portion of Alameda County, bisected by Interstate I-580. The subject Conditional Use Permits (CUPs) apply to 828 existing wind turbines and supporting infrastructure owned by Altamont Winds, Inc. (AWI, Applicant), and which have a total footprint of approximately 233 acres distributed across the Alameda County portion of the APWRA. The AWI facilities are intermixed with other wind turbines and facilities not owned by AWI, as well as with ongoing ranching and other land uses.

As part of this extension, AWI is in discussions with another wind farm operator in the APWRA that shares common infrastructure with AWI, regarding a contemplated wind turbine exchange. In such a scenario, AWI would exchange approximately 300 wind turbines it presently owns south of I-580 for an equal number of wind turbines owned and operated by another company, Green Ridge Power LLC, north of I-580. As proposed, and under assurances from both companies, such an exchange will not increase the capacity or quantity of AWI's operating turbines. The result would be that after such an exchange AWI would no longer own or operate any wind turbine energy assets south of I-580.

PROJECT DESCRIPTION:

AWI has applied to Alameda County to modify its CUPs, specifically related to operational and decommissioning schedules for its 828 existing wind turbines, which have a nameplate generating capacity of 85.8 MW. The AWI application requests that the existing CUPs, set to expire on October 31, 2015 under modifications approved in July 2013, be extended for three (3) years, through October 31, 2018 under specified conditions, for operation of its estimated 828 turbines.

* Amendments to the Notice are shown in **bold underline** and ~~strikeout~~. Please note that some additional information is provided separate from the extension of the comment period.

Notice of Availability of a Draft Supplemental Environmental Impact Report for the Modifications to Existing Conditional Use Permits – Altamont Winds Inc. (AWI)
November 17, 2014 December 30, 2014, Amended Notice to Extend the Comment Period
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The SEIR is intended to supplement an Environmental Impact Report (EIR), certified in July 2013, that evaluated the application made by AWI in 2011 to modify these same CUPs as they had been approved in September of 2005. The 2013 FEIR is available on the County Planning Department website at <http://www.acgov.org/cda/planning/landuseprojects/awipermit-pln2011-102.htm>.

The prior 2013 EIR evaluated AWI's application to replace the schedule adopted in 2005 for phased decommissioning (shut down and removal) of existing turbines in steps in 2009, 2013, 2015 and 2018, in anticipation of repowering (replacement with current generation turbines), with full operation through October 2015 only, and without any partial or phased decommissioning. The 2013 EIR included as Alternative 3 the potential full operation of the turbines through October 2018, at a limited level of analysis, as provided for in the CEQA Guidelines (Section 15126.6(d)), to provide "sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project."

The County determined that a Supplement to the 2013 EIR should be prepared in order to address the environmental impact of AWI's proposed project modification because, among other reasons, the 3-year extension requested by AWI is a substantial change to the project, which will cause a substantial increase in the severity of previously-identified significant environmental impacts. The Supplemental EIR is the appropriate mechanism to make the required revisions to the 2013 EIR; the consideration of operations through 2018 as one of four project alternatives in the 2013 EIR does not adequately address the scope and detail of revisions necessary to evaluate the changed project scope.

When the County certified the EIR in July 2013 for the modifications that provided for full operations through 2015, a finding was made regarding this alternative that: "Alternative 3 would better serve the project objectives of renewable energy, but would also very substantially increase the avian mortality impacts compared to the project and all other alternatives. For the purpose of meeting the project objectives and minimizing significant impacts on special status avian wildlife, Alternative 3 is considered infeasible." On the basis of this determination, the County has determined it is necessary to provide additional information, which this SEIR is intended to provide, together with the same kind of notice and public review as provided for a draft EIR under Section 15087 of the CEQA Guidelines. The SEIR supplements the prior EIR with additional analysis beyond that included in the Alternatives analysis to provide a basis for making the findings required by CEQA. In addition, although the County has determined that there are no new substantial changes to the project that were not evaluated in the prior 2013 EIR that require preparation of a subsequent EIR, but rather that only relatively minor additional information and changes are required for the 2013 EIR to adequately apply to the current proposal. However, to the extent new information has become available since the prior FEIR, the County CDA has incorporated that information into the DSEIR. As such, the SEIR is intended to comply with the standards established in the CEQA Guidelines for supplemental EIRs (Section 15163).

The SEIR does not address repowering. At the time that AWI proposes repowering, a separate project EIR will be required, which may 'tier' from the separate Program EIR that was recently completed and certified (November 2014) and which evaluated overall repowering of the Alameda County portion of the APWRA on a program level, as well as serving as the project EIR for two repowering projects south of I-580, which were also approved at that time.

The 2013 FEIR provided a full discussion of the prior project's potential environmental effects on the following resource areas: Air Quality and Greenhouse Gases (GHGs); Biological Resources; Noise; and Hazards and Hazardous Materials. Impacts were distinguished as those resulting from continued operations of the turbines through 2015 (and as alternatives, through 2016 and 2018), and from planned decommissioning activities to shut down and remove the turbines. Because the current project is limited in

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scope to changes in the operational schedule – the three-year extension to 2018 – and would have no effect on decommissioning activities, which will remain subject to the findings and mitigation monitoring and reporting program of the 2013 EIR, impacts resulting solely from decommissioning activities are not discussed, and the County CDA will instead rely entirely on the analyses and mitigation measures as described in the 2013 FEIR for operational impacts, and not any decommissioning-related impacts.

ANTICIPATED SIGNIFICANT ENVIRONMENTAL EFFECTS:

The 2013 FEIR's analysis of biological resources indicated that extending the term of the CUPs through October 31, 2018 would have significant and unavoidable adverse impacts on both common and special-status avian species (Impact BIO-1), including the four focal raptor species: American kestrel, burrowing owl, golden eagle, and red-tailed hawk. The 2014 DSEIR's analysis of current project impacts identifies the following impact on biological resources to be *significant and unavoidable*:

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

With respect to an issue raised during the scoping period following the Notice of Preparation, of potential releases of lubricant oil into the environment from the extended operation of existing turbines, the DSEIR determined there would be *no impact* on the following:

- Impact HAZ-1: Result in a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.

PUBLIC REVIEW:

One of the purposes of CEQA itself is in large part to inform the public of the likely environmental consequences of public and private projects such as the proposed modifications to the CUPs. The purpose of this Notice, consistent with Sections 15086 and 15087 of the CEQA Guidelines, is to consult with and request comments on the DSEIR from responsible agencies, organizations, Native American tribes, and interested parties as to its environmental analyses.

The DSEIR is available for review during normal business hours (8:30 a.m. to 5:00 p.m.), Monday through Friday, at the Alameda County Community Development Agency, Planning Department, at 224 West Winton Avenue, Room 111, Hayward, California, 94544. It is also available at the Livermore Public Library, Civic Center Branch, 1188 South Livermore Ave, Livermore, CA 94550-9315, 10:00 a.m. to 9:00 p.m. Monday to Thursday; 10:00 a.m. to 6:00 p.m. Friday 10:00 a.m. to 5:00 p.m. Saturday and 10:00 a.m. to 5:00 p.m., Sunday. The DSEIR may also be viewed or downloaded at the Alameda County website: (<http://www.acgov.org/cda/planning/landuseprojects/awipermit.htm>), or select Pending Land Use Projects – Current Development Projects – Wind Turbine Projects - Altamont Winds, Inc. Permit Modification – Application No. PLN2014-28, at <http://www.acgov.org/cda/planning>. Comments on the DSEIR may be submitted to:

Sandra Rivera, Assistant Planning Director
ATTN: AWI Permit Modification EIR
Alameda County Community Development Agency
224 W. Winton Avenue, Suite 110
Hayward, CA 94544

Please include a return address and contact name with your written comments. Comments can also be sent via email with subject line "AWI Permit Modification EIR" to: sandra.rivera@acgov.org.

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Although CEQA does not require formal hearings at any stage of the environmental review process (State CEQA Guidelines Section 15202[a]), it does encourage “wide public involvement, formal and informal... in order to receive and evaluate public reactions to environmental issues” (State CEQA Guidelines Section 15201) and requires the lead agency to provide the public with the opportunity to provide comments. The County, as lead agency, circulated an NOP of a SEIR (SCH # 2014092057) for the proposed project on September 16, 2014. The NOP was distributed for a 30-day comment period that ended on October 15, 2014. Comments received on the NOP were considered in the preparation of the DSEIR. Appendix A of the DSEIR contains the NOP and written comments received on the NOP.

The DSEIR incorporates public and agency responses to the NOP. Like the NOP, the DSEIR is being circulated for review and comment by appropriate agencies, as well as organizations and individuals who have requested notification. In accordance with Section 15205(d) of the CEQA Guidelines, the County has scheduled a 45-day public review period for the DSEIR, **now expanded to a 55-day review period** beginning on November 17, 2014 and ending on ~~January 2, 2015~~ **January 12, 2015**, at 5:00 p.m., **allowing an additional 10 (ten) days for comments in recognition of the Winter holiday period.** Within ~~that~~ **the original** 45-day period, the County ~~will hold~~ **has held** one public hearing to request verbal comments on the DSEIR, at the following time and place:

Thursday, December 18, 2014, 1:30 p.m.
Meeting of the East County Board of Zoning Adjustments
City of Pleasanton Council Chambers,
200 Old Bernal Avenue, Pleasanton

~~The m~~Meeting facilities ~~will be~~ **are** accessible to persons with disabilities. If special translation or signing services or other special accommodations are needed, please contact Nilma Singh at 510-670-5400 or nilma.singh@acgov.org at least 48 hours before the meeting.

Following the close of the public review period for the DSEIR, the County will prepare a Final EIR, incorporating all comments received during the public comment period, for consideration **of its certification** by the East County Board of Zoning Adjustments (EBZA), tentatively scheduled for ~~Thursday~~ **Tuesday, January 22, 2015, February 3, 2015**. As required by CEQA (Section 21092.5), the Final EIR, including written responses to the comments submitted by public agencies, will be available at least 10 days prior to certification.

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**ATTACHMENT: Assessor Parcel Numbers
SCH# 2014092057**

LIST OF CUPS, LANDOWNERS AND APNS

CUP NO.	LANDOWNER	ASSESSOR'S PARCEL NUMBERS	APPROXIMATE ACRES
C-8036	Frick/Costa	99B-5680-15	207.12
C-8037	Pombo	99B-6300-2-1, 99B-6300-2-2, 99B-6425-1-6, 99B-6325-2-4 and 99B-6400-1-7	224.26
C-8134	Rooney	99B-6125-2	160.21
C-8137	Mulqueeney	99B-7900-1-5, 99B-7900-1-7, 99B-7890-2-4, 99B-7890-2-5, 99B-7890-2-6, 99B-7925-2-4, 99B-7925-2-1, 99B-7925-2-5, 99B-7950-2, 99B-7975-1, 99B-7980-1, 99B-7985-1-6, 99B-7985-1-4, 99B-7985-1-3, 99B-7985-1-5, 99A-1800-2-4, 99A-1800-2-3 and 99B-8050-1	4,447.50
C-8191	Mulqueeney	99B-7910-1-1	592.84
C-8243	ACWMA	99A-1780-1-4, 99A-1770-2-1, 99A-1770-2-2, 99A-1770-2-3, 99A-1810-1 and 99A-1790-3	1,324.83
C-8216	ACWMA	99A-1810-1	240.81 (parcel acreage included in C-8243)
C-8231*	Altamont Landfill	99B-6225-1, 99B-6250-1, 99B-6275-1-1	1,547.80
C-8232	Egan	99B-6125-3	160.47
C-8233	Elliott	99B-6125-4	157.54
C-8235	Corbett	99B-5650-1-4 and 99A-1785-1-14	284.96
C-8236	Dunton	99B-5680-1	330.46
C-8237	Valhalla (Devincenzi)	99B-5610-1 and 99B-6075-3	665.98
C-8238	Ralph (north)	99B-7300-1-5 and 99B-7375-1-7	766.57
C-8239*	Jackson	99B-6125-5	325.59
C-8241	Walker	99B-6100-2-10, 99B-6100-2-11, 99B-6100-2-12, 99B-6100-3-10, 99B-6100-3-15, 99B-6100-3-11	1,314.55
C-8242	Gomes (north)	99B-6150-4-10, 99B-6150-3 and 99B-6150-2-7	635.48
C-8244	Gomes (south)	99B-6425-2-3, 99A-1790-2 and 99A-1795-1	1,049.48
TOTAL ACREAGE			14,195.64

Source: AWI, 2014

Notes:

1. The above table includes those parcels and CUPs on which AWI currently has installed wind turbines, as well as those parcels and CUPs on which turbines owned by other wind companies are presently installed and whose wind turbines may be obtained in exchange on a turbine-for-turbine basis with turbines currently owned by AWI.
2. Many of the wind farms in the APWRA overlap, with different wind energy facility operating companies on a single parcel of land. Therefore, other wind companies beside AWI currently operate wind farms within the project area described above.
3. Two additional CUPs, C-8231 and C-8239 (landowners Waste Management Inc. and Jackson, respectively), apply to turbines proposed to be acquired by AWI or its affiliates in a proposed asset exchange, and would contain turbines subject to the proposed modifications.

**MINUTES OF MEETING
EAST COUNTY BOARD OF ZONING ADJUSTMENTS
DECEMBER 18, 2014
(Approved January 22, 2015)**

REGULAR MEETING

CALL TO ORDER: *The Chair called the meeting to order at 1:30 p.m.*

MEMBERS PRESENT: Members Larry Gosselin, Vice-Chair; Jim Goff; and Jon Harvey, Chair.

OTHERS PRESENT: Sandra Rivera, Deputy Planning Director; Jana Beatty, Senior Planner; Andrew Young, Planner; Heather Littlejohn, County Counsel's Office; and Nilma Singh, Recording Secretary.

There were approximately twenty-four people in the audience.

PLEDGE OF ALLEGIANCE

OPEN FORUM: Open forum is provided for any members of the public wishing to speak on an item not listed on the agenda. Each speaker is limited to three (3) minutes. *No one requested to be heard under open forum.*

NEIGHBORHOOD PRESERVATION AND ZONING ORDINANCE ABATEMENT ~ None
ALCOHOLIC BEVERAGE SALE REGULATION ADMINISTRATIVE HEARING ~ None

APPROVAL OF MINUTES FROM PREVIOUS MEETINGS

1. APPROVAL OF BOARD MINUTES ~ November 12, 2014

Member Goff made the motion to approve the November 12th Minutes as submitted and Chair Harvey seconded. Motion carried unanimously, 3/0.

CONSENT CALENDAR:

- 2. KIMBRO/CROWN CASTLE/CORE DEVELOPMENT/SPRINT, CONDITIONAL USE PERMIT, PLN2014-00134 ~** Application to allow continued operation of a telecommunications facility with modifications, in a "A" (Agricultural) District, located at 5810 Mission Road, west side, approximately 1.2 miles north of Vargas Road, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 96-0056-008-12.

Staff Planner: Richard Tarbell

Continued from October 23, 2014

Moved from the Regular Calendar; to be continued without discussion to the January hearing.

Member Gosselin made the motion to approve the modified Consent Calendar and Member Goff seconded. Motion carried unanimously, 3/0.

REGULAR CALENDAR:

2. **KIMBRO/CROWN CASTLE/CORE DEVELOPMENT/SPRINT, CONDITIONAL USE PERMIT, PLN2014-00134** ~ Application to allow continued operation of a telecommunications facility with modifications, in a "A" (Agricultural) District, located at 5810 Mission Road, west side, approximately 1.2 miles north of Vargas Road, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 96-0056-008-12.
Staff Planner: Richard Tarbell
Continued from October 23, 2014

This item was moved to the Consent Calendar, to be continued without discussion.

3. **ALTAMONT WINDS, INC., MODIFICATIONS TO EXISTING (YEAR 2005, AS MODIFIED IN 2013) CONDITIONAL USE PERMITS, PLN2014-00028 - Informational Item Only** ~ Public Hearing to receive comments on the Draft Supplemental Environmental Impact Report (DSEIR) **on an** application to modify conditions on 16 conditional use permits, for continued operation of an estimated 828 existing utility-scale wind turbines with a combined (current) generation capacity of 85.8 megawatts (MW). The application specifically requests that the existing CUPs, which are set to expire on October 31, 2015 under modifications approved in July 2013, be extended for three (3) years, through October 31, 2018, under specified conditions. The existing turbines are located throughout the approximately 14,436-acre Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), in the eastern portion of Alameda County, bisected by Interstate I-580, on up to 58 parcels bearing 58 separate Assessor's Parcel Numbers.
Staff Planners: Sandra Rivera and Andrew Young

Mr. Young, with a powerpoint presentation, discussed the Draft Supplemental EIR.

Chris Knoppe, Project Manager, Power Engineers, with a powerpoint, discussed the following: Proposed Project Being Evaluated; Project Operational Area; D Supplemental EIR (DSEIR); CEQA, 2013 FEIR; Biological Resource Impacts; Hazards & Hazardous Materials and SEIR Process Schedule.

Public testimony was called for. Bob Cooper, 4000 Dyer Road, Livermore, submitted photographs and read his written testimony—expressed oil leakage concerns and urged a denial unless repowered.

Doug Bell, EBRPD, indicated that extensive written comments will be submitted and discussed four major comments re SEIR: 1) inadequate, especially impacts; 2) calculation

of Fatality Rate; 3) mitigation efforts re cost of average raptor rehab; & 4) Asset exchange; and, formally requested an extension of the comment period.

Michael Lynes, representing Audubon, in opposition discussed the inadequacy of the SEIR, cost of raptor rehab (more than \$500), repowering, indicated that detailed written comments will be submitted and agreed with Mr. Bell re request of an extended comment period.

Member Gosselin asked both Mr. Bell and Mr. Lynes if there would be any consideration of mitigation to justify an extension.

Rick Koebee, AWI, explained the oil leakage and mitigation (inspection during off season); mitigation for eagle impact, repowering, background information re asset exchange and added that a detailed presentation will be provided at the January 22nd hearing.

Public testimony was closed. The Board discussed the possibility of an extension. *Staff will confirm the continuance date. Member Gosselin requested, if possible, a copy of the turbine Maintenance Log to all interested parties and the FSEIR to reflect specific reasons for the changes of the COA.*

The Chair announced a 5-minute recess and the hearing reconvened at 3:00 p.m.

4. **EDF RENEWABLE ENERGY – PATTERSON PASS WIND PROJECT, CONDITIONAL USE PERMIT, PLN2012-00214, and GOLDEN HILLS WIND LLC – GOLDEN HILLS WIND PROJECT, PHASE 1 – CONDITIONAL USE PERMIT, PLN2014-00032** ~ public hearing to receive comments and recommendations of the EBZA regarding the roles and responsibilities of the Altamont Pass Wind Resource Area Technical Advisory Committee (APWRA TAC) pursuant to Condition 88 of the Patterson Pass Wind Project (and matching Condition 94 of the Golden Hills Wind Project), both of which Conditional Use Permits were approved by the EBZA on November 12, 2014. The TAC is intended to oversee the post-construction avian mortality monitoring program, review and provide advice on Avian Protection Plans proposed by the operators, and on the implementation of adaptive management measures that may be required.

Staff Planners: Sandra Rivera and Andrew Young

Ms. Rivera provided an oral presentation re an email statement from Member Gosselin who also provided a further explanation. Ms. Rivera, with a powerpoint, discussed the following: Purpose of hearing, TAC; Other TAC references in Program EIR; TAC membership concepts under B10-11g; Compensatory Mitigation under B10-11h; TAC proposal by EBZA member; TAC member roles per proposal; Other aspects of proposal; Proposed role of TAC to implement landscape-scale compensatory mitigation strategies; Main topic of concerns; Concepts considered by staff; County proposal; County Proposal for adjunct TAC members; Core TAC roles based on Program EIR; Additional TAC roles; Limitations on any County TAC; and, Discussion & Questions.

The Board discussed the following: current process; existing TAC representatives-two agencies; guidelines/By-Laws; core group; possible future TAC members (expanded TAC); coordination with EACCS-perhaps a subcommittee/working group and transparency.

Doug Bell, Contra Costa TAC member, explained their formation and importance of consistency.

Member Gosselin suggested an invitation to other agencies; and discussed landscape-scale mitigation and the Fish & Wildlife Eagle Guidelines.

Michael Lynes, Audobon, discussed commitment from regulatory agencies.

Staff summarized the Board discussion: Core TAC expansion as needed; confer with CC TAC; timeline/staff to coordinate meetings; invitations to potential members, and list of documents.

STAFF COMMENTS & CORRESPONDENCE: *None*

COMMISSION ANNOUNCEMENTS, COMMENTS AND REPORTS: *Member Gosselin discussed the timeline for the availability of environmental documents, and, the Chair noted his discussions with staff re future agenda management.*

ADJOURNMENT: *There being no further business, Member Goff moved to adjourn the meeting at 4:10 p.m. Member Gosselin seconded the motion. The motion was carried 3/0.*

ALBERT LOPEZ, SECRETARY
EAST COUNTY BOARD OF ZONING ADJUSTMENTS



**ALAMEDA COUNTY CDA
PLANNING DEPARTMENT**

**PUBLIC COMMENT HEARING ON A DRAFT SUPPLEMENTAL
ENVIRONMENTAL IMPACT REPORT**

TO: EAST COUNTY BOARD OF ZONING ADJUSTMENTS
HEARING DATE: DECEMBER 18, 2014

GENERAL INFORMATION

**APPLICATION: MODIFICATIONS TO 16 EXISTING CONDITIONAL USE PERMITS
(APPROVED YEAR 2005, AS MODIFIED IN 2013), PLN2014-00028**

APPLICANT: ALTAMONT WINDS, INC.

REQUEST: To extend 16 conditional use permits, which are set to expire on October 31, 2015 under modifications approved in July 2013, for three (3) years, through October 31, 2018, under specified conditions, for operation of an estimated 828 existing utility-scale wind turbines with a combined existing (current) generation capacity of 85.8 megawatts (MW). The application could also apply to two additional CUPs for an estimate 300 turbines that may be acquired by the applicant in an asset exchange.

LOCATION, SPECIFIC PERMITS, OPERATORS, PROPERTY OWNERS AND PARCEL NUMBERS: The existing turbines are located throughout the approximately 14,436-acre Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), in the eastern portion of Alameda County, bisected by Interstate I-580, on up to 58 parcels bearing 58 separate Assessor's Parcel Numbers.
Conditional Use Permit Numbers, Facility Permittee/Land Owner family names and Assessor's Parcel Numbers (APNs) as follows:

C-8036, Altamont Infrastructure Company/Frick & Costa, APN: 099B-5680-015-00;
C-8037, Altamont Infrastructure Company/Pombo, APNs: 099B-6300-002-01, 099B-6300-002-02, 099B-6325-002-03, 099B-6325-002-04 and 099B-6425-001-06;
C-8134, Altamont Infrastructure Company/Rooney, APN: 099B-6125-002-00;
C-8137, Altamont Infrastructure Company/Mulqueeney, APNs: 099A-1800-002-03, 99A-1800-002-04, 99b 7890-002-04, 99B-7890-002-05, 99B-7900-001-05, 99B-7900-001-07, 99B-7910-001-01, 99B-7925-001-03, 99B-7925-001-04, 99B-7925-002-04, 99B-7925-002-05, 99B-7975-001-00, 99B-7980-001-00, 99B-7985-001-03, 99B-7985-001-04, 99B-7985-001-05, 99B-7985-001-06 and 99B-8050-001-00;
C-8191, WindWorks Inc./Mulqueeney, APN: 099B-7910-001-01;
C-8216, WindWorks Inc./Alameda County Waste Management Authority, APN: 099A-1810-001-00;
C-8232, Altamont Infrastructure Company/ 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/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-6100-003-13;

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.

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

Two additional CUPs, C-8231 and C-8239 (landowners Waste Management Inc. and Jackson, respectively), apply to turbines proposed to be acquired by AWI or its affiliates in a proposed asset exchange, and would contain turbines subject to the proposed modifications.

ZONING: A-BE 160 and A-BE-320 (Agriculture, Minimum Building Site Area 160 and 320 acres, respectively) Districts, intended to promote implementation of general plan land use proposals (or designations) for agricultural and other non-urban uses, to conserve and protect existing agricultural uses, and to provide space for and encourage such uses in places where more intensive development is not desirable or necessary. (Section 17.06.010). Permitted uses include a variety of agricultural and agricultural support uses, including crop, vine and tree farms, animal husbandry, wineries, fish hatcheries, trails, and on qualified building sites, single family and secondary dwelling units. Conditionally permitted uses include privately-owned wind electric generators.

GENERAL PLAN DESIGNATION: The site is subject to the East County Area Plan (ECAP), adopted in 1994 and amended substantially in November 2000 by the voter-approved Ordinance/Initiative Measure D. The ECAP designates the site as Large Parcel Agriculture (LPA), and establishes minimum parcel sizes for specific areas of the East County (100 acres for the subject parcels) and maximum building intensity (floor area ratio or FAR). Subject to the provisions, policies and programs of the ECAP, the LPA designation permits one single family residence per parcel, agricultural uses, agricultural processing facilities, public and quasi-public uses, quarries, landfills and related facilities, "windfarms and related facilities, utility corridors and similar uses compatible with agriculture."

ENVIRONMENTAL REVIEW: A Draft Supplemental Environmental Impact Report (DSEIR) has been prepared to evaluate the potential environmental impacts of the application to extend for three years the existing CUPs, and which is "tiered" from an EIR that was certified by the EBZA on July 18, 2013 for modifications approved on the same date, to allow full operation of the 828 existing turbines through October 31, 2015. The prior EIR addressed continuing operations of the turbines and decommissioning activities (i.e., removal of old turbines for repowering). The DSEIR began circulating for the purpose of public and agency comment on November 17, 2014. The comment period will end on January 2, 2015, after which a Final SEIR will be prepared, comprising both the Draft SEIR and a Response to Comments document.

RECOMMENDATIONS:

That the East County Board of Zoning Adjustments take public comment on the Draft Supplemental Environmental Impact Report.

PERTINENT FACTS:

Physical Features: The subject CUPs are widely distributed across the Alameda County portion of the Altamont Pass Wind Resource Area (APWRA). The project location containing AWI's existing wind turbines falls within an approximately 14,196-acre portion of the 50,000-acre APWRA. The APWRA extends across the northeastern hills of Alameda County and a smaller proportion of Contra Costa County to the north. The region is generally characterized by rolling foothills of annual grassland. The area in which the CUPs are permitted is mostly treeless with relatively steep terrain on the west and gently rolling hills on the east toward the floor of the Central Valley. The underlying landscape generally consists of undeveloped grazing land. Major features of the area include the wind turbines, ancillary facilities, an extensive grid of high voltage power transmission lines, substations, microwave towers, a landfill site, Interstate 580, railroad track lines, ranch houses, and clusters of rural residential homes on Dyer and Midway Roads.

History/Background: The 16 subject CUPs were initially approved by the EBZA in November 2003 and January 2004 with conditions, as the continued operation of existing wind farm facilities, including turbines and infrastructure. These permits, along with 13 other CUPs approved on those dates, were approved with a determination that they were categorically exempt from CEQA as the continued operation of existing facilities; the approvals were subsequently appealed by the Center for Biological Diversity, Californians for Renewable Energy, and Golden Gate Audubon Society for resolution by the County Board of Supervisors, primarily on the grounds that the CUPs were not exempt from CEQA, due to special circumstances represented by high levels of avian mortality. The Board of Supervisors acted on September 22, 2005 to uphold the EBZA's approval, but imposed a number of operational restrictions on wind farm operations, including the progressive or phased shutdown and removal of specified percentages of turbines, in order to enable repowering of their wind energy assets (i.e., replacement of the older turbines, installed in the 1980s and 1990s with current generation, much larger turbines). Other key requirements included a winter seasonal shutdown during peak avian migration through the APWRA, the establishment of a Scientific Review Committee, and requirements for the preparation of an EIR to address both continuing operations through the end of the permit term in 2018 and repowering of the APWRA. It should be noted, however, that the 16 CUPs applied originally to a total of over 2,600 turbines, including 920 that were "beneficially owned" by AWI, and the remainder by other operators. All but 4 of the 16 permits are 'held' by Altamont Infrastructure Co. (AIC), which is a service company that does not own but instead only manages turbines under a compact among the different wind companies.

The first phase of decommissioning took place in 2009, at which time AWI was required to remove 10 percent of its 920 turbines. An additional 25 percent of the original 920 turbines (for a cumulative total of 35 percent) were to be permanently removed by September 30, 2013, followed by 50 percent of the original turbine number (for a cumulative total of 85 percent) by September 30, 2015, and the remaining 15 percent of turbines by September 30, 2018. In July 2011, AWI applied to the County CDA to modify the 2005 CUPs to:

1. Remove the requirement for phased decommissioning.
2. Remove winter seasonal shutdown requirements.
3. Provide for 100 percent of AWI's turbines be decommissioned by the end of 2015.

The 2013 FEIR was prepared to evaluate the environmental effects of such modifications and to identify mitigation measures to reduce any significant environmental effects identified. It also met the 2005 CUP requirement that an EIR be prepared to evaluate existing operations and phased decommissioning, and identified numerous mitigation measures to reduce and avoid the impacts of turbine removal in advance of repowering, although no specific repowering project had been proposed at that time.

PROJECT DESCRIPTION

The current project proposal is a request to modify 16 existing Conditional Use Permits (CUPs), approved in 2005 and modified in July 2013 (application PLN2011-00102), for continued operation of the wind farm assets of Altamont Winds, Inc. (AWI), now comprised of 828 wind turbines with a rated capacity of 85.8 MW. Specifically, AWI's request would provide for the wind farm turbines to continue operating through October 2018, as a change from the current expiration of the CUPs on October 31, 2015. While the CUPs as approved in 2005 provided for operations through September 2018, they also required phased shutdown and removal, with a combined 35 percent of all turbines removed by September 2013 and an additional 50 percent removed by September 2015, so that only 15 percent of the original number of turbines would be operating between 2015 and 2018. The modifications approved in 2013 in effect exchanged the phased shutdown requirement for a complete shutdown in October of 2015, in order to initiate repowering of its wind farm assets in 2016.

The Applicant, AWI, contends that its progress in developing a repowering program for its turbines is constrained by ongoing commercial and regulatory difficulties, and that the CUP modifications allowing it to operate through 2018 are necessary in the event that circumstances beyond AWI's control prevent it from initiating repowering in 2015 or in a financially feasible manner after the current CUPs expire in 2015. AWI proposes to operate through 2018 only on the condition that it has diligently pursued repowering of its wind farm assets, and can demonstrate that circumstances beyond AWI's control have delayed completion of the repowered project. Conditions of approval would require an annual review to document AWI's efforts to repower its assets.

Asset Exchange. Concurrently with the request for an extension through 2018, AWI is in discussions with another wind farm operator, Green Ridge Power LLC (an operating entity of NextEra Energy Resources, aka NEER), for an exchange of wind turbine assets. Specifically, approximately 300 wind turbines currently owned by AWI south of I-580 would be acquired by Green Ridge and an equal number of wind turbines would be acquired by AWI north of I-580, currently operating under CUPs C-8231 and C-8239, so that the permit modifications would apply to a total of 18 existing CUPs, if the asset exchange occurs. As proposed, and under assurances from both companies, such an exchange will not increase the capacity or quantity of AWI's operating turbines. Green Ridge will shut down and remove the turbines it will acquire, for the purpose of repowering.

The asset exchange is recognized in the Draft SEIR and certain aspects of it are discussed, such as that it would result in a decrease of roughly 1.7 MW in AWI's rated annual capacity, and that it would result in a moderate reduction in the number of operating high-risk turbines (HRT) turbines, specifically those rated 8.5 to 10.0 for their relative risk of striking birds.

HEARING FOR COMMENTS ON THE DRAFT EIR

EIR Summary: The Draft Supplemental EIR (DSEIR) has been prepared as a supplement to the 2013 EIR, which was certified in July 2013 as a complete assessment of the environmental impacts of AWI's existing operations. The 2013 EIR provided a comprehensive identification of the environmental impacts of AWI's operation through 2015, as well as the air quality and noise effects of decommissioning activities (i.e., construction-related effects). The DSEIR is not intended to re-evaluate the assessment of those impacts, but is only meant to evaluate the additional environmental effects attributable to the additional three years of operations proposed by AWI (2015 through 2018), which are limited almost exclusively to biological resources and in particular, avian mortality.

Although the 2013 FEIR evaluated the alternative of continuing operations until October 31, 2018, that alternative was rejected by the EBZA due to the additional number of avian fatalities. The EBZA, on

recommendation from Planning staff, determined that the environmentally superior project, other than the No Project alternative, was Alternative 1, which was the project then proposed, but with winter season shutdowns continuing through each year of operations, through 2015. The County determined that the level of analysis provided in the 2013 EIR of AWT's operations through 2018 (Alternative 3) was not sufficient to make the required findings for the purpose of CEQA, and therefore determined that the current proposal required the preparation of a Supplemental EIR.

In accordance with CEQA Guidelines Sections 15162 and 15163, a Supplemental EIR may augment an EIR prepared for an existing project to address any project changes, new information of substantial importance that was not known or could have been known without the exercise of reasonable diligence or changed circumstances occurring since the time the prior document was certified. In the case of changes to a previously approved project, as is the case here, the purpose of an SEIR is to provide only the additional analysis necessary to make the previous EIR adequately apply to the project as modified.

As with the 2013 EIR, the analysis quantifies effects on the four focal raptor species that were the subject of the 2007 Settlement Agreement, including golden eagle, red-tailed hawk, burrowing owl and American kestrel, as well as all bird species known to inhabit the APWRA. The DSEIR used the same method as the 2013 EIR to quantify the relative, projected number of bird deaths in the years 2013 to 2018, which was the range of years used in the 2013 EIR to show avian mortality impacts and changes due to that proposal, between the baseline (no project) conditions (with phased shutdown and decommissioning between 2013 and 2018) and complete shutdown in 2015.

An Executive Summary in the DSEIR includes Table ES-4, that briefly summarizes the impacts that were identified, and also identified topic areas that were excluded from the analysis as not relevant or applicable to the site location or nature of the project. The Draft SEIR's analysis of Project impacts determined that one environmental impact on biological resources would be significant and unavoidable:

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

The DSEIR identifies three distinct mitigation measures to address the impact, two of which were previously included in the 2013 EIR, namely continuing the winter seasonal shutdown (Mitigation Measure 16), and retrofitting electrical power poles (Mitigation Measure 17). To further mitigate and compensate for the projected level of avian mortality resulting from the proposed CUPs extension, the DSEIR identified Mitigation Measure "BIO-17a", as a suite of optional measures to compensate for the loss of special-status avian species, including golden eagles, by contributing to conservation efforts. This measure is adopted almost verbatim and directly from the *Program EIR* for the *Altamont Pass Wind Resource Area Repowering* that was certified in November, 2014, and includes measures that may be outlined in a programmatic eagle take permit, contributing to raptor recovery activities, raptor conservation, and regional raptor habitat conservation efforts. Such measures would be based on a Resource Equivalency Analysis (REA) or similar type of compensation assessment. The DSEIR indicates that the result of these mitigation measures would reduce the impact on avian species, but that they would not eliminate the effects or reduce it to a level that is less than significant, and the impacts would remain significant and unavoidable.

In response to a specific comment in response to the Notice of Preparation from a resident on Dyer Road, regarding the appearance of oil or other lubricants being released from leaking turbine generators or other equipment, including along the turbine blades, the DSEIR also provides supplemental information on the potential of a significant leak of hazardous materials into the environment. A soil sample from near a transformer was analyzed by a specialist lab, and its report was included in the DSEIR. Staining on the wind turbine blades was determined to be rust and mineral deposits released from the turbine hub, and is

not a hazardous material. The DSEIR also reported that the turbines are regularly monitored and maintained by the operator to prevent any release of hazardous materials, with annual maintenance of turbines and rotor blades. The DSEIR determined that the impacts were less than significant and did not warrant the requirement for any mitigation measures.

Public Review, Notices and Hearings: The California Environmental Quality Act (CEQA) does not require formal hearings at any stage of the environmental review process (State CEQA Guidelines Section 15202(a)); however, it does encourage “wide public involvement, formal and informal...in order to receive and evaluate public reactions to environmental issues” (State CEQA Guidelines Section 15201) and requires the lead agency to provide the public with the opportunity to provide comments. The County, as lead agency, circulated a Notice of Preparation (NOP) of the DSEIR (SCH # 2014092057) for the proposed CUP extensions on September 15 2014. The NOP was distributed for a 30-day comment period through October 15, 2014. Comment letters received on the NOP were considered in the preparation of the EIR. Appendix A of the DSEIR contains the NOP, written comments received on the NOP (one letter, from the California State Attorney General, was inadvertently left out of the Appendix and is attached to this staff report, along with a response to the letter from the applicant, AWI).

Comments on the DSEIR received during the 45-day public review period will be considered in the preparation of a Final SEIR. The public review period began on November 17, 2014 and will end on January 2, 2015 at 5:00 p.m. Within that 45-day period, the County will hold one public hearing to request verbal comments on the DSEIR, which is the subject of the current hearing.

The DSEIR was made available for review during normal business hours at the Planning Department offices in Hayward and the Livermore Public Library on South Livermore Avenue in Livermore during its regular hours. The DSEIR was also made available for viewing or downloading at the Alameda County website: <http://www.acgov.org/cda/planning/landuseprojects/awipermit-pln2014-28.htm>. The Notice of Availability (NOA) of the DSEIR was mailed to all of the interested parties and agencies.

The item is currently scheduled to be heard on January 22, 2015, for consideration of the Final SEIR, a Staff Report, attachments and draft Resolution. The draft Resolution will provide a mechanism to convey applicable conditions to the asset-exchanged turbines.

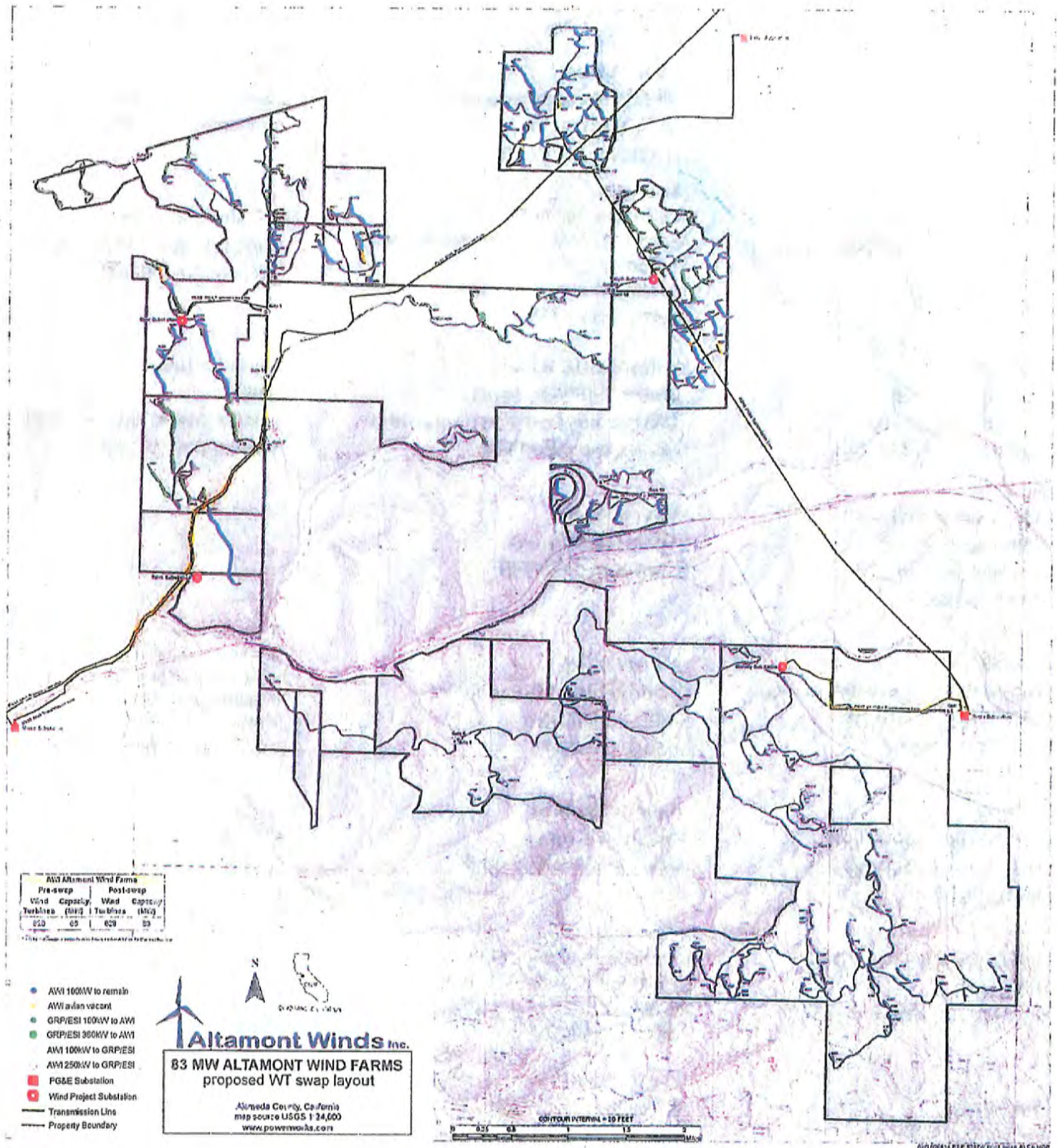
Recommendation: That the East County Board of Zoning Adjustments take public comment on the Draft Supplemental Environmental Impact Report.

Staff Planner: Andrew Young, Planner III

Reviewed By: Sandra Rivera, Assistant Planning Director

H:\APPLICATIONS - 2014\PLN2014-00028\Staff Report\PLN2014-00028 EBZA 12-18-43 for DSEIR Public Comments.docx

Exhibit A
DISTRIBUTION OF ALTAMONT WINDS INC. WIND ENERGY PLANT
Including Representation of Proposed Asset Exchange



**AMENDED Notice of Availability of a
SEIR for Modifications to Existing CUPs
– AWI Jan 12, 2015 – Mailing List**

A-Interested Parties

John Howe
Ogin, Inc.
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14740 Altamont Pass Road
Tracy, CA 95391

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Contra Costa County
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Martinez, CA 94553

Kim Delfino
Defenders of Wildlife
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Sacramento, CA 95814

Leslie Koenig
Alameda County Resource
Conservation District
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The Planning & Conservation League
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CA Wind Energy Association
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Berkeley, CA 94710

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N. Palm Springs, CA 92258-1043

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Altamont Landfill & Resource Recovery
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Environmental Protection Dept
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California Native Plant Society
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Santa Clara, CA 95050

Jymiece & Scullion Donald Silva
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Ralph & Onita Pombo Trs
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Tracy, CA 95377

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Omaha NE 68179

Santucci Properties, LLC
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Livermore, CA 94550

Bill & Elree Langford
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Tracy, CA 95377

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Waste Management of Alameda
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Jackson Land & Cattle LLC and
Jackson A M TR SU Etal
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Midway Power LLC
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San Francisco, CA 94177

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Nancy & Dominic Devincenzi & BA Etal
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ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

November 17, 2014

Chris Bazar
Agency Director

Albert Lopez
Planning Director

224
West Winton Ave
Room 111

Hayward
California
94544

phone
510.670.5400
fax
510.785.8793

www.acgov.org/cda

**Notice of Availability of a
Draft Supplemental Environmental Impact Report for
Modifications to Existing Conditional Use Permits –
Altamont Winds Inc. (AWI): 2018 CUP Extension**
Planning Case PLN2014-00028

SUMMARY:

Notice is hereby given by the County of Alameda, Community Development Agency, Planning Department, as the lead agency pursuant to the California Environmental Quality Act (CEQA), that the above-named Draft Supplemental Environmental Impact Report (DSEIR) is available for public review and comment. Comments on the DSEIR will be received for a 45-day period, between November 18, 2014 and January 2, 2015, after which a Final SEIR will be prepared containing comments and responses to comments, that together with the DSEIR will form the Final SEIR. The Final SEIR will be used by the East County Board of Zoning Adjustments in its consideration of approval of the proposed CUP modifications, described below.

PROJECT LOCATION:

Within the approximately 14,436-acre Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), in the eastern portion of Alameda County, bisected by Interstate I-580. The subject Conditional Use Permits (CUPs) apply to 828 existing wind turbines and supporting infrastructure owned by Altamont Winds, Inc. (AWI, Applicant), and which have a total footprint of approximately 233 acres distributed across the Alameda County portion of the APWRA. The AWI facilities are intermixed with other wind turbines and facilities not owned by AWI, as well as with ongoing ranching and other land uses.

As part of this extension, AWI is in discussions with another wind farm operator in the APWRA that shares common infrastructure with AWI, regarding a contemplated wind turbine exchange. In such a scenario, AWI would exchange approximately 300 wind turbines it presently owns south of I-580 for an equal number of wind turbines owned and operated by another company, Green Ridge Power LLC, north of I-580. As proposed, and under assurances from both companies, such an exchange will not increase the capacity or quantity of AWI's operating turbines. The result would be that after such an exchange AWI would no longer own or operate any wind turbine energy assets south of I-580.

PROJECT DESCRIPTION:

AWI has applied to Alameda County to modify its CUPs, specifically related to operational and decommissioning schedules for its 828 existing wind turbines, which have a nameplate generating capacity of 85.8 MW. The AWI application requests that the existing CUPs, set to expire on October 31, 2015 under modifications approved in July 2013, be extended for three (3) years, through October 31, 2018 under specified conditions, for operation of its estimated 828 turbines.

The SEIR is intended to supplement an Environmental Impact Report (EIR), certified in July 2013, that evaluated the application made by AWI in 2011 to modify these same CUPs as they had been approved in September of 2005. The 2013 FEIR is available on the County Planning Department website at <http://www.acgov.org/cda/planning/landuseprojects/awipermit-pln2011-102.htm>.

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November 17, 2014

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The prior 2013 EIR evaluated AWI's application to replace the schedule adopted in 2005 for phased decommissioning (shut down and removal) of existing turbines in steps in 2009, 2013, 2015 and 2018, in anticipation of repowering (replacement with current generation turbines), with full operation through October 2015 only, and without any partial or phased decommissioning. The 2013 EIR included as Alternative 3 the potential full operation of the turbines through October 2018, at a limited level of analysis, as provided for in the CEQA Guidelines (Section 15126.6(d)), to provide "sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project."

The County determined that a Supplement to the 2013 EIR should be prepared in order to address the environmental impact of AWI's proposed project modification because, among other reasons, the 3-year extension requested by AWI is a substantial change to the project, which will cause a substantial increase in the severity of previously-identified significant environmental impacts. The Supplemental EIR is the appropriate mechanism to make the required revisions to the 2013 EIR; the consideration of operations through 2018 as one of four project alternatives in the 2013 EIR does not adequately address the scope and detail of revisions necessary to evaluate the changed project scope.

When the County certified the EIR in July 2013 for the modifications that provided for full operations through 2015, a finding was made regarding this alternative that: "Alternative 3 would better serve the project objectives of renewable energy, but would also very substantially increase the avian mortality impacts compared to the project and all other alternatives. For the purpose of meeting the project objectives and minimizing significant impacts on special status avian wildlife, Alternative 3 is considered infeasible." On the basis of this determination, the County has determined it is necessary to provide additional information, which this SEIR is intended to provide, together with the same kind of notice and public review as provided for a draft EIR under Section 15087 of the CEQA Guidelines. The SEIR supplements the prior EIR with additional analysis beyond that included in the Alternatives analysis to provide a basis for making the findings required by CEQA. In addition, although the County has determined that there are no new substantial changes to the project that were not evaluated in the prior 2013 EIR that require preparation of a subsequent EIR, but rather that only relatively minor additional information and changes are required for the 2013 EIR to adequately apply to the current proposal. However, to the extent new information has become available since the prior FEIR, the County CDA has incorporated that information into the DSEIR. As such, the SEIR is intended to comply with the standards established in the CEQA Guidelines for supplemental EIRs (Section 15163).

The SEIR does not address repowering. At the time that AWI proposes repowering, a separate project EIR will be required, which may 'tier' from the separate Program EIR that was recently completed and certified (November 2014) and which evaluated overall repowering of the Alameda County portion of the APWRA on a program level, as well as serving as the project EIR for two repowering projects south of I-580, which were also approved at that time.

The 2013 FEIR provided a full discussion of the prior project's potential environmental effects on the following resource areas: Air Quality and Greenhouse Gases (GHGs); Biological Resources; Noise; and Hazards and Hazardous Materials. Impacts were distinguished as those resulting from continued operations of the turbines through 2015 (and as alternatives, through 2016 and 2018), and from planned decommissioning activities to shut down and remove the turbines. Because the current project is limited in scope to changes in the operational schedule – the three-year extension to 2018 – and would have no effect on decommissioning activities, which will remain subject to the findings and mitigation monitoring and reporting program of the 2013 EIR, impacts resulting solely from decommissioning activities are not discussed, and the County CDA will instead rely entirely on the analyses and mitigation measures as described in the 2013 FEIR for operational impacts, and not any decommissioning-related impacts.

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ANTICIPATED SIGNIFICANT ENVIRONMENTAL EFFECTS:

The 2013 FEIR's analysis of biological resources indicated that extending the term of the CUPs through October 31, 2018 would have significant and unavoidable adverse impacts on both common and special-status avian species (Impact BIO-1), including the four focal raptor species: American kestrel, burrowing owl, golden eagle, and red-tailed hawk. The 2014 DSEIR's analysis of current project impacts identifies the following impact on biological resources to be *significant and unavoidable*:

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

With respect to an issue raised during the scoping period following the Notice of Preparation, of potential releases of lubricant oil into the environment from the extended operation of existing turbines, the DSEIR determined there would be *no impact* on the following:

- Impact HAZ-1: Result in a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.

PUBLIC REVIEW:

One of the purposes of CEQA itself is in large part to inform the public of the likely environmental consequences of public and private projects such as the proposed modifications to the CUPs. The purpose of this Notice, consistent with Sections 15086 and 15087 of the CEQA Guidelines, is to consult with and request comments on the DSEIR from responsible agencies, organizations, Native American tribes, and interested parties as to its environmental analyses.

The DSEIR is available for review during normal business hours (8:30 a.m. to 5:00 p.m.), Monday through Friday, at the Alameda County Community Development Agency, Planning Department, at 224 West Winton Avenue, Room 111, Hayward, California, 94544. It is also available at the Livermore Public Library, Civic Center Branch, 1188 South Livermore Ave, Livermore, CA 94550-9315, 10:00 a.m. to 9:00 p.m. Monday to Thursday; 10:00 a.m. to 6:00 p.m. Friday 10:00 a.m. to 5:00 p.m. Saturday and 10:00 a.m. to 5:00 p.m., Sunday. The DSEIR may also be viewed or downloaded at the Alameda County website: (<http://www.acgov.org/cda/planning/landuseprojects/awipermit.htm>, or select Pending Land Use Projects – Current Development Projects – Wind Turbine Projects - Altamont Winds, Inc. Permit Modification – Application No. PLN2014-28, at <http://www.acgov.org/cda/planning>. Comments on the DSEIR may be submitted to:

Sandra Rivera, Assistant Planning Director
ATTN: AWI Permit Modification EIR
Alameda County Community Development Agency
224 W. Winton Avenue, Suite 110
Hayward, CA 94544

Please include a return address and contact name with your written comments. Comments can also be sent via email with subject line "AWI Permit Modification EIR" to: sandra.rivera@acgov.org.

Although CEQA does not require formal hearings at any stage of the environmental review process (State CEQA Guidelines Section 15202[a]), it does encourage "wide public involvement, formal and informal... in order to receive and evaluate public reactions to environmental issues" (State CEQA Guidelines Section 15201) and requires the lead agency to provide the public with the opportunity to provide comments. The County, as lead agency, circulated an NOP of a SEIR (SCH # 2014092057) for the proposed project on September 16, 2014. The NOP was distributed for a 30-day comment period that

Notice of Availability of a Draft Supplemental Environmental Impact Report for the Modifications to Existing Conditional Use Permits – Altamont Winds Inc. (AWI)

November 17, 2014

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ended on October 15, 2014. Comments received on the NOP were considered in the preparation of the DSEIR. Appendix A of the DSEIR contains the NOP and written comments received on the NOP.

The DSEIR incorporates public and agency responses to the NOP. Like the NOP, the DSEIR is being circulated for review and comment by appropriate agencies, as well as organizations and individuals who have requested notification. In accordance with Section 15205(d) of the CEQA Guidelines, the County has scheduled a 45-day public review period for the DSEIR, beginning on November 17, 2014 and ending on January 2, 2015 at 5:00 p.m. Within that 45-day period, the County will hold one public hearing to request verbal comments on the DSEIR, at the following time and place:

Thursday, December 18, 2014, 1:30 p.m.
Meeting of the East County Board of Zoning Adjustments
City of Pleasanton Council Chambers,
200 Old Bernal Avenue, Pleasanton

The meeting facilities will be accessible to persons with disabilities. If special translation or signing services or other special accommodations are needed, please contact Nilma Singh at 510-670-5400 or nilma.singh@acgov.org at least 48 hours before the meeting.

Following the close of the public review period for the DSEIR, the County will prepare a Final EIR, incorporating all comments received during the public comment period, for consideration by the East County Board of Zoning Adjustments (EBZA) tentatively scheduled for Thursday, January 22, 2015. As required by CEQA (Section 21092.5), the Final EIR, including written responses to the comments submitted by public agencies, will be available at least 10 days prior to certification.

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**ATTACHMENT: Assessor Parcel Numbers
SCH# 2014092057**

LIST OF CUPS, LANDOWNERS AND APNS

CUP NO.	LANDOWNER	ASSESSOR'S PARCEL NUMBERS	APPROXIMATE ACRES
C-8036	Frick/Costa	99B-5680-15	207.12
C-8037	Pombo	99B-6300-2-1, 99B-6300-2-2, 99B-6425-1-6, 99B-6325-2-4 and 99B-6400-1-7	224.26
C-8134	Rooney	99B-6125-2	160.21
C-8137	Mulqueoney	99B-7900-1-5, 99B-7900-1-7, 99B-7890-2-4, 99B-7890-2-5, 99B-7890-2-6, 99B-7925-2-4, 99B-7925-2-1, 99B-7925-2-5, 99B-7950-2, 99B-7975-1, 99B-7980-1, 99B-7985-1-6, 99B-7985-1-4, 99B-7985-1-3, 99B-7985-1-5, 99A-1800-2-4, 99A-1800-2-3 and 99B-8050-1	4,447.50
C-8191	Mulqueoney	99B-7910-1-1	592.84
C-8243	ACWMA	99A-1780-1-4, 99A-1770-2-1, 99A-1770-2-2, 99A-1770-2-3, 99A-1810-1 and 99A-1790-3	1,324.83
C-8216	ACWMA	99A-1810-1	240.81 (parcel acreage included in C-8243)
C-8231*	Altamont Landfill	99B-6225-1, 99B-6250-1, 99B-6275-1-1	1,547.80
C-8232	Egan	99B-6125-3	160.47
C-8233	Elliott	99B-6125-4	157.54
C-8235	Corbett	99B-5650-1-4 and 99A-1785-1-14	284.96
C-8236	Dunton	99B-5680-1	330.46
C-8237	Valhalla (Devincenzi)	99B-5610-1 and 99B-6075-3	665.98
C-8238	Ralph (north)	99B-7300-1-5 and 99B-7375-1-7	766.57
C-8239*	Jackson	99B-6125-5	325.59
C-8241	Walker	99B-6100-2-10, 99B-6100-2-11, 99B-6100-2-12, 99B-6100-3-10, 99B-6100-3-15, 99B-6100-3-11	1,314.55
C-8242	Gomes (north)	99B-6150-4-10, 99B-6150-3 and 99B-6150-2-7	635.48
C-8244	Gomes (south)	99B-6425-2-3, 99A-1790-2 and 99A-1795-1	1,049.48
TOTAL ACREAGE			14,195.64

Source: AWI, 2014

Notes:

1. The above table includes those parcels and CUPs on which AWI currently has installed wind turbines, as well as those parcels and CUPs on which turbines owned by other wind companies are presently installed and whose wind turbines may be obtained in exchange on a turbine-for-turbine basis with turbines currently owned by AWI.
2. Many of the wind farms in the APWRA overlap, with different wind energy facility operating companies on a single parcel of land. Therefore, other wind companies beside AWI currently operate wind farms within the project area described above.
3. Two additional CUPs, C-8231 and C-8239 (landowners Waste Management Inc. and Jackson, respectively), apply to turbines proposed to be acquired by AWI or its affiliates in a proposed asset exchange, and would contain turbines subject to the proposed modifications.

Notice of Completion & Environmental Document Transmittal

Mail to: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044 (916) 445-0613
 For Hand Delivery/Street Address: 1400 Tenth Street, Sacramento, CA 95814

SCH #2014092057

Project Title: Modifications to Existing Conditional Use Permits - Altamont Winds Inc.

Lead Agency: County of Alameda Community Development Agency

Contact Person: Sandra Rivera

Mailing Address: 224 West Winton Ave., Rm. 111

Phone: 510-670-5400

City: Hayward

Zip: 94544

County: Alameda

Project Location: County: Alameda

City/Nearest Community: Livermore

Cross Streets: Project is bisected by Interstate I-580,

Zip Code: _____

Longitude/Latitude (degrees, minutes and seconds): _____ " N / _____ " W Total Acres: 14,196

Assessor's Parcel No.: See attached list

Section: _____

Twp.: _____

Range: _____

Base: _____

Within 2 Miles. State Hwy #: Interstate I-580 bisects site

Waterways: _____

Airports: _____

Railways: _____

Schools: _____

Document Type:

CEQA: ☐ NOP

☐ Draft EIR

NEPA: ☐ NOI

Other: ☐ Joint Document

☐ Early Cons

☒ Supplement/Subsequent EIR

☐ EA

☐ Final Document

☐ Neg Dec

(Prior SCH No.) _____

☐ Draft EIS

☐ Other: _____

☐ Mit Neg Dec

Other: _____

☐ FONSI

Local Action Type:

☐ General Plan Update

☐ Specific Plan

☐ Rezone

☐ Annexation

☐ General Plan Amendment

☐ Master Plan

☐ Prezone

☐ Redevelopment

☐ General Plan Element

☐ Planned Unit Development

☒ Use Permit

☐ Coastal Permit

☐ Community Plan

☐ Site Plan

☐ Land Division (Subdivision, etc.)

☐ Other: _____

Development Type:

☐ Residential: Units _____ Acres _____

☐ Office: Sq.ft. _____ Acres _____ Employees _____

☐ Commercial: Sq.ft. _____ Acres _____ Employees _____

☐ Industrial: Sq.ft. _____ Acres _____ Employees _____

☐ Educational: _____

☐ Recreational: _____

☐ Water Facilities: Type _____ MGD _____

☐ Transportation: Type _____

☐ Mining: Mineral _____

☒ Power: Type Wind _____ MW 85.8

☐ Waste Treatment: Type _____ MGD _____

☐ Hazardous Waste: Type _____

☐ Other: _____

Project Issues Discussed in Document:

☐ Aesthetic/Visual

☐ Fiscal

☐ Recreation/Parks

☐ Vegetation

☐ Agricultural Land

☐ Flood Plain/Flooding

☐ Schools/Universities

☐ Water Quality

☐ Air Quality

☐ Forest Land/Fire Hazard

☐ Septic Systems

☐ Water Supply/Groundwater

☐ Archeological/Historical

☐ Geologic/Seismic

☐ Sewer Capacity

☐ Wetland/Riparian

☒ Biological Resources

☐ Minerals

☐ Soil Erosion/Compaction/Grading

☐ Growth Inducement

☐ Coastal Zone

☒ Noise

☐ Solid Waste

☐ Land Use

☐ Drainage/Absorption

☐ Population/Housing Balance

☒ Toxic/Hazardous

☒ Cumulative Effects

☐ Economic/Jobs

☐ Public Services/Facilities

☐ Traffic/Circulation

☐ Other: _____

Present Land Use/Zoning/General Plan Designation:

Large Parcel Agriculture

Project Description: (please use a separate page if necessary)

The proposed project consists of modifications to AWI's existing CUPs, as amended in July 2013, for continued wind power operation and maintenance activities within the Alameda County portion of the APWRA through October 31, 2018. As amended in 2013, the wind power operations were scheduled to terminate on October 31, 2015, subject to new and revised conditions. A Notice of Preparation was previously circulated with details and background information on the proposed changes. Comments on the Draft Supplemental EIR will be accepted between November 17, 2014 and January 2, 2015. Copies of the Draft Supplemental EIR will be available for review at the Permit Center of the County Planning Department, 399 Elmhurst Avenue, Hayward, CA 94544 and the Livermore Public Library, 1188 S. Livermore Ave, Livermore, CA 94550.

Note: The State Clearinghouse will assign identification numbers for all new projects. If a SCH number already exists for a project (e.g., Notice of Preparation or previous draft EIR), it must be included.

Reviewing Agencies Checklist

Lead Agencies may recommend State Clearinghouse distribution by marking agencies below with an "X".
If you have already sent your document to the agency please denote that with an "S".

<input type="checkbox"/> Air Resources Board	<input type="checkbox"/> Office of Historic Preservation
<input type="checkbox"/> Boating & Waterways, Department of	<input type="checkbox"/> Office of Public School Construction
<input type="checkbox"/> California Emergency Management Agency	<input type="checkbox"/> Parks & Recreation, Department of
<input type="checkbox"/> California Highway Patrol	<input type="checkbox"/> Pesticide Regulation, Department of
<input type="checkbox"/> Caltrans District # _____	<input type="checkbox"/> Public Utilities Commission
<input type="checkbox"/> Caltrans Division of Aeronautics	<input type="checkbox"/> Regional WQCB # _____
<input type="checkbox"/> Caltrans Planning	<input type="checkbox"/> Resources Agency
<input type="checkbox"/> Central Valley Flood Protection Board	<input type="checkbox"/> Resources Recycling and Recovery, Department of
<input type="checkbox"/> Coachella Valley Mtns. Conservancy	<input type="checkbox"/> S.F. Bay Conservation & Development Comm.
<input type="checkbox"/> Coastal Commission	<input type="checkbox"/> San Gabriel & Lower L.A. Rivers & Mtns. Conservancy
<input type="checkbox"/> Colorado River Board	<input type="checkbox"/> San Joaquin River Conservancy
<input type="checkbox"/> Conservation, Department of	<input type="checkbox"/> Santa Monica Mtns. Conservancy
<input type="checkbox"/> Corrections, Department of	<input type="checkbox"/> State Lands Commission
<input type="checkbox"/> Delta Protection Commission	<input type="checkbox"/> SWRCB: Clean Water Grants
<input type="checkbox"/> Education, Department of	<input type="checkbox"/> SWRCB: Water Quality
<input type="checkbox"/> Energy Commission	<input type="checkbox"/> SWRCB: Water Rights
<input type="checkbox"/> Fish & Game Region # _____	<input type="checkbox"/> Tahoe Regional Planning Agency
<input type="checkbox"/> Food & Agriculture, Department of	<input type="checkbox"/> Toxic Substances Control, Department of
<input type="checkbox"/> Forestry and Fire Protection, Department of	<input type="checkbox"/> Water Resources, Department of
<input type="checkbox"/> General Services, Department of	
<input type="checkbox"/> Health Services, Department of	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Housing & Community Development	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Native American Heritage Commission	

Local Public Review Period (to be filled in by lead agency)

Starting Date November 14, 2014

Ending Date December 30, 2014

Lead Agency (Complete if applicable):

Consulting Firm: Power Engineers, Inc.
Address: 731 East Ball Road, Suite 100
City/State/Zip: Anaheim, CA 92805
Contact: Chris Knopp
Phone: 858-810-5381

Applicant: Altamont Winds, Inc.
Address: 15850P Jess Ranch Road
City/State/Zip: Tracy, CA 95377
Phone: 925-724-0175

Signature of Lead Agency Representative: _____

Date: 11/14/14

Authority cited: Section 21083, Public Resources Code. Reference: Section 21161, Public Resources Code.

ATTACHMENT: Assessor Parcel Numbers

SCH# 2014092057

LIST OF CUPS, LANDOWNERS AND APNS

CUP NO.	LANDOWNER	ASSESSOR'S PARCEL NUMBERS	APPROXIMATE ACRES
C-8036	Frick/Costa	99B-5680-15	207.12
C-8037	Pombo	99B-6300-2-1, 99B-6300-2-2, 99B-6425-1-6, 99B-6325-2-4 and 99B-6400-1-7	224.26
C-8134	Rooney	99B-6125-2	160.21
C-8137	Mulqueeney	99B-7900-1-5, 99B-7900-1-7, 99B-7890-2-4, 99B-7890-2-5, 99B-7890-2-6, 99B-7925-2-4, 99B-7925-2-1, 99B-7925-2-5, 99B-7950-2, 99B-7975-1, 99B-7980-1, 99B-7985-1-6, 99B-7985-1-4, 99B-7985-1-3, 99B-7985-1-5, 99A-1800-2-4, 99A-1800-2-3 and 99B-8050-1	4,447.50
C-8191	Mulqueeney	99B-7910-1-1	592.84
C-8243	ACWMA	99A-1780-1-4, 99A-1770-2-1, 99A-1770-2-2, 99A-1770-2-3, 99A-1810-1 and 99A-1790-3	1,324.83
C-8216	ACWMA	99A-1810-1	240.81 (parcel acreage included in C-8243)
C-8231*	Altamont Landfill	99B-6225-1, 99B-6250-1, 99B-6275-1-1	1,547.80
C-8232	Egan	99B-6125-3	160.47
C-8233	Elliott	99B-6125-4	157.54
C-8235	Corbett	99B-5650-1-4 and 99A-1785-1-14	284.96
C-8236	Dunton	99B-5680-1	330.46
C-8237	Valhalla (Devincenzi)	99B-5610-1 and 99B-6075-3	665.98
C-8238	Ralph (north)	99B-7300-1-5 and 99B-7375-1-7	766.57
C-8239*	Jackson	99B-6125-5	325.59
C-8241	Walker	99B-6100-2-10, 99B-6100-2-11, 99B-6100-2-12, 99B-6100-3-10, 99B-6100-3-15, 99B-6100-3-11	1,314.55
C-8242	Gomes (north)	99B-6150-4-10, 99B-6150-3 and 99B-6150-2-7	635.48
C-8244	Gomes (south)	99B-6425-2-3, 99A-1790-2 and 99A-1795-1	1,049.48
TOTAL ACREAGE			14,195.64

Source: AWI, 2014

Notes:

1. The above table includes those parcels and CUPs on which AWI currently has installed wind turbines, as well as those parcels and CUPs on which turbines owned by other wind companies are presently installed and whose wind turbines may be obtained in exchange on a turbine-for-turbine basis with turbines currently owned by AWI.
2. Many of the wind farms in the APWRA overlap, with different wind energy facility operating companies on a single parcel of land. Therefore, other wind companies beside AWI currently operate wind farms within the project area described above.
3. Two additional CUPs, C-8231 and C-8239 (landowners Waste Management Inc. and Jackson, respectively), apply to turbines proposed to be acquired by AWI or its affiliates in a proposed asset exchange, and would contain turbines subject to the proposed modifications



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

Chris Bazar
Agency Director

Albert Lopez
Planning Director

224
West Winton Ave
Room 111

Hayward
California
94544

phone
510.670.5400
fax
510.785.8793

www.acgov.org/cda

September 15, 2014

FROM: Sandra Rivera, Assistant Planning Director
Alameda County Community Development Agency
224 W. Winton Avenue, Suite 110
Hayward, CA, 94544

SUBJECT: Notice of Preparation (Notice) of a Supplemental Environmental Impact Report for Modifications to Existing Conditional Use Permits – Altamont Winds Inc. (AWI) (PLN2014-00028)

SUMMARY

The County of Alameda (County) is issuing this Notice of Preparation to inform agencies and interested parties that the County will prepare a Supplemental Environmental Impact Report (SEIR) for proposed modifications to 16 existing Conditional Use Permits (CUPs), for turbines owned and operated by Altamont Winds Inc. in the Alameda County portion of the Altamont Pass Wind Resource Area (AC/APWRA). Altamont Winds Inc. (the Applicant, together with its operating subsidiary WindWorks Inc., and collectively, AWI) has submitted an application requesting that these CUPs, set to expire on October 31, 2015 under modifications approved in 2013, be extended through October 31, 2018 under specified conditions, for operation of its estimated 828 turbines, which have a rated capacity of approximately 85.8 MW.

The SEIR is intended to supplement an Environmental Impact Report (EIR), certified in July 2013, that evaluated the application made by AWI in 2011 to modify these same CUPs as they had been approved in September of 2005. Although the current proposal for operations through 2018 was evaluated in the prior EIR as an alternative (Alternative 3), it was only at a limited level of analysis, as provided for in the CEQA Guidelines (Section 15126.6(d)), to provide "sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project." The County made the following finding in 2013 when it certified the EIR regarding this alternative: "Alternative 3 would better serve the project objectives of renewable energy, but would also very substantially increase the avian mortality impacts compared to the project and all other alternatives. For the purpose of meeting the project objectives and minimizing significant impacts on special status avian wildlife, Alternative 3 is considered infeasible." On the basis of this determination, it is necessary to provide additional information, which this SEIR is intended to provide, together with the same kind of notice and public review as provided for a draft EIR under Section 15087 of the CEQA Guidelines. The SEIR will supplement the prior EIR with additional analysis beyond that included in the Alternatives analysis to provide a basis for making the findings required by CEQA.

The 2011 application sought to replace the schedule adopted in 2005 for phased decommissioning (shut down and removal) of existing turbines in anticipation of repowering (replacement with current generation turbines), beginning with 10% removal by September 2009, 35% by 2013, 85% by 2015, and 100% by the end of the CUP term in 2018. The schedule proposed in 2011 and approved in 2013, eliminated the phased decommissioning and provided for operation of the wind farm through October 2015, subject to new and revised conditions. Other changes were also requested by AWI, such as cessation of the winter seasonal shutdown imposed by the County through the administration of the CUPs, but these changes were not approved by the County.

The CUPs as approved in 2005 required that an EIR be prepared to evaluate ongoing operations, proposed decommissioning and repowering. The EIR certified in 2013 served this purpose in part by evaluating the environmental impacts of ongoing operations and anticipated decommissioning, but did not evaluate any repowering project. The SEIR that is the subject of this Notice will not evaluate a repowering project, but will evaluate the environmental impacts of the requested change to the scheduled expiration of the CUPs under which AWI's turbines are operated. A separate CEQA document (an Addendum or Supplemental EIR) 'tiered' from the Altamont Pass Wind Resource Area Repowering Program EIR that is currently in the form of a Draft Program EIR, will address the repowering proposal by AWI.

The County will serve as the Lead Agency for the SEIR, which will be prepared pursuant to the California Environmental Quality Act (CEQA, 1970, as amended) and in accordance with relevant federal, state and local regulations. The County has determined that a Supplemental EIR is required to evaluate the three-year CUP extension requested by AWI, which is a substantial change to the Project compared to the Project as evaluated in the prior EIR. Although the three-year extension was evaluated in the prior EIR as an Alternative, the adoption and implementation of the extension will result in a substantial increase in the severity of previously identified significant effects and will require important revisions of that EIR, pursuant to Public Resources Code Section 21166 and CEQA Guidelines Section 15162. The County is preparing a Supplemental EIR, rather than a Subsequent EIR, based on its determination, pursuant to CEQA Guidelines Section 15163, that only minor additions and changes are necessary to make the previous EIR adequate to apply to the Project for the changes proposed by the applicant.

Based on the substantial evidence contained in the prior EIR, which included the currently-proposed extension of the CUPs through 2018 as an Alternative, and the evidence represented by the current application, in light of the whole record, the County considers the changes to the Project, from how it was defined for the prior EIR (operations through 2015, with conditions and required mitigation measures) to the current definition of operations through 2018 (with anticipated additional conditions and similar mitigation measures), would increase the severity of previously identified significant effects. For example, full operations (i.e., without phased decommissioning, although with seasonal shutdowns) for an additional three years will increase the total projected number of avian fatalities due to Project operations.

The County does not anticipate that major revisions to the EIR are necessary to identify new environmental impacts that were not disclosed in the prior EIR. Additionally, although there have been some changed circumstances since 2013, the County does not find that there are substantially changed circumstances that would result in new or substantially different significant impacts on the environment. Furthermore, no new information of substantial importance shows that the CUP extension to 2018 would have significant impacts not discussed in the prior EIR. However, to the extent new information has become available since the prior EIR, the County intends to incorporate that information into the SEIR.

The SEIR will be used by the East County Board of Zoning Adjustments in its consideration of approval of the proposed CUP modifications. The County is soliciting the views of agencies, organizations and interested parties as to the scope and content of the environmental resources and topics to be evaluated in the SEIR. In accordance with CEQA, agencies are requested to review the content of this NOP and provide comments on any environmental issues related to the statutory responsibilities of the agency.

CEQA sets the review and comment period for an NOP to end 30 days after publication. The County therefore requests comments on this NOP be received no later than the close of business on Wednesday, October 15, 2014. Provide a name for a contact person in your agency. Send written comments to:

Sandra Rivera, Assistant Planning Director
ATTN: AWI Permit Modification Supplemental EIR
Alameda County Community Development Agency
224 W. Winton Avenue, Suite 110
Hayward, CA, 94544

Comments can also be sent via e-mail with subject line "AWI Permit Modification Supplemental EIR" to sandra.rivera@acgov.org. Please include a return address and contact name with your written comments.

Project Location

The proposed project would extend numerous CUPs for 828 existing wind turbines that are widely distributed within an approximately 14,000-acre portion of the 50,000-acre Altamont Pass Wind Resource Area (APWRA) in eastern Alameda County, California (**Figure 1**). The project site is bisected by Interstate 580. The portion of the site lying southerly of I-580 constitutes approximately 7,700 acres, with the remainder lying northerly of I-580. The lands are currently under permit by AWI or its affiliates either solely or as a shared arrangement with other wind farm operators. In preparation for repowering, AWI is in discussions with another wind farm operator in the APWRA regarding a contemplated wind turbine exchange, whereby AWI would exchange some of its wind turbines for an equal number of wind turbines owned and operated by another wind farm operator. Such an exchange would result in AWI operating wind turbines on different parcels of land than those on which it presently operates (**Figure 2**). Under no circumstances, however, will any such exchange increase the capacity or quantity of AWI's operating turbines. **Table 1** below outlines existing CUPs, landowners, Assessor's Parcel Numbers (APNs), and approximate acreage for the lands that may be included either in whole or in part in the project, including lands on which AWI may operate following an exchange scenario as contemplated above. Partial inclusion of some parcels is necessary because AWI does not have control of all turbines on all parcels.

Table 1. Existing Conditional Use Permits (As of the time of this Notice)

CUP No.	Landowner	Assessor's Parcel Numbers	Approximate Acres
C-8036	Costa (was Frick)	99B-5680-15	207.12
C-8037	Pombo	99B-6300-2-1, 99B-6300-2-2, 99B-6425-1-6, 99B-6325-2-4 and 99B-6400-1-7	224.26
C-8134	Rooney	99B-6125-2	160.21
C-8137	Mulqueeney	99B-7900-1-5, 99B-7900-1-7, 99B-7890-2-4, 99B-7890-2-5, 99B-7890-2-6, 99B-7925-2-4, 99B-7925-2-1, 99B-7925-2-5, 99B-7950-2, 99B-7975-1, 99B-7980-1, 99B-7985-1-6, 99B-7985-1-4, 99B-7985-1-3, 99B-7985-1-5, 99A-1800-2-4, 99A-1800-2-3 and 99B-8050-1	4,447.50
C-8191	Mulqueeney	99B-7910-1-1	592.84
C-8243	ACWMA	99A-1780-1-4, 99A-1770-2-1, 99A-1770-2-2, 99A-1770-2-3, 99A-1810-1 and 99A-1790-3	1,324.83
C-8216	ACWMA	99A-1810-1 (parcel acreage included in C-8243)	240.81
C-8232	Egan	99B-6125-3	160.47
C-8233	Elliott	99B-6125-4	157.54
C-8235	Corbett	99B-5650-1-4 and 99A-1785-1-14	284.96
C-8236	Dunton	99B-5680-1	330.46
C-8237	DeVincenzi (was Valhalla)	99B-5610-1 and 99B-6075-3	665.98
C-8238	Ralph (north)	99B-7300-1-5 and 99B-7375-1-7	766.57
C-8241	Walker	99B-6100-2-10, 99B-6100-2-11, 99B-6100-2-12, 99B-6100-3-10, 99B-6100-3-15, 99B-6100-3-11	1,314.55
C-8242	Gomes (north)	99B-6150-4-10, 99B-6150-3 and 99B-6150-2-7	635.48
C-8244	Gomes (south)	99B-6425-2-3, 99A-1790-2 and 99A-1795-1	1,049.48
TOTAL ACREAGE			14,195.64

Notes:

1. The above table includes those parcels and CUPs on which AWI currently has installed wind turbines, as well as those parcels and CUPs on which turbines owned by other wind companies are presently installed and whose wind turbines may be obtained in exchange on a turbine-for-turbine basis with turbines currently owned by AWI.
2. Many of the wind farms in the APWRA overlap, with different wind energy facility operating companies on a single parcel of land. Therefore, other wind companies beside AWI currently operate wind farms within the project area described above.
3. Two CUPs, C-8231 and C-8239, that previously applied to turbines owned by AWI or its affiliates, are no longer operated by AWI or its affiliates.

Proposed Project

The proposed project consists of operational modifications to AWI's existing CUPs, as amended in July 2013, for continued wind power operation and maintenance activities within the Alameda County portion of the APWRA through October 31, 2018.

The project facilities consist of 828 existing, operating wind turbines on concrete foundations, plus support facilities, occupying approximately 155 acres within a 14,196-acre area. The turbines have a nameplate capacity of 85.8 MW and rest on lattice and tubular towers that range in height from 60 to 82 feet, generally sited in strings along ridgelines. Support facilities include existing gated, graveled access roads, a power collection and transmission interconnection system, meteorological towers ranging from 60 to 100 feet in height, communication systems, maintenance equipment areas, and offsite facilities including AWI's wind farm main service yard (located near Tracy), and the main wind farm control center, shared with other wind farm operators (located in Livermore). The power collection and transmission interconnection system consists of pad-mount transformers, underground cables, overhead conductors on poles, circuit breakers and switches, electrical metering/protection devices, and the existing Dyer, Frick, Ralph, and Midway substations. Electrical power is collected from the turbines and transmitted to the substations, where its voltage is increased for interconnection with Pacific Gas and Electric's (PG&E) transmission lines.

The existing project operations consists of 828 turbines and ancillary facilities, with a maximum combined generation capacity of 85.8 MW, through October 31, 2015. After this point, operations would be extended for three additional years, through October 31, 2018, on the condition that AWI has diligently pursued development of a repowered wind farm on the project site, but where circumstances beyond AWI's control have delayed completion of the repowered project. Mitigation for impacts resulting from operation of the project through October 31, 2018 will be carried out in accordance with the mitigation measures prescribed in the 2013 EIR.

Probable Environmental Effects

In accordance with CEQA Guidelines Section 15161, the AWI Permit Modification SEIR will examine the environmental impacts of the requested CUP modifications, focusing primarily on the changes in the environment that would result from the proposed extension of the wind farm's operational schedule.

Based on the project description and the County's understanding of the environmental issues associated with the project, the Draft SEIR will evaluate the impacts the proposed CUP modifications may have on biological resources, paying particular attention to impacts to avian species associated with the project's proposed extended operation of wind turbines.

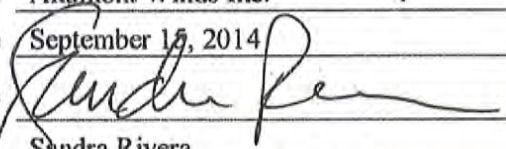
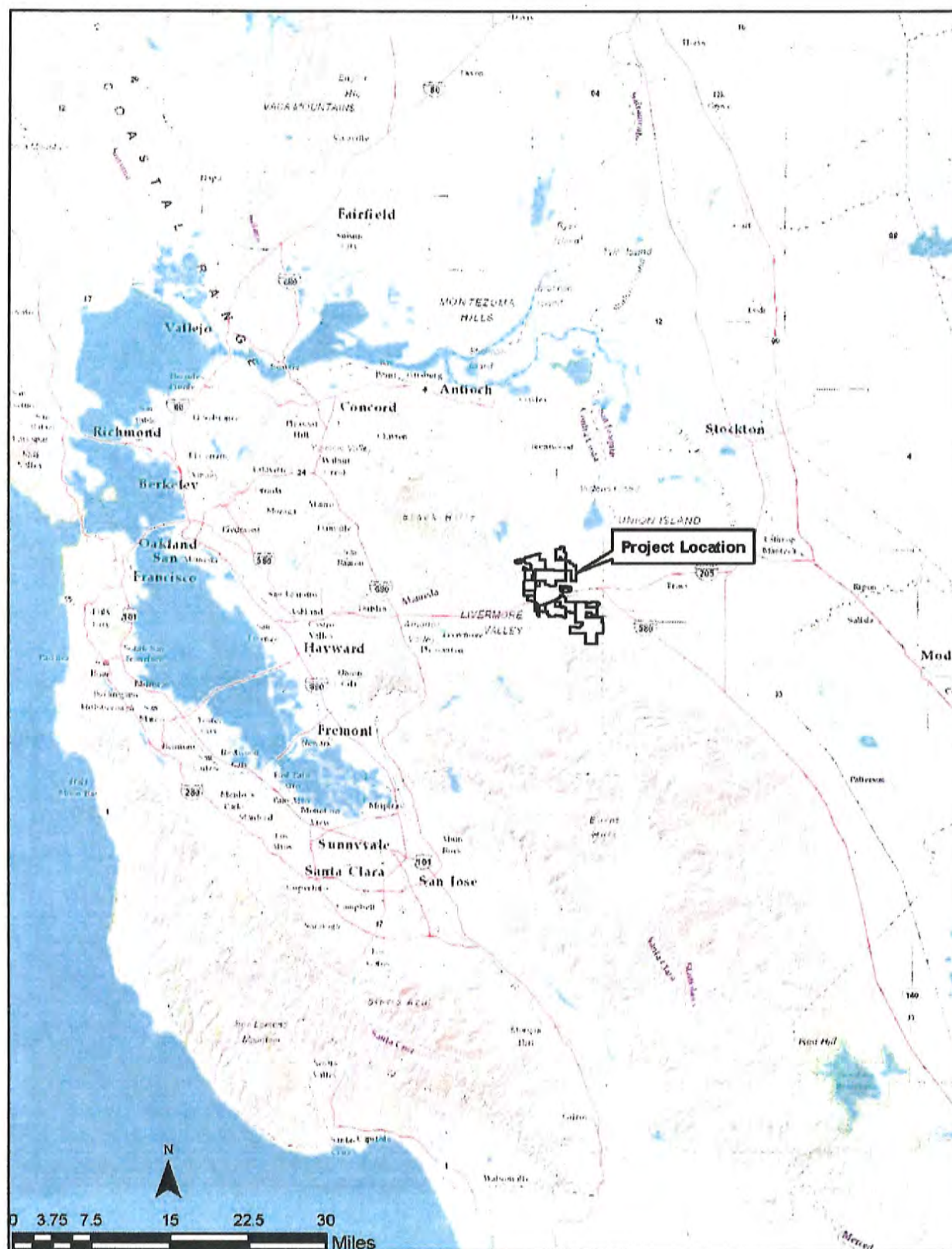
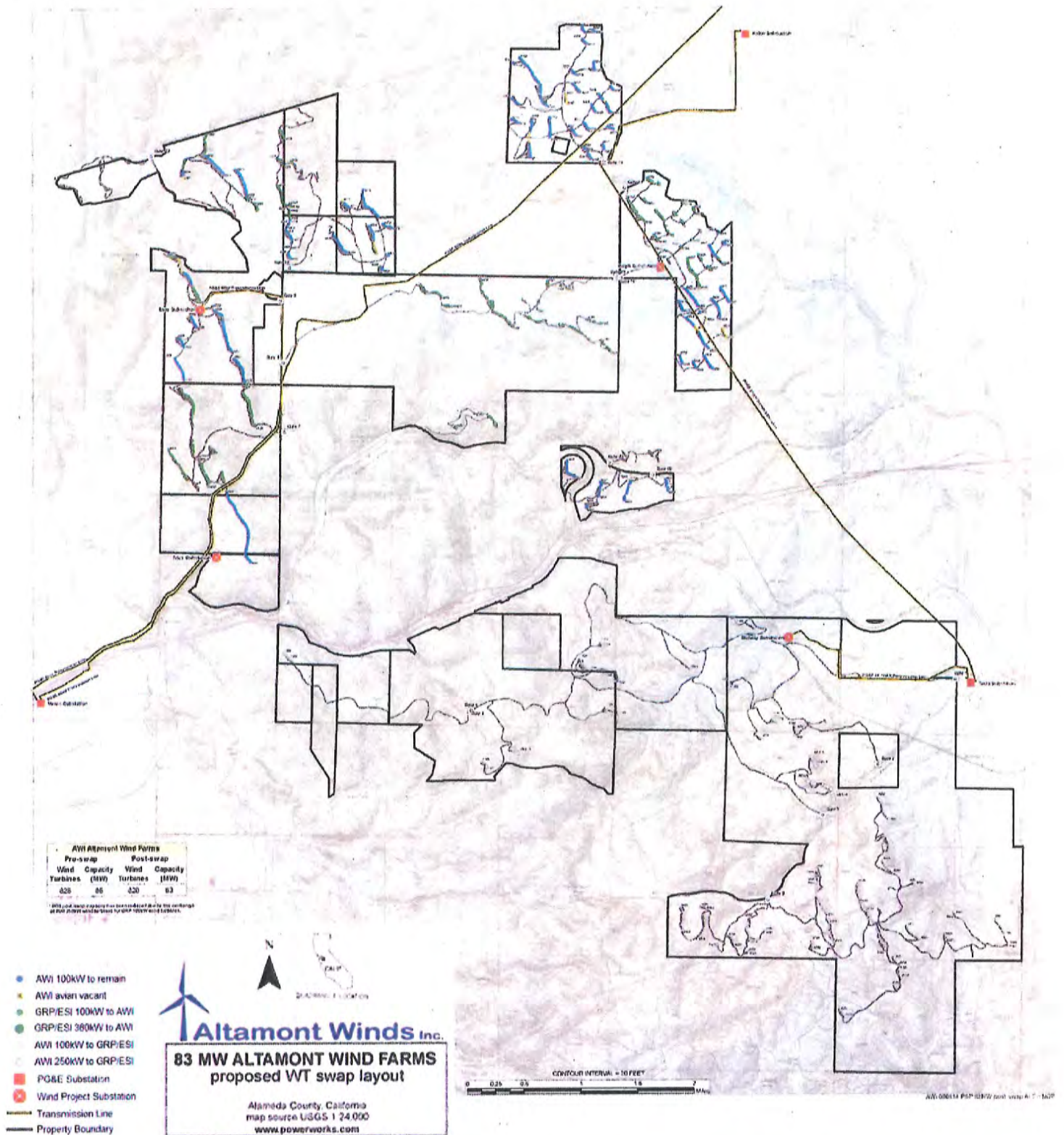
Project Title	<u>Modifications to Existing Conditional Use Permits</u>
Project Applicant	<u>Altamont Winds Inc.</u>
Date	<u>September 15, 2014</u>
Signature	
Name	<u>Sandra Rivera</u>
Title	<u>Assistant Planning Director</u>
Telephone/e-mail	<u>510-670-5400 / sandra.rivera@acgov.org</u>

FIGURE 1
Project Location Map





Standard Application

Application Received	
By: <u>Ajron</u>	Date: <u>2-28-14</u>
Application #: <u>2014-00028</u>	

WE WILL NOT ACCEPT INCOMPLETE SUBMITTALS!!

1. Type of application: *Check one or more*

- ☐ Boundary Adjustment
 ☐ Subdivision
 ☐ Conditional Use Permit
 ☐ Variance
 ☐ Site Development Review
 ☐ Rezoning
☐ Administrative Conditional Use Permit
 ☐ Sign Review
 ☒ Other:* Modifications to existing CUPS

2. Brief description of application:*

Modifications to existing wind farm CUPS to

(1) modify the time line to permanently cease operation of existing wind turbines and (2) replace certain mitigation measures with new ones.

3. Project site:

Altamont Pass Wind Resource Area, see attached separate sheet.

Address City State Zip Code

4. Assessor's parcel number(s):

See attached separate sheet.

5. Special instructions to access property (e.g. dogs, gates, alarms, etc.):*

Contact Applicant

to arrange for escorted access.

6. Land owner:

See attached separate sheet.

NAME COMPANY

Address City State Zip Code

Contact Phone(s) Fax # Email Address

7. Applicant:

William Damon, Vice President Altamont Winds Inc. & WindWorks Inc.

(if different from above) NAME COMPANY (see sep. sheet)

☐ Same as above
 15850 Jess Ranch Road Tracy, California 95377
 Address City State Zip Code

925.724.0175 925.447.1789 wd@powerworks.com
Contact Phone(s) Fax # Email Address

8. Primary contact person:

Andrew Roth, Gen. Counsel Altamont Winds Inc.
NAME COMPANY

☐ Land Owner
 ☐ Applicant
 15850 Jess Ranch Road Tracy, California 95377
☐ Other (fill in information) Address City State Zip Code

925.455.7251 925.447.1789 ajr@powerworks.com
Contact Phone(s) Fax # Email Address

FOR PLANNING DEPARTMENT USE ONLY

Side Distance (f,m) Direction

Of Cross Street

Uninc. Area/District Zoning

ROW FWL SBL

Lot Area: (ft) (ac)

History

Alameda County

COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT



Offices: 224 West Winton Avenue, Room 111
Hayward, CA 94544

Permit Center: 399 Elmhurst Street, Room 141
Hayward CA 94544

Ph: (510) 670-5400 Fax: (510) 785-8793

www.acgov.org/cda/planning

September 2012

AFFIDAVIT:

1. I attest under penalty of perjury to the truth and accuracy of all the facts, exhibits, maps, and attachments presented with and made a part of this application.
2. I hereby authorize County staff and members of review bodies, including but not limited to the Castro Valley Municipal Advisory Council, the Board of Zoning Adjustments, the Planning Commission, and the Board of Supervisors, to enter upon my property to verify or obtain information, to view the property, or to photograph the property and the surrounding area as part of the application review process. (Please note any special instructions regarding access to your property such as dogs, gates, alarms, etc.)

I understand that staff will make all efforts to notify me of such site visits, but that this may not always be possible.

3. I understand that unless this is a fixed fee application, the money I have submitted constitutes a deposit and that costs necessary to process the application will be billed against this deposit. The County will bill charges for County staff time spent processing this application at an hourly rate that represents salary plus overhead and will bill consultant charges at actual cost. In addition, the County will bill direct costs, including but not limited to actual costs of mailing or publication of notices or actions, against the deposit.

The deposit is based on the typical time it takes to process an application similar to mine. However, processing time can vary depending on the specifics of an application and it is possible, particularly if my application becomes controversial, that the processing time, and thus the cost, may exceed the estimated time. If this happens, I am responsible for the additional costs. When costs approach the amount of my deposit, the County will notify me and request an additional deposit based on the County's best estimate of the additional time necessary to complete the application review.

It is also possible that the costs to process my application will be less than the deposit. If this happens the County will refund the balance of my deposit, less additional post-approval costs such as landscape inspections, after the appeal period for the approval has passed. Should I withdraw my application, County staff will stop working on it and refund the balance of my deposit less any costs to which the County has committed as of the date of withdrawal, such as costs of publication.

I further understand that I am liable for the cost of processing my application regardless of whether the County approves, approves with modifications, or denies my application, and that all applications approved by the County will be conditioned to require that the County be made whole for any costs of processing the application that may be outstanding.

4. I understand that acceptance of this application and accompanying material does not constitute acceptance of this application as complete. I further understand that although my application may be deemed complete for purposes of initial review, it is possible that I may need to submit additional information as the review proceeds or after final action on my application before I can implement my project, including but not limited to the following:

- Additional information as needed to complete an environmental review under the California Environmental Quality Act;
- Additional information as needed to clarify the application or address questions raised either as a result of responses received from the referral of my application to other public agencies and interested parties or in response to issues raised at public hearings by members of the hearing body or the general public who submit written or oral testimony at the hearings;
- Final information that will be necessary to meet Public Works Agency Stormwater Management requirements;
- Revised plans, elevations, or other material necessary to illustrate or otherwise conform to changes that the final approval body makes to my original submittal;
- Additional material, such as landscape or drainage improvement plans, that may be required under a condition or provision of approval.

I understand that delay of information submittal or submittal of inaccurate information may delay the review process.

5. I understand that if I make changes in proposed plans during the review process or in approved plans before construction permits are issued, during construction, or prior to final inspection and occupancy, such changes will require additional design review by County staff and the advisory and approval bodies. It is my responsibility to submit such revised plans to County staff in a timely manner. This may require four to six or more additional weeks of review and processing time from the time I submit complete plans. Depending on the final outcome of the approval process, I may have to submit revised plans consistent with that action as noted above. In addition, any unauthorized building, demolition, grading, landscaping, or other site plan changes made during the review period will require correction at my expense.
6. I understand that any representations made to me in a pre-application meeting or otherwise prior to or during the application review process regarding cost or timing are best-guess estimates and that I cannot bind or hold the County to them. I understand that factors such as changes to my project or issues raised by approval bodies or members of the public during the review process, including at public hearings, can extend the time necessary to complete the review and reach a decision on my application.
7. Furthermore, I hereby agree to hold the County harmless from all costs and expenses, including attorney's fees, that the County incurs or held to be the liability of the County in connection with the County's defense of its actions in any proceeding brought in any State or Federal Court challenging the County's actions with respect to my project. This includes but is not limited to actions brought pursuant to the California Environmental Quality Act, the Alameda County Zoning Ordinance, or other State and County code and ordinance requirements. If I fail to defend adequately the County, the County may provide its own legal defense and subdivider or its successors shall be responsible for the County's reasonable attorneys' fees. This agreement to hold the County harmless shall extend to any successors in interest to this application. I agree that if this application is signed by more than one person the obligations and liabilities of each person is joint and several, with each person being responsible for the entire obligation.

Applicant Signature: <i>William L. Damon</i> Altamont Winds Inc. & WindWorks Inc. by William Damon, Vice President Date: January 30, 2014	
Landowner Signature: On file with original CUP renewal applications	Date:

Conditional Use Permit

- For complete filing instructions, see the **Standard Application** form.
- For general procedures and guidelines, read the handout "*Applying for a Conditional Use Permit*"
- You must make an appointment with a Planning Department staff member to determine if materials or information (in addition to those listed below) are needed to evaluate your project.
- If Conditional Use Permit involves new construction or additions, then subject information required per Site Development Review Supplemental forms.
- If you have any questions, please call (510) 670-5410.

1. Applicant Name: Altamont Winds Inc. and WindWorks Inc.
2. Contact the Planning Department at (510) 670-5410 to make an appointment with a Senior Planner to submit the following materials to the Alameda County Planning Department (Zoning Counter) at 399 Elmhurst Street, Hayward, California. **We will not accept incomplete applications.** Please use the following checklist to ensure the application is complete.

Required

Standard Application form.

Application Supplement: *Conditional Use Permit* form.

Filing Fee Deposit: Make check payable to "Treasurer, County of Alameda."

\$1,500 deposit for all Districts. **\$4,000** deposit to approve: *an outdoor recreation facility, sanitary landfill, flight strip, heliport, cemetery, church, or school*. If this deposit is depleted, the Planning Staff will advise you that additional funds must be deposited to continue the processing of this application. Any remaining unexpended money will be refunded.

Plot plan (20 copies): Show all information as shown on the **Sample Plot Plan** on the back of this form. Minimum paper size is 8½ x 11 inches. Larger plans shall be folded to 8½ x 11 inches.

Written Statement: On an attached sheet, briefly explain how your property specifically relates to each of the following findings required to approve a Conditional Use Permit.

1. The use is required by the public need.
2. The use will be properly related to other land uses transportation and service facilities in the vicinity.
3. The use, if permitted, under all the circumstances and conditions of the particular case, will not materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood.
4. The use will not be contrary to the character or performance standards established for the District in which it is to be located.

Supporting Documents: Other documents to support the project may include elevations, floor plans, applicable permits from other County, State or Federal agencies.

Alameda County Planning Department

224 West Winton Avenue, Room 111, Hayward, CA 94544

Phone: (510) 670-5400 Fax: (510) 785-8793 Web: <http://www.acgov.org/cda/planning>

If Conditional Use Permit involves new construction or additions, then subject information required per Site Development Review Supplemental forms.

Other Information requested by Planner: None.

Call for appointment to meet with a Senior Planner for submittal.

Applicant Signature verifying that the applicant understands the application process:

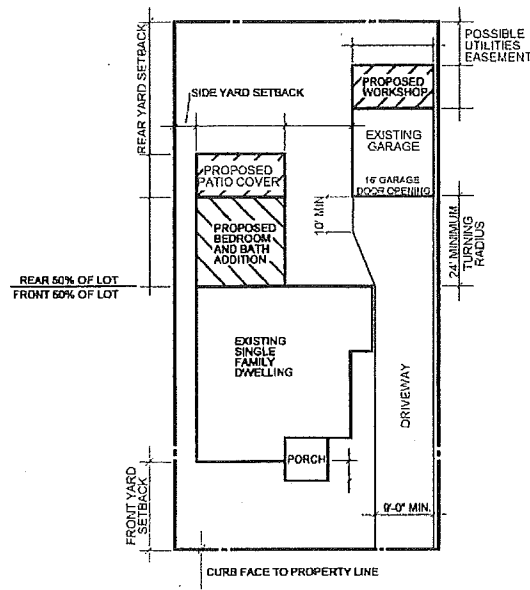
William J. Damon

Applicant Signature Altamont Winds Inc. & WindWorks Inc. Date Jan. 30, 2014
by William Damon, Vice President

Sample Site Plan

Site Plan should include the following:

1. North direction arrow.
2. Scale. You must use 1 inch = an even number of feet (i.e. 20 feet, 40 feet, 100 feet, or 600 feet depending on the size of your property).
3. Boundaries of the parcel, including dimensions (you may need a plot map of your property).
4. Location, dimensions, and purpose of rights-of way and easements within the property.
5. Location, dimensions, and use of all existing and proposed structures.
6. Distances of existing and proposed structures from all property lines, from rights-of way, easements, and other structures.
7. Location of all utilities labeled existing or proposed, including septic tank and drainfield, water, power, phone etc.
8. Location and dimensions of all proposed and existing roads, driveways, parking areas, patios, decks, walkways, and other impervious (paved) area(s).
9. Location of any surface water (streams, culverts, drainage ways), or any distinguishing land features such as slopes within or adjacent to the parcel.
10. Extent of area which will be disturbed by construction activity, clearing, digging, or earth moving.
11. On the back of your site plan, please provide detailed directions to the site.
12. Vicinity map.



TYPICAL PLOT PLAN DETAIL

Revised 1/09

Alameda County Planning Department

224 West Winton Avenue, Room 111, Hayward, CA 94544

Phone: (510) 670-5400 Fax: (510) 785-8793 Web: <http://www.acgov.org/cda/planning>

Stormwater Requirements Pre-Screening Checklist

Complete this form for all projects regardless of size. The purpose of this form is to identify requirements for stormwater controls.

NOT APPLICABLE

A. Project Information

A.1 Project Name: 86 MW Altamont Pass Wind Project

A.2 Project Address/Location: Altamont Pass Wind Resource Area

A.3 Project Engineer:

		Yes	No
A.4	Does the project propose to alter external structure or site characteristics? If Yes, continue to A.5. If No, project is non-Regulated and does not have C3 requirements. STOP HERE. NO FURTHER C3 EVALUATION NEEDED.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
A.5	Is this a single family house project that is not part of a larger development? If Yes, continue to A.6. If No, continue to A.7.	<input type="checkbox"/>	<input type="checkbox"/>
A.6	Will this project create or replace more than 2,500 square feet of impervious surface? If Yes, Skip to and complete Table 1. If No, complete Sections B, C, and D. The project is non-Regulated and does not have C3 requirements.	<input type="checkbox"/>	<input type="checkbox"/>
A.7	Does the project include the creation or replacement of more than 5,000 square feet of parking lot? If Yes, the project may be Regulated. Skip to and complete Table 1. If No, continue to A.8.	<input type="checkbox"/>	<input type="checkbox"/>
A.8	Does the project create or replace more than 5,000 square feet of impervious surface at a restaurant and auto related facility? If Yes, the project may be Regulated. Skip to and complete Table 1. If No, continue to A.9.	<input type="checkbox"/>	<input type="checkbox"/>
A.9	Does the project create or replace more than 10,000 square feet of impervious surface? If Yes, the project may be Regulated. Skip to and complete Table 1. If No, continue to A.10.	<input type="checkbox"/>	<input type="checkbox"/>
A.10	Will this project create or replace more than 2,500 square feet of impervious surface? If Yes, Skip to and complete Table 1. If No, complete Sections B, C, and D. The project is non-Regulated and does not have C3 requirements.	<input type="checkbox"/>	<input type="checkbox"/>

Table 1: Impervious and Pervious Surfaces

	Yes	No
Identify separately the surface area(s) of Building(s) footprint, Driveway(s), Patio(s), Impervious deck(s), Uncovered parking lot (including top deck of parking structure), Impervious trails, Miscellaneous paving or structures, and Off-lot Impervious Surface (Streets, Sidewalks and/or Bike lanes built as part of new street) for Questions B through G below.		
A. Total lot or site area of the proposed development.		
B. Existing impervious surface area (Pre-Project) located within the proposed development.		
C. The amount of existing impervious surface (Question B above) that will be removed and will not be replaced.		
D. The amount of existing impervious surface (Question B above) that will be removed and replaced in kind.		
E. The amount of existing impervious surface (Question B above) that will be removed and replaced with other types of impervious surface.		
F. The amount of newly created impervious surface.		
G. Add Questions D, E, and F above. This is the project's on-site impervious surface area.		
H. The amount of impervious surface created or replaced off-site.		
I. Add Questions G and H above. This is the project's total impervious surface area which is subject to water quality control.		
J. Does the Total Impervious Surface (identified in I) equal 10,000 sq.ft. or more? If YES, The Project is a Regulated Project. and all sections of this checklist apply. If NO, the Project is non-Regulated and only Sections B, C, and D of this checklist apply.	<input type="checkbox"/>	<input type="checkbox"/>
K. Does the total amount of Replaced impervious surface (identified in D and E) equal 50 percent or more of the Pre-Project Impervious Surface (identified in B)? If YES, the entire site is regulated. If NO, the requirements apply only to the impervious surface created and/or replaced.	<input type="checkbox"/>	<input type="checkbox"/>

Continue to next page

B. Select Appropriate Site Design Measures (Required for C.3 Regulated Projects; all other projects are encouraged to implement site design measures, which may be required at municipality discretion. Starting December 1, 2012, projects that create and/or replace 2,500 – 10,000 sq.ft. of impervious surface must include one of Site Design Measures a through f.¹ Consult with municipal staff about requirements for your project.)

B.1 Is the site design measure included in the project plans?

Yes	No	Plan Sheet No.	
<input type="checkbox"/>	<input type="checkbox"/>		a. Direct roof runoff into cisterns or rain barrels and use rainwater for irrigation or other non-potable use.
<input type="checkbox"/>	<input type="checkbox"/>		b. Direct roof runoff onto vegetated areas.
<input type="checkbox"/>	<input type="checkbox"/>		c. Direct runoff from sidewalks, walkways, and/or patios onto vegetated areas.
<input type="checkbox"/>	<input type="checkbox"/>		d. Direct runoff from driveways and/or uncovered parking lots onto vegetated areas.
<input type="checkbox"/>	<input type="checkbox"/>		e. Construct sidewalks, walkways, and/or patios with permeable surfaces.
<input type="checkbox"/>	<input type="checkbox"/>		f. Construct bike lanes, driveways, and/or uncovered parking lots with permeable surfaces.
<input type="checkbox"/>	<input type="checkbox"/>		g. Minimize land disturbance and impervious surface (especially parking lots).
<input type="checkbox"/>	<input type="checkbox"/>		h. Maximize permeability by clustering development and preserving open space.
<input type="checkbox"/>	<input type="checkbox"/>		i. Use micro-detention, including distributed landscape-based detention.
<input type="checkbox"/>	<input type="checkbox"/>		j. Protect sensitive areas, including wetland and riparian areas, and minimize changes to the natural topography.
<input type="checkbox"/>	<input type="checkbox"/>		k. Self-treating area (see Section 4.2 of the C.3 Technical Guidance)
<input type="checkbox"/>	<input type="checkbox"/>		l. Self-retaining area (see Section 4.3 of the C.3 Technical Guidance)
<input type="checkbox"/>	<input type="checkbox"/>		m. Plant or preserve interceptor trees (Section 4.1, C.3 Technical Guidance)

C. Source controls required by the Alameda County Building Code

Are these features in project?		Features that require source control measures	Source control measures (Refer to Local Source Control List for detailed requirements)	Is source control measure included in project plans?		
Yes	No			Yes	No	Plan Sheet No.
<input type="checkbox"/>	<input type="checkbox"/>	Storm Drain	Mark on-site inlets with the words "No Dumping! Flows to Bay" or equivalent.	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Floor Drains	Plumb interior floor drains to sanitary sewer ² [or prohibit].	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Parking garage	Plumb interior parking garage floor drains to sanitary sewer. ³	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Landscaping	<ul style="list-style-type: none"> Retain existing vegetation as practicable. Select diverse species appropriate to the site. Include plants that are pest- and/or disease-resistant, drought-tolerant, and/or attract beneficial insects. Minimize use of pesticides and quick-release fertilizers. Use efficient irrigation system; design to minimize runoff. 	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Pool/Spa/Fountain	Provide connection to the sanitary sewer to facilitate draining. ³	<input type="checkbox"/>	<input type="checkbox"/>	

Continue to next page

¹ See MRP Provision C.3.a.i(6) for non-C.3 Regulated Projects, C.3.c.i(2)(a) for Regulated Projects, C.3.i for projects that create/replace 2,500 to 10,000 sq.ft. of impervious surface and stand-alone single family homes that create/replace 2,500 sq.ft. or more of impervious surface.

² Any connection to the sanitary sewer system is subject to sanitary district approval.

<input type="checkbox"/>	<input type="checkbox"/>	Food Service Equipment (non-residential)	<ul style="list-style-type: none"> Provide sink or other area for equipment cleaning, which is: <ul style="list-style-type: none"> Connected to a grease interceptor prior to sanitary sewer discharge.³ Large enough for the largest mat or piece of equipment to be cleaned. Indoors or in an outdoor roofed area designed to prevent stormwater run-on and run-off, and signed to require equipment washing in this area. 	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Refuse Areas	<ul style="list-style-type: none"> Provide a roofed and enclosed area for dumpsters, recycling containers, etc., designed to prevent stormwater run-on and runoff. Connect any drains in or beneath dumpsters, compactors, and tallow bin areas serving food service facilities to the sanitary sewer.³ 	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Outdoor Process Activities ³	Perform process activities either indoors or in roofed outdoor area, designed to prevent stormwater run-on and runoff, and to drain to the sanitary sewer. ³	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Outdoor Equipment/ Materials Storage	<ul style="list-style-type: none"> Cover the area or design to avoid pollutant contact with stormwater runoff. Locate area only on paved and contained areas. Roof storage areas that will contain non-hazardous liquids, drain to sanitary sewer³, and contain by berms or similar. 	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Vehicle/ Equipment Cleaning	<ul style="list-style-type: none"> Roofed, pave and berm wash area to prevent stormwater run-on and runoff, plumb to the sanitary sewer³, and sign as a designated wash area. Commercial car wash facilities shall discharge to the sanitary sewer.³ 	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Vehicle/ Equipment Repair and Maintenance	<ul style="list-style-type: none"> Designate repair/maintenance area indoors, or an outdoors area designed to prevent stormwater run-on and runoff and provide secondary containment. Do not install drains in the secondary containment areas. No floor drains unless pretreated prior to discharge to the sanitary sewer.³ Connect containers or sinks used for parts cleaning to the sanitary sewer.³ 	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Fuel Dispensing Areas	<ul style="list-style-type: none"> Fueling areas shall have impermeable surface that is a) minimally graded to prevent ponding and b) separated from the rest of the site by a grade break. Canopy shall extend at least 10 ft in each direction from each pump and drain away from fueling area. 	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Loading Docks	<ul style="list-style-type: none"> Cover and/or grade to minimize run-on to and runoff from the loading area. Position downspouts to direct stormwater away from the loading area. Drain water from loading dock areas to the sanitary sewer.³ Install door skirts between the trailers and the building. 	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Fire Sprinklers	Design for discharge of fire sprinkler test water to landscape or sanitary sewer. ³	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Miscellaneous Drain or Wash Water	<ul style="list-style-type: none"> Drain condensate of air conditioning units to landscaping. Large air conditioning units may connect to the sanitary sewer.³ Roof drains shall drain to unpaved area where practicable. Drain boiler drain lines, roof top equipment, all washwater to sanitary sewer³. 	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Architectural Copper	Drain rinse water to landscaping, discharge to sanitary sewer ³ , or collect and dispose properly offsite. See flyer "Requirements for Architectural Copper."	<input type="checkbox"/>	<input type="checkbox"/>	

Continue to next page

³ Businesses that may have outdoor process activities/equipment include machine shops, auto repair, industries with pretreatment facilities.

D. Implement construction Best Management Practices (BMPs) (Applies to all projects).

Best Management Practice (BMP)

Attach the Alameda Countywide Water Pollution Prevention Program's construction BMP plan sheet to project plans and require contractor to implement the applicable BMPs on the plan sheet.

Temporary erosion controls to stabilize all denuded areas until permanent erosion controls are established.

Delineate with field markers clearing limits, easements, setbacks, sensitive or critical areas, buffer zones, trees, and drainage courses.

Provide notes, specifications, or attachments describing the following:

- Construction, operation and maintenance of erosion and sediment controls, include inspection frequency;
- Methods and schedule for grading, excavation, filling, clearing of vegetation, and storage and disposal of excavated or cleared material;
- Specifications for vegetative cover & mulch, include methods and schedules for planting and fertilization;
- Provisions for temporary and/or permanent irrigation.

Perform clearing and earth moving activities only during dry weather.

Use sediment controls or filtration to remove sediment when dewatering and obtain all necessary permits.

Protect all storm drain inlets in vicinity of site using sediment controls such as berms, fiber rolls, or filters.

Trap sediment on-site, using BMPs such as sediment basins or traps, earthen dikes or berms, silt fences, check dams, soil blankets or mats, covers for soil stock piles, etc.

Divert on-site runoff around exposed areas; divert off-site runoff around the site (e.g., swales and dikes).

Protect adjacent properties and undisturbed areas from construction impacts using vegetative buffer strips, sediment barriers or filters, dikes, mulching, or other measures as appropriate.

Limit construction access routes and stabilize designated access points.

No cleaning, fueling, or maintaining vehicles on-site, except in a designated area where washwater is contained and treated.

Store, handle, and dispose of construction materials/wastes properly to prevent contact with stormwater.

Contractor shall train and provide instruction to all employees/subcontractors re: construction BMPs.

Control and prevent the discharge of all potential pollutants, including pavement cutting wastes, paints, concrete, petroleum products, chemicals, washwater or sediments, rinse water from architectural copper, and non-stormwater discharges to storm drains and watercourses.

Name of applicant completing the form: Altamont Winds Inc. & WindWorks Inc.

Signature of applicant completing the form: William Z. Damon Date: Jan. 30, 2014
William Damon, Vice President

Name of Planner: _____ Date: _____

CONDITIONAL USE PERMIT ("CUP") STANDARD APPLICATION SEPARATE SHEET

2. Brief Description of Application. For complete description of the proposed CUP modifications, please see attached Project Description below at Exhibit 1.

All Altamont Pass Wind Resource Area ("APWRA") CUPs and their conditions are memorialized in the County Board of Supervisors' ("BOS") Resolution No. R-2005-463 dated September 22, 2005, as amended by BOS Resolution No. R-2007-111 dated January 11, 2007 and Resolution Z-13-36 dated July 18, 2013 ("BOS Resolutions"). For the purposes of this application, the modification request applies to the following sixteen existing CUPs (as they pertain to wind turbines owned and operated by Altamont Winds Inc. and WindWorks Inc.):

C-8036	C-8191	C-8235	C-8241
C-8037	C-8216	C-8236	C-8242
C-8134	C-8232	C-8237	C-8243
C-8137	C-8233	C-8238	C-8244

3. Project Site. Please refer to the APWRA map, attached as Exhibit 2.

4. Assessor's Parcel Numbers. Please refer to the list of CUPs, landowners and APNs attached as Exhibit 3.

6. Landowners. Again, please refer to the list of CUPs, landowners and APNs attached as Exhibit 3.

7. Applicant. The Applicant is Altamont Winds Inc. and WindWorks Inc. William Damon is Vice President of both companies.

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CONDITIONAL USE PERMIT (“CUP”) APPLICATION SUPPLEMENT SUPPORTING INFORMATION

1. **CUP Standard Application Form.** The completed CUP standard application form is included in Altamont Winds Inc.’s and WindWorks Inc.’s (collectively, “AWI”) conditional use permit (“CUP”) application package.
2. **CUP Application Supplement Form.** The completed CUP application supplement form is included in AWI’s CUP application package.
3. **Filing Deposit Fee.** A check in the amount of \$4,000 to cover the CUP application filing fee deposit is included in AWI’s CUP application package. A copy of this check can be found attached as Exhibit 4.
4. **Plot Plan.** All of the wind turbines and related infrastructure (i.e. wind farm) under the previously approved CUPs referenced in CUP application Section 2 were installed in the 1980s. This application seeks only to modify certain conditions of the relevant CUPs, and does not involve the construction of any new, additional or changed physical improvements. For this reason, a traditional building plot plan is not suited for inclusion in this CUP application. However, please refer to the APWRA map, attached as Exhibit 2, for the location of parcels on which the wind turbines comprising the wind farm are located.
5. **Relationship of Use to Four Findings.** The below information will allow the County to make the following four findings necessary to grant the requested modification of the CUPs (also, please refer to the Project Description attached as Exhibit 1 below).
 - 5.1 **The use is required by the public need.** The underlying need for APWRA wind farms is to continue their contribution towards satisfying the ever-increasing demand of society and consumers for electricity from clean, renewable energy resources. AWI’s existing 86 MW wind farm in the APWRA assists California in meeting its legislated Renewable Portfolio Standard criteria for the generation of renewable energy in the state; this standard requires electric utilities and providers to continuously increase procurement of renewable energy, such as from wind, up to 33% of their annual retail electricity sales by 2020. In addition, these wind farms assist California in meeting its legislated AB 32 global warming solutions criteria, requiring reductions in carbon dioxide and other greenhouse gases emissions by 25% to meet 1990 levels by 2020.

Reduced greenhouse gas and air pollution emissions provide substantial human health, wildlife, and climate benefits, as follows:

- > the wind farm displaces over 600 million pounds of toxic air pollutants and greenhouse gas emissions each year;
- > displacement of greenhouse gases and other pollution prevents over 900 bird deaths over three years (from 2016 through 2018);
- > also helps prevent premature deaths, heart attacks, and respiratory/breathing illnesses in humans.

This extension is also necessary to continue high-skilled wind power jobs in Alameda County preserve jobs for AWI employees, to preserve rental income to Altamont land owners, and to preserve taxes for the County and State, all in the event that repowering is delayed due to

circumstances beyond AWI's control. Without an extension of our permits and repowering, high-skilled wind power jobs in Alameda County will disappear as early as late 2015.

5.2 The use will be properly related to other land uses, transportation, and service facilities in the vicinity. Wind farming is compatible with traditional agricultural use, the other related land use in the vicinity, as evidenced by the successful combination of wind farms and agriculture in the APWRA since the 1980s. AWI's existing 86 MW wind farm is roughly one-seventh of the total 580 MW of wind farms originally built-out in the APWRA. AWI's wind farms have been fully staffed and operational since inception, and no additional facilities, transportation, parking or other service facilities will be required as a result of this CUP modification request.

5.3 The use, if permitted, under all the circumstances and conditions of the particular case, will not materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood. AWI's existing 86 MW wind farm, which is also part of a total of 580 MW of wind farms originally built in the APWRA, has operated harmoniously and safely with persons, property and the public-at-large in the area since the 1980s. Since this CUP modification request does not involve any changes to the existing physical improvements or the methods of operation and maintenance, there will be no changed or increased impacts to persons, property and the public-at-large in the area from what exists today.

5.4 The use will not be contrary to the character or performance standards established for the District in which it is to be located. AWI's existing 86 MW wind farm is located in the A (Agriculture) zoning district, which has as its stated intent to promote implementation of General Plan land use policies for agriculture and other non-urban uses; to conserve and protect existing agricultural uses; and to provide space for and encourage such uses in places where more intensive development is not desirable or necessary for the general welfare. Wind power projects are encouraged by the General Plan in the APWRA. The use of wind farms is compatible with agriculture in all respects, including only the minimal removal of land from agricultural production. In addition, wind farming results in supplemental income for the agricultural property, thereby enhancing the viability of agricultural use and contributing to the longevity of this use, while retaining the land as non-urban open space.

6. Supporting Documents. All supporting documents are included in the attached Exhibits 1, 2 and 3.

7. Site Development Review Supplemental Forms Not Required. AWI's existing 86 MW wind farm is currently located within the APWRA, which is already exhaustively developed for wind farm operations. This CUP modifications request does not involve any new construction or additions, nor are any physical changes to external structures or the site proposed. For this reason, no site development review is required and site development review supplemental forms are not being submitted.

8. Other Information Requested by Planner. No additional information has been requested by the Planner.

The remainder of this page intentionally left blank.

EXHIBIT 1

PROJECT DESCRIPTION

This Project Description describes the operational changes that would occur if the requested modifications to AWI's existing CUPs are approved. These CUPs currently regulate operation of AWI's existing wind energy generation facility, located within Alameda County in the Altamont Pass Wind Resource Area ("APWRA") in northern California, on numerous large parcels that total approximately 14,196 acres in area, or about 22 square miles, compared to the much larger APWRA, totaling over 75 square miles. The CUP modifications described herein were originally proposed in a letter to Alameda County sent on November 21, 2013.

Further, this Project Description identifies the project's regional location, outlines AWI's existing project facilities and operations, and identifies how the proposed revisions relate to the existing facilities and operations. Finally, this chapter outlines the effect of the project's cumulative conditions in the APWRA, as presently anticipated.

2.1 Description of the Existing Facilities and Operations

AWI currently owns and operates a wind energy generation facility comprised of 828 wind turbines and ancillary equipment spread throughout an area of several thousand acres of the APWRA in unincorporated eastern Alameda County. The facility is currently permitted by Alameda County to operate through October 31, 2015, at which point the CUPs for the project will expire and AWI will be required to decommission the facility. For the stated purpose of reducing the impact on certain avian species in the project area, all turbines comprising the facility are shut down from November 1 through February 14 of each year, a period known as the Winter Seasonal Shutdown ("WSSD").

A complete description of the existing facility is given in Section 2.4 in a previous Environmental Impact Report for this facility, *Draft Environmental Impact Report for Modification to Existing (Year 2005) Conditional Use Permits – Altamont Winds Inc. ("2013 EIR")*.

2.2 Proposed Changes to the Altamont Wind Project Conditional Use Permits

This section describes the key components of the project. The project would consist of the continued operation of existing turbines with a combined generation capacity of 85.8 MW on the existing wind energy facility site through October 31, 2015. After this point, operations would be extendable on a year-to-year basis for up to three years (through October 31, 2018), on the condition that AWI has diligently pursued development of a repowered wind farm on the project site (i.e., decommission the existing facility and replace it with an updated facility comprised of fewer, larger wind turbines), but where circumstances beyond AWI's control, as defined, have delayed completion of the repowered project. Additionally, in the event operations continue beyond October 31, 2015, AWI is proposing to replace the mitigation measures stipulated for impacts on certain avian species identified in the 2013 EIR with a new program of on-site mitigation. Specifically, the project would comprise the following components and activities:

2.2.1 Modification of Permanent Shutdown Date and Pursuit of Facility Repowering

Under the proposed permit modifications, AWI will be required to cease operations of the existing wind farm on October 31, 2015 unless (1) AWI has diligently pursued development of a

repowered wind farm on the project site, and (2) circumstances beyond AWI's control delay repowering beyond October 31, 2015.

(a) Diligent pursuit of repowering. To assess AWI's diligent pursuit of repowering, AWI has proposed inclusion of repowering development milestones which must be met as conditions of continuing operation beyond October 31, 2015. These development milestones would be conditions of approval, and failure to achieve these milestones by the dates set forth would constitute noncompliance with the CUPs. These milestones are as follows:

- (1) no later than March 31, 2014, AWI shall submit a project-specific repowering application to Alameda County;
- (2) no later than May 31, 2014, AWI shall submit an affidavit to Alameda County affirming obtainment of site control for the repowered wind farm;
- (3) no later than June 30, 2014, AWI shall begin preparation of a project-specific EIR for the repowering project;
- (4) continuous preparation of the project-specific repowering EIR until completion.

(b) Delay due to circumstance beyond applicant's control. To continue operation of the wind facility beyond October 31, 2015, in addition to diligently pursuing repowering, AWI's repowered project must be delayed beyond that date due to circumstances beyond AWI's control. Such circumstances considered outside of AWI's control which would allow AWI to operate beyond October 31, 2015 shall be:

- (1) delay in completion of an interconnection transmission study despite AWI's initiation of that study, or refusal by the California Independent System Operator to grant transmission/interconnection rights following such related study;
- (2) not able to secure an economic power purchase agreement for the repower project, despite commercially reasonable efforts to do so;
- (3) failure by Congress to renew the federal renewable energy production tax credit ("PTC") beyond 2015, which expired on December 31, 2013;
- (4) land owner site control for repowering is unilaterally withdrawn by the landowner or is otherwise terminated due to no fault of AWI;
- (5) repower permits are delayed or not issued by Alameda Co., including delays fostered by resource agencies and special interest groups, despite AWI's diligent pursuit of such permits;
- (6) procurement of wind turbines and related wind project equipment for repowered facilities is delayed due to market supply constraints;
- (7) the separation of existing Altamont Pass wind power assets (such as, land leases, substations, etc.), necessary to repower the site, is delayed by parties unrelated to AWI.

2.2.2 Modification of Mitigation Measures

Under the existing CUPs, AWI is required to mitigate for the project's contribution to golden eagle mortality by retrofitting hazardous electrical poles within 140 miles of the proposed project in an area with eagles at risk from electrocutions, as determined through coordination with the USFWS. The proposed CUP modifications would remove this mitigation measure and replace it with a number of alternative mitigations designed to achieve an equivalent or greater reduction in avian impact. These proposed replacement mitigation measures consist of:

1. a one-time, permanent shutdown of 50 wind turbines on Oct. 31, 2015;
2. annual mitigation payment of \$525/MW installed capacity (based on Feb. 15, 2016 installed capacity, and amended annually), to be paid toward avian mitigation or other conservation efforts, as determined by Alameda County;
3. at the end of each wind season, AWI will either permanently shut down or install a black blade, at AWI's option, on any operating wind turbine(s) identified to have been involved in a direct strike with any focal species during that wind season. "Identified to have been involved in a direct strike" means that a carcass is actually recovered by the monitoring team, as opposed to a statistically-assumed fatality, and is reasonably attributable to an AWI wind turbine based on the normal attribution criteria used by the monitoring team;
4. if two such fatalities occur at any operating turbine between Feb. 15, 2016 and Nov. 1, 2018, such turbine(s) will be immediately and permanently shut down.

2.3 Post-2016 APWRA Scenario

At the same time the proposed permit modifications potentially come into effect on October 31, 2015, significant changes in the operating landscape of the APWRA will take place that bear upon the impacts of the proposed project.

Following the 2015 wind season, which concludes on October 31, 2015, approximately 1,000 old generation wind turbines owned by other wind companies will be permanently shut down and will be removed. This reduction in turbine quantity and density may result in reduced pressure on local bird populations and migratory individuals in a manner that significantly reduces the mortality rate for raptors in the Altamont Pass.

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EXHIBIT 2
APWRA Map

EXHIBIT A.1, MAP KEY
Altamont Pass Wind Resources Area Permits
January 11, 2007

CUPs highlighted in
yellow apply to AWI

Key Map Number	Current CUP #	Property Owner w/ Key Map Number	Operator
1	C-8241	Walker Family Trust	Altamont Infrastructure Company
2	C-8137	Mulqueeney	Altamont Infrastructure Company
2	C-8191	Mulqueeney	Windworks, Inc.
3	C-8161	Pombo	SeaWest Power Resources
4	C-8023	Johnston	SeaWest Power Resources
5	C-8037	Pombo	Altamont Infrastructure Company
6	C-8238	Ralph Properties II	Altamont Infrastructure Company
7	C-8224	Elworthy	Altamont Power Company
8	C-8031	Corbett	Altamont Power Company
9	C-8036	Frick Trust	Altamont Infrastructure Company
10	C-8263	Patterson Pass Windfarms	EnXco, Inc.
11	C-8031	Corbett	Altamont Power Company
12	C-8216	Alameda Co. Waste Mgmt. Authority	Windworks, Inc.
12	C-8243	Alameda Co. Waste Mgmt. Authority	Altamont Infrastructure Company
13	C-8234	Ralph Properties II	Altamont Infrastructure Company
14	C-8235	Corbett	Altamont Infrastructure Company
15	C-8225	Guo/Lin	Altamont Infrastructure Company
16	C-8240	Hansen	Altamont Infrastructure Company
17	C-8244	Gomes Family Farms	Altamont Infrastructure Company
18	C-8237	Valhalla Enterprises	Altamont Infrastructure Company
19	C-8232	Egan	Altamont Infrastructure Company
20	C-8242	Gomes Family Farms	Altamont Infrastructure Company
21	C-8239	Jackson	Altamont Infrastructure Company
22	C-8231	Waste Mgmt. Inc.	Altamont Infrastructure Company
23	C-8134	Rooney	Altamont Infrastructure Company
24	C-8201	Griffith/Brockman	SeaWest Power Resources
25	C-8236	Dunton	Altamont Infrastructure Company
29	C-8224	Elworthy	Altamont Power Company
30	C-8233	Elliott Family	Altamont Infrastructure Company
32	C-8224	Elworthy	Altamont Power Company
33	C-8173	Wildlands	Altamont Infrastructure Company
34	C-8182	Ralph Properties II	SeaWest Power Resources
35	C-8136	Contra Costa Water District	Altamont Infrastructure Company
36	C-8203	Arnaudo/Castello	SeaWest Power Resources

Note: Permits on Sites 26, 27, 28 and 31 have not been extended.

Properties identified
in red apply to AWI

EXHIBIT A.1, MAP
Altamont Pass Wind Resources Area Permits
September 22, 2005

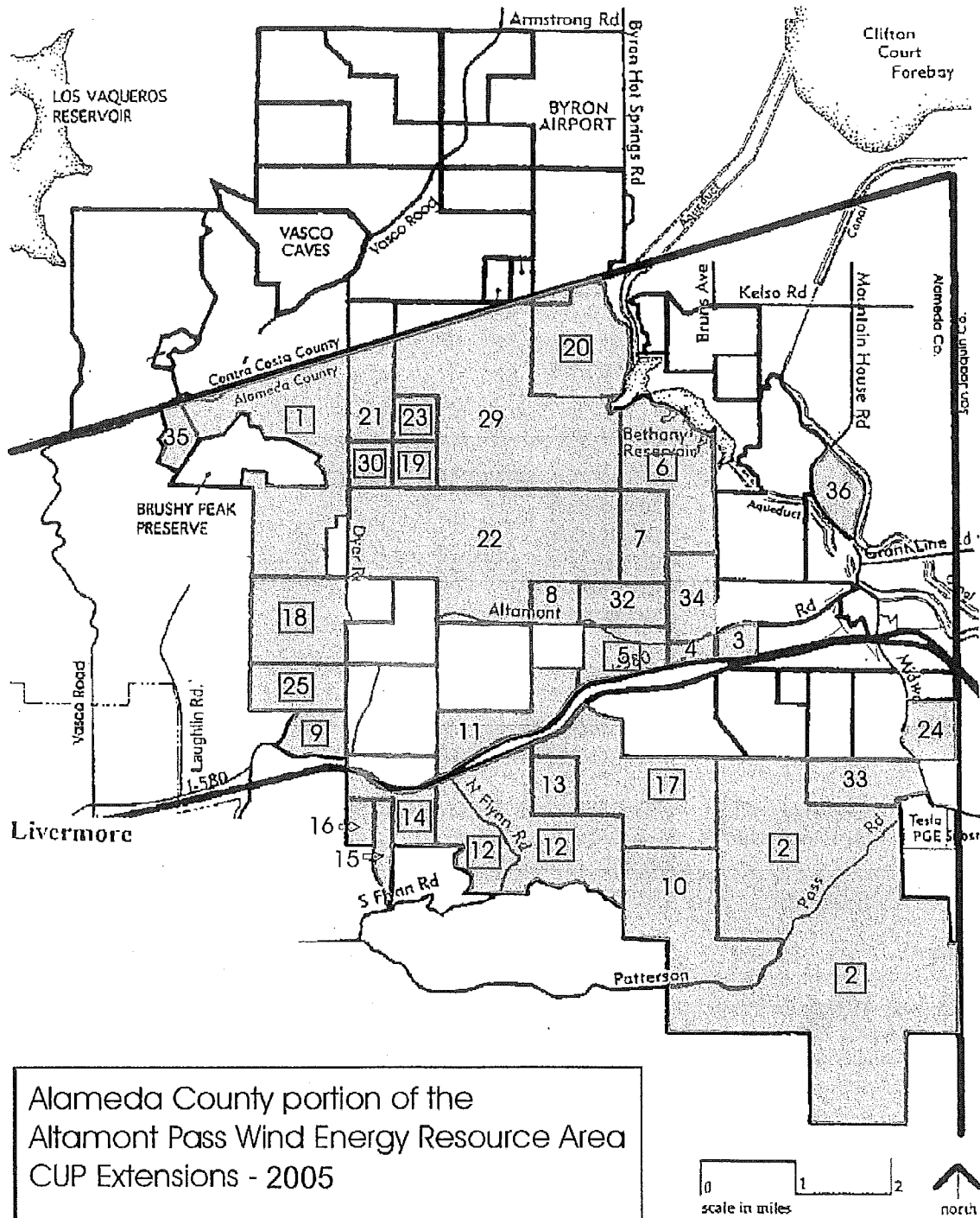


EXHIBIT 3
List of CUPs, Landowners and APNs

CUP No.	Landowner	Assessor's Parcel Numbers	Approximate Acres
C-8036	Frick/Costa	99B-5680-15	207.12
C-8037	Pombo	99B-6300-2-1, 99B-6300-2-2, 99B-6425-1-6, 99B-6325-2-4 and 99B-6400-1-7	224.26
C-8134	Rooney	99B-6125-2	160.21
C-8137	Mulqueeney	99B-7900-1-5, 99B-7900-1-7, 99B-7890-2-4, 99B-7890-2-5, 99B-7890-2-6, 99B-7925-2-4, 99B-7925-2-1, 99B-7925-2-5, 99B-7950-2, 99B-7975-1, 99B-7980-1, 99B-7985-1-6, 99B-7985-1-4, 99B-7985-1-3, 99B-7985-1-5, 99A-1800-2-4, 99A-1800-2-3 and 99B-8050-1	4,447.50
C-8191	Mulqueeney	99B-7910-1-1	592.84
C-8243	ACWMA	99A-1780-1-4, 99A-1770-2-1, 99A-1770-2-2, 99A-1770-2-3, 99A-1810-1 and 99A-1790-3	1,324.83
C-8216	ACWMA	99A-1810-1	240.81 (parcel acreage included in C-8243)
C-8231*	Altamont Landfill	99B-6225-1, 99B-6250-1, 99B-6275-1-1	1,547.80
C-8232	Egan	99B-6125-3	160.47
C-8233	Elliott	99B-6125-4	157.54
C-8235	Corbett	99B-5650-1-4 and 99A-1785-1-14	284.96
C-8236	Dunton	99B-5680-1	330.46
C-8237	Valhalla (Devincenzi)	99B-5610-1 and 99B-6075-3	665.98
C-8238	Ralph (north)	99B-7300-1-5 and 99B-7375-1-7	766.57
C-8239*	Jackson	99B-6125-5	325.59
C-8241	Walker	99B-6100-2-10, 99B-6100-2-11, 99B-6100-2-12, 99B-6100-3-10, 99B-6100-3-15, 99B-6100-3-11	1,314.55
C-8242	Gomes (north)	99B-6150-4-10, 99B-6150-3 and 99B-6150-2-7	635.48
C-8244	Gomes (south)	99B-6425-2-3, 99A-1790-2 and 99A-1795-1	1,049.48
TOTAL ACREAGE			14,195.64

* CUPs C-8231 and C-8239 are not currently granted to AWI or its affiliates.

Notes:

1. The above table includes those parcels and CUPs on which AWI currently has installed wind turbines, as well as those parcels and CUPs on which turbines owned by other wind companies are presently installed and whose wind turbines may be obtained in exchange on a turbine-for-turbine basis with turbines currently owned by AWI.
2. Many of the wind farms in the APWRA overlap, with different wind energy facility operating companies on a single parcel of land. Therefore, other wind companies beside AWI currently operate wind farms within the project area described above.

Young, Andrew, CDA

From: rodgrobn@clearwire.net
Sent: Saturday, February 28, 2015 1:05 PM
To: Young, Andrew, CDA; Palmeri, Maria, CDA;
Subject: Letter re: Altamont Wind Farm Permits Extension

Ralph F. Pombo
32919 S. Tracy Blvd.
Tracy, CA 95377

February 25, 2015

To Whom it May Concern,

I own 305 acres of grazing land on both sides of Old Altamont Road in Alameda County. This land was one of the very first ranches to experiment with wind turbines in 1987, in the Altamont hills. Because of ranches like mine, that took the risk of allowing the new concept of generating electricity with wind power, the industry has flourished.

This has not been an easy venture as there has been many setbacks over the years. I have suffered several wind company bankruptcies, new firms taking over and gambling that the unknown strangers knew more than the last ones.

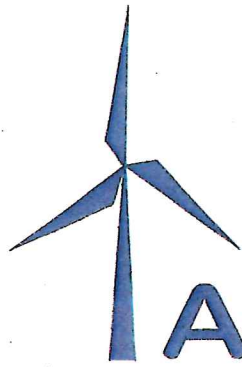
After all the risky years, the venture became somewhat stable, with the wind power companies grossing more than one million wholesale dollars on my property annually. My small percentage allowed me to compensate for the many drought years in the cattle business, helped to pay my ranch mortgages and property taxes. Then came the Alameda County Board of Supervisors decision to have a third of the wind generators removed from my property. I was led to believe that this was just the first step in a repowering of this section of my ranch. Of course that never happened and the results are unpaid property taxes and late ranch mortgage payments.

If the goal is to obtain renewable energy, help the economy with jobs, support local ranchers, strengthen the tax base, repay the many years of trial and error by countless entrepreneurs that are trying to satisfy the needs of the public, there can be only one decision. Promote the clean renewable energy industry. This industry has continuously made many costly modifications to their machinery and methods of operations in order to satisfy some very questionable goals. Let us encourage, not discourage, the expansion of a very promising industry. Most of the revenue generated is spent locally and is a big stimulus to our economy.

My property has produced electrical energy for the past 25 years. Not one iota of the natural resources such as, underground minerals, water, oil or above ground fuel, has been depleted for this venture. Isn't this what every environmental and government agency has asked for and demanded of us?

All of the ranchers in this area are asking you to **PLEASE** approve the Altamont Wind Farm permits extensions.

Ralph F. Pombo



Altamont Winds Inc.

23 February 2015

Alameda County Waste Management Authority
1537 Webster Street
Oakland, CA 94612
sent via e-mail to bmathews@stopwaste.org

Attention: Mr. Brian Mathews, Senior Program Manager

Subject: **NextEra-AWI Wind Turbine Exchange Completion**

Dear Mr. Mathews:

Today, we completed our wind turbine asset exchange with NextEra Energy Resources and its affiliate, Green Ridge Power. Therefore, we no longer operate any wind turbines on land owned by Alameda County Waste Management Authority ("ACWMA").

Because we no longer operate on ACWMA land, the Conditional Use Permits ("CUPs") that we formerly operated under, which concern ACWMA land, have been removed from our permit extension application before Alameda County. The relevant CUPs are identified as follows:

- > C-8216, WindWorks Inc./ACWMA, APN: 099A-1810-001-00;
- > C-8243, Altamont Infrastructure Co./ACWMA: 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.

Therefore, since ACWMA no longer has any interest in our CUP extension application and appeal, we will make this fact known to Alameda County Planning Dept. and the Alameda County Board of Supervisors.

Please contact me if you have any questions.

Sincerely,

Altamont Winds Inc.

Jeremy Liem
Legal Counsel

Judith Hintz
3883 Santa Clara Way
Livermore, CA 94550

February 19, 2015

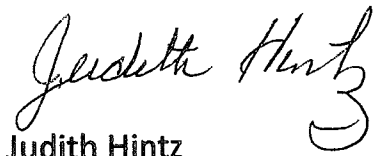
ALAMEDA COUNTY SUPERVISORS
1221 Oak Street, Suite 536
Oakland, CA 94612

My name is Judith Hintz; I am part owner of the Egan Estate Ranch in Altamont. My great grandparents purchased the ranch in 1879, and it remains in the family. I am requesting that the Board of Supervisors for Alameda County approve the three year extension requested by Altamont Winds Inc.

Altamont Winds Inc. continues to work with Alameda County in compliance with the seasonal shutdowns as recommended in the 2013 FEIR CEQA Alternatives. The extension of the CUPs is merely a stop-gap measure until the Altamont Winds Inc. is able to fully execute repowering efforts in the area in question. It is imperative that the application for extending the CUPs is approved. This is a critical time in California to continue to expand the availability of renewable energy in response to Governor Brown's environmental goals to achieve 50% of California's energy from renewable sources. By approving the Conditional Use Permits Alameda County will be supporting these goals.

I urge you to approve the three year extension as requested by Altamont Winds Inc.

Thank you for your consideration.

A handwritten signature in cursive script, appearing to read "Judith Hintz", with a stylized flourish at the end.

Judith Hintz

Cc: Altamont Winds Inc.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Office of Law Enforcement
2800 Cottage Way, W-2928
Sacramento, CA 95825



February 19, 2015

Alameda County Board of Supervisors
Alameda County Administration Building
1221 Oak Street; Suite 536
Oakland, California 94612

Dear Board of Supervisors:

This letter is to inform you of the U.S. Fish and Wildlife Service's (Service) position regarding the ongoing unlawful take of golden eagles at Altamont Winds, Inc. (AWI) facilities located in the Altamont Pass Wind Resource Area, further supplementing our December 10, 2014, October 15, 2014, and April 19, 2013, comment letters regarding the *Notice of Availability of a Draft Supplemental EIR for Modifications to Existing Conditional Use Permits – AWI*; the *Notice of Preparation of a Supplemental EIR for Proposed Modifications to Existing Conditional Use Permits – AWI*; and, the *Draft Environmental Impact Report for the Modification to Existing (Year 2005) Conditional Use Permits (Project) for AWI*, respectively.

The Bald and Golden Eagle Protection Act (Eagle Act) prohibits a variety of actions with respect to eagles, including unauthorized "take." In 2009, the Service promulgated a final rule on two new permit regulations that, for the first time, specifically authorize the unintentional take of eagles and eagle nests in certain situations under the Eagle Act (50 CFR 22.26 and 22.27). The Service's regulations (74 Federal Register 46853-46879, September 11, 2009; and, 78 Federal Register 73704-73725, December 9, 2013) allow permits for up to 30 years to take eagles under the Eagle Act where "take is associated with, but not the purpose of the activity, and cannot practicably be avoided." Take of golden eagles can only be authorized where it is compatible with the preservation of the species.

Since January 2010, after issuance of the Service's final rule on the new permit regulations under the Eagle Act, approximately thirty-one (31) unpermitted eagle fatalities have been recorded at AWI facilities in the Altamont Pass Wind Resource Area. Although companies are not legally required to seek or obtain an eagle take permit, the take of an eagle without a permit is a violation of the Eagle Act, and could result in civil or criminal prosecution.

Despite the fact that the new permit regulations have been published for several years, and in the face of AWI's stated commitment to create an Eagle Conservation Plan and apply for an Eagle Take Permit, the Service has yet to receive either. Accordingly, the Service's Office of Law Enforcement is monitoring AWI's ongoing unpermitted eagle take and its associated actions.

The Service continues to recommend that Alameda County deny AWI's requested project modifications to their operational and decommissioning schedule, and instead enforce AWI's current permit requiring removal of its 828 existing wind turbines by October 31, 2015. To do otherwise will likely result in more eagles being killed by AWI's turbines, further increasing AWI's liability and possibly subjecting the County to increased scrutiny for having approved the CUP extension proposal.

Sincerely,



Jill Birchell
Special Agent in Charge
Office of Law Enforcement
U.S. Fish and Wildlife Service

cc:

Tara Mueller, California Attorney General's Office, Deputy Attorney General
Bob Anderson, Department of Justice, Environmental Crimes Division, Senior Trial Attorney
Craig Weightman, California Department of Fish and Wildlife, Environmental Program Manager
Eric Davis, U.S. Fish and Wildlife Service, Migratory Birds and State Programs
Alameda County Community Development Agency



Alameda County Fire Department

Fire Prevention Bureau

Plan Review Comments

399 Elmhurst Street, Room 120, Hayward, California 94544 (510) 670-5853 Fax (510) 887-5836

2-24-15

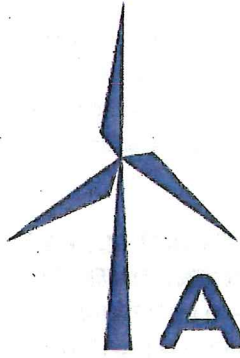
Alameda County
Community Development Agency
Planning Department
224 West Winton Ave., Room 111
Hayward, California 94544

To	Andrew Young	PLN #	14-00028
Address	Goecken Rd		
Job Description	Extend windfarm CUP		
Reviewed By	Scott McMillan	510 670-5877	

Conditions of Approval

The following conditions shall be met prior the issuance of a building permit and fire clearance for occupancy.

1. No Fire Department comments.



Altamont Winds Inc.

12 February 2015

Alameda County Board of Supervisors
Alameda County Administration Building
1221 Oak Street, Suite 536
Oakland, California 94612

**Subject: Appeal of East County Board of Zoning Adjustments'
Denial of Extension of Conditional Use Permits
86 MW Altamont wind farms**

Dear Alameda County Supervisors:

Altamont Winds Inc. ("AWI") submits this appeal of the East County Board of Zoning Adjustments' ("EBZA") denial of our application to extend Conditional Use Permits ("CUPs") C-8036, C-8037, C-8134, C-8137, C-8191, C-8231, C-8232, C-8233, C-8235, C-8236, C-8237, C-8238, C-8239, C-8241, C-8242, and C-8244. AWI is a small Alameda County based company that operates the 86 MW wind farms in the Altamont Pass, which provide clean renewable energy to our fellow Californians, and help the state and county to maintain their renewable energy portfolio standards and greenhouse gas reduction goals. AWI currently operates its wind farms in compliance with the previously mentioned CUPs, and appeals the EBZA's denial of our application to extend the CUPs because the EBZA has failed to adequately consider the social, economic, and environmental benefits from our wind farms.

AWI respectfully requests that the Board of Supervisors extends the CUPs for three years, 2016 through 2018, taking into account the following:

- > Continued operation of AWI's wind farms provides significant climate and environmental benefits to Alameda County and the environment as a whole.
- > Continued operation of AWI's wind farms has significant economic benefits.
- > Extending AWI's conditional use permits through 2018 aligns with CEQA's goals of reducing environmental damage.
- > The mitigation measures proposed in the SEIR will mitigate for avian impacts beyond the impacts directly attributable to AWI's wind farms.
- > There is overwhelming evidence in the administrative record to support adopting a Statement of Overriding Considerations and approve the proposed permit extension.

AWI is fully committed to implementing the mitigation measures identified in the Supplemental Environmental Impact Report ("SEIR"), and believes that the SEIR is sufficient to inform Alameda County of the potential negative environmental effects of the proposed CUP extension. Therefore, AWI agrees with the EBZA's certification of the SEIR, and only appeals the EBZA's denial of the extension of the CUPs.

1. CONTINUED OPERATION OF AWI'S WIND FARMS PROVIDES SIGNIFICANT CLIMATE AND ENVIRONMENTAL BENEFITS TO ALAMEDA COUNTY AND THE ENVIRONMENT AS A WHOLE. The environmental benefits of wind power are well known and well established.

One of the main benefits of wind power is reduced use of fossil fuel-based energy generation, which results in fewer greenhouse gas ("GHG") emissions and less toxic air pollution. Keeping our air clean and clear of GHGs helps to reduce anthropogenic (human caused) impact on climate change, and has countless health benefits to humans and wildlife. By allowing AWI to continue operating its Altamont Pass wind farm through the end of the 2018 wind season (i.e., until October 31, 2018), Alameda County will support clean and renewable energy generation.

1.1 Continued operation of AWI's wind farms aligns with Alameda County's dedication to renewable energy, as described in its Community Climate Action Plan. In 2014, the Board of Supervisors passed the Alameda County Community Climate Action Plan ("CCAP"). One of the six Climate Action Areas identified by the CCAP is "Building Energy," which includes an increased use of renewable energy.¹ As the CCAP states, over 1/3 of the unincorporated county's GHG emissions come from energy consumption in residential, commercial, and industrial buildings.² Alameda County has committed itself to "work to increase the amount of renewable energy within the electricity grid's generation portfolio" in order to reduce these GHG emissions and to achieve the County's goal of an 80% reduction of GHG emissions by 2050.³ In order to achieve the county's GHG reduction target, the CCAP also recognizes the "need to reduce the use of fossil fuel-based energy, through expanding renewable energy generation within the unincorporated county."⁴ As we will show, the continued operation of our wind farms will offset tons of GHGs and particulate matter air pollution. Extending AWI's conditional use permits through the end of the 2018 wind season fits squarely within Alameda County's goals of reduced GHG emissions and reduced reliance on energy from fossil fuels.

1.2 Continued operation of AWI's wind farms has net positive environmental and climate benefits. The net benefit of this wind project to avian species, society, and the environment as a whole is well documented in the administrative record for this project. AWI's wind farms reduce massive amounts of toxic air pollution and climate change-causing greenhouse gases by offsetting the use of fossil fuels to generate electrical power.⁵

Wind energy satisfies the societal need for electrical power at one of the lowest overall impact levels to human and animal health and to the overall environment.⁶ Wind power produces no air

¹ *Alameda County Community Climate Action Plan* p.37 (June 3, 2011).

² *Alameda County Community Climate Action Plan* p.37 (June 3, 2011).

³ *Alameda County Community Climate Action Plan* p.37 (June 3, 2011).

⁴ *Alameda County Community Climate Action Plan* p.38 (June 3, 2011).

⁵ "A significant benefit of wind power compared to natural gas is the almost complete elimination of fossil-fuel-related emissions." Donald McCubbin & Benjamin K. Sovacool, "The Hidden Factors That Make Wind Energy Cheaper than Natural Gas in the United States," *Electricity Journal*, Vol. 24, p.86 (2011).

⁶ Benjamin K. Sovacool, "The avian and wildlife costs of fossil fuels and nuclear power," *Journal of Integrative Environmental Sciences*, Vol.9, p.267 (2012).

or water pollution, and delivers a net **reduction** in such externalities by offsetting toxic pollutants that would otherwise be generated by extracting, transporting, and burning fossil fuels. Compared to other forms of power generation, wind energy has the lowest lifecycle greenhouse gas emissions of **any** electricity source.⁷

In a real and quantifiable way, AWI's wind farms mitigate the negative environmental impacts of electricity generation generally, and in doing so, AWI's operations help to prevent respiratory and cardiovascular disease, cancer, and premature death in humans and animals, including birds.⁸ While certain poorly-sited wind turbines may pose an increased risk to individual birds in some areas of the Altamont Pass, studies have shown that the net benefit provided by wind farms prevent an even larger number of birds from coming into contact with other harmful anthropogenic impacts.

1.2.1 Continued operation of AWI's wind farms has net positive impacts to human and avian health. In support of our CUP extension application, we have referenced a study conducted by Drs. McCubbin and Sovacool in 2011 on the air quality benefits of wind farms in the Altamont Pass Wind Resource Area ("**APWRA**"), and we have entered this study in the administrative record. The study's results have been cited in numerous peer-reviewed journals, including the *Journal of Integrative Environmental Sciences*.⁹ The study estimates that the APWRA's replacement of regional natural gas-fired power generation offset enough air pollution from 1986 to 2006 to prevent over 45,000 premature bird deaths.¹⁰ Extrapolating from these results, **AWI's wind farm prevents 31 premature bird deaths every month.**¹¹ As well, AWI's wind farms, over the past 20 years alone, have **avoided or saved:**

- > 10 premature deaths
- > 7 heart attacks
- > 102 asthma attacks
- > 721 lost work/sick days
- > 4,259 restricted activity days
- > \$78 million in health costs
- > **over 7,000 bird deaths**

Since that study was conducted, AWI's positive effect on the environment has continued to improve, in part due to the implementation of many mitigation measures that were not in effect

⁷ Mark. Z. Jacobson, "Review of Solutions to Global Warming, Air Pollution, and Energy Security," *Energy & Environmental Science* 2 (2009): 148-173.

⁸ Donald McCubbin & Benjamin K Sovacool, *Health, Wildlife, and Climate Benefits of the 580 MW Altamont Wind Farm, Altamont Pass, California*, December 2011 at i.

⁹ Benjamin K. Sovacool, "The Avian and Wildlife Costs of Fossil Fuels and Nuclear Power," *Journal of Integrative Environmental Sciences* 9(4) (December, 2012), pp. 255-278; McCubbin, D and BK Sovacool. "The Hidden Factors That Make Wind Energy Cheaper than Natural Gas in the United States," *Electricity Journal* 24(9) (November, 2011), pp. 84-95; Sovacool, BK. "The Avian Benefits of Wind Energy: A 2009 Update," *Renewable Energy* 49 (January, 2013), pp. 19-24; McCubbin, D and BK Sovacool. "Quantifying the Health and Environmental Benefits of Wind Power to Natural Gas," *Energy Policy* 53 (February, 2013), pp. 429-441.

¹⁰ Donald McCubbin & Benjamin K. Sovacool, *Health, Wildlife and Climate Benefits of the 580 MW Altamont Pass Wind Farms, Altamont Pass, California*, December 2011, at 56.

¹¹ According to McCubbin (Dec. 2011), note 25, the 580 MW APWRA wind farms avoided more than 45,000 avian deaths over 20 years (240 months), which equals 187 avian deaths avoided per month. AWI's portion alone is estimated to avoid approx. 31 bird deaths per month.

before 2006. Assuming the same rates of reduction in air pollution, extending AWI's permit as requested for three years, 2016-2018, can avoid or save nearly:

- > 2 premature deaths
- > 1 heart attack
- > 13 asthma attacks
- > 92 lost work/sick days
- > 543 restricted activity days
- > \$10 million in health costs
- > over 950 bird deaths

These benefits only come as a result of the self-mitigating benefits of wind energy itself. Because the results above do not take into account all of the proposed avian mitigation, continued operation of AWI's wind farm will have significantly greater environmental benefits when those mitigation measures are implemented.

1.2.2 Continued operation of AWI's wind farms contribute to reduced greenhouse gas emissions and reduced air pollution. Over the proposed three year extension of the conditional use permits, AWI's wind farm will offset and avoid a substantial amount of greenhouse gas emissions and particulate matter pollution. Specifically, over the course of the three year extension, AWI's wind farms will offset and avoid:

- > 252,000 lbs. of Nitrous Oxides
- > 2,500 lbs. of Sulphur Dioxide
- > 25,000 lbs. of Particulate Matter
- > 609,000,000 lbs. of Carbon Dioxide¹²

Similarly, when operation of our wind farms was considered as an alternative in the 2013 EIR, the County noted that continued operation of our wind farms through the end of the 2018 wind season would have the greatest reduction in GHG emissions compared to all other alternatives considered.¹³

2. CONTINUED OPERATION OF AWI'S WIND FARMS HAS SIGNIFICANT ECONOMIC BENEFITS. Studies by the National Research Energy Laboratory¹⁴ and Illinois State University Center for Renewable Energy¹⁵ have calculated the overall economic benefits of wind power, including both direct and indirect the economic benefits of a wind project. Some of those benefits include:

- > property taxes
- > benefits to land owners
- > payroll for wind plant employees
- > operations and maintenance costs
- > cost of parts and materials involved in operations and maintenance

¹² Donald McCubbin and Benjamin K. Sovacool, *Health, Wildlife and Climate Benefits of the 580 MW Altamont Pass Wind Farms*, Altamont Pass, California, December 2011.

¹³ 2013 FEIR, p.4-12, Table 3.1-12.

¹⁴ E. Lantz, *Economic Development Benefits from Wind Power in Nebraska: A Report for the Nebraska Energy Office*, National Renewable Energy Laboratory (Nov. 2008).

¹⁵ Center for Renewable Energy, Illinois State University, *Economic Impact – Wind Energy Development in Illinois* (Jun. 2012).

- > sales taxes on operations and maintenance parts
- > insurance, auditing, and banking costs
- > permitting costs
- > avoided carbon dioxide emissions
- > health cost savings

The data from these studies shows that over a 20 year period the entire 580 MW wind farms within the APWRA has economic benefits of over \$3.1 billion. More specifically, extending AWI's CUP's for another three years will result in economic benefits of over \$103 million.

2.1 AWI's wind farms provide substantial social and economic benefits to Alameda County. In his comments at the February 2, 2015 hearing before the EBZA, Mr. Jay Dunton, one of AWI's landowners in the Altamont Pass, mentioned that all of the wind rent proceeds he receives from the wind turbines located on his land are donated to charities in Alameda County. Most notably, each year, he gives tens of thousands of dollars to Alameda County hospitals, and has funded two rooms in the Valley Care Medical Center hospital in Pleasanton. At the hearing, Mr. Dunton stated that if AWI's CUP's are not extended, he will not be able to afford to continue to give to the hospital.

Beyond charitable donations, extending AWI's CUPs will allow AWI to continue employing the wind smiths, mechanics, machinists, technicians, and support staff that operate the wind farms. Many of AWI's employees are Alameda County residents whose income and property taxes contribute to the local, state, and national governments. As well, extending the CUPs will complement the green jobs initiative outlined in Alameda County's CCAP. Failing to extend AWI's conditional use permits will force AWI to undergo a large restructuring that will undoubtedly result in severely reduced personnel needs. However, ending current operations in 2018 (as envisioned by AWI's application to extend the CUPs) does not require the personnel reduction that AWI would need if the CUPs expire at the end of the 2015 wind season. AWI is in the process of developing new wind repower projects in the APWRA which will replace the projects that are covered by the CUPs at issue.

Alameda County also stands to benefit from property taxes levied on AWI's wind farm. If AWI's wind farms are forced to shut down, our landowners' properties will be severely devalued. Unlike residential solar systems in California, commercial wind farms are not excluded from property value assessments, which significantly increase the value of land, and thereby, increase the amount of tax levied on the land each year.

3. EXTENDING AWI'S CONDITIONAL USE PERMITS THROUGH 2018 ALIGNS WITH CEQA'S GOALS OF REDUCING ENVIRONMENTAL DAMAGE. One of the overarching goals of the California Environmental Quality Act ("CEQA") is to reduce environmental damage.¹⁶ Although CEQA is an informative document, the purpose of providing agency decision-makers with information on the environmental impacts of a proposed project is to give the public agency the opportunity to make decisions that avoid environmental harm and promote environmental health.¹⁷ As courts have continually held, "the overriding purpose of CEQA is to ensure that agencies regulating activities that may affect the quality of the environment give primary consideration to preventing environmental damage. CEQA is the Legislature's declaration of

¹⁶ CEQA Statute and Guidelines §§ 21000, 21001.

¹⁷ CEQA Statute and Guidelines §§ 21000, 21001.

policy that all necessary action is taken 'to protect, rehabilitate and enhance the environmental quality of the state.'"¹⁸

Similarly, recent environmental review jurisprudence has determined that in many cases, when deciding to approve or deny an applicant's permit, California agencies must consider the effects the proposed project has on GHG emissions in light of California's climate policies.¹⁹ For example, in *Cleveland National Forest Foundation v. San Diego Association of Governments*, (decided in late 2014), the appellate court held that San Diego erred by failing to sufficiently consider the impacts the project would have on greenhouse gas emissions.²⁰ In making that decision, the court indicated that the error was due to a failure to analyze the project's environmental impacts in light of Executive Order S-3-05, which outlines California's GHG reduction goals, and is still in effect today.²¹ Therefore, AWI believes that consideration of the reduction in GHG emissions that would result from the extension of the CUPs is appropriate, and consistent with California's GHG reduction policies.

4. THE MITIGATION MEASURES PROPOSED IN THE SEIR WILL MITIGATE FOR AVIAN IMPACTS BEYOND THE IMPACTS DIRECTLY ATTRIBUTABLE TO AWI'S WIND FARMS.

There are many factors that go into determining the net impacts AWI's wind farms have on avian mortality rates in the APWRA.²² Some of those factors include the previously mentioned reduction in GHG emissions and air pollutants, retrofitting power poles that pose risks to birds, shutting down the wind turbines during migratory periods, background mortality of focal species, and the environmental effects of unassociated projects adjacent to the APWRA. Because the mitigation measures identified within the SEIR are focused on the overall impacts to avian species, including avian impacts not attributable to AWI's wind farm, AWI's mitigation efforts will provide a net environmental benefit to the APWRA.

4.1 Because the SEIR does not fully incorporate background mortality, the proposed mitigation measures are more than sufficient. The focus of the SEIR was to identify the potential environmental impacts of extending the CUPs, and as such, has only identified environmental impacts due to the operation of wind turbines. Without challenging the adequacy of the SEIR to inform Alameda County of the potential negative environmental impacts of the project, AWI notes that background mortality of the focal species was not fully considered. Background mortality is mortality that is not attributable to AWI's projects. Some examples of background mortality include predation of the focal species and poison entering the focal species' food chain. Because AWI is committed to responsible stewardship and an environmentally friendly project, AWI will implement the mitigation as proposed in the SEIR, knowing that such mitigation measures will exceed AWI's impacts to avian species.

4.1.1 The proposed mitigation measures compensate for raptor background mortality.

Because the purpose of the SEIR is to evaluate the environmental effects of the proposed CUP extension itself, it does not take into account the environmental effects of nearby projects, and

¹⁸ *Save our Peninsula Committee v. Monterey County Board of Supervisors*, 87 Cal.App.4th 99, 117 (2001) (citing *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal.3d 376, 390 (1988)).

¹⁹ *Cleveland National Forest Foundation v. San Diego Association of Governments*, 231 Cal.App.4th 1056 (2014).

²⁰ *Cleveland* at 1072.

²¹ *Cleveland* at 1072; Cal. Exec. Order No. S-3-05 (June 1, 2005).

²² FSEIR p.30-40.

does not fully incorporate background mortality of focal species.²³ Although AWI believes that the SEIR has adequately informed Alameda County of the potential environmental impacts, AWI notes that because focal species' background mortality is not incorporated into the SEIR, the mitigation measures proposed by the SEIR are more than sufficient to compensate for the potential impacts AWI's permit extension will have on the local environment.

In 2014, avian fatalities increased even though fewer wind turbines were operating than years prior. AWI, on its own initiative, conducted research into the source of the increased fatalities. AWI was surprised to find that the California Department of Water Resources ("DWR") uses rodenticide poison along the South Bay Aqueduct, the Bethany Reservoir, and the California Aqueduct to control/kill ground squirrel populations. These rodenticide bait stations are at the heart of the APWRA. The rodenticide poison used is an ingested anticoagulant that can have lethal effects on raptors that prey on poisoned squirrels. The connection between rodenticide use and raptor poisoning is well-known, and a recent study into the effects of rodenticide on raptor species concluded that certain anticoagulants are twenty-times more toxic to focal species identified in the SEIR than other non-raptor avian species.²⁴ Many state and local agencies and governments, as well as environmental groups, are aware of the connection between rodenticide and raptor mortality, and have either passed regulations or published documentation aimed at reducing raptor deaths due to secondary poisoning.²⁵

As well, a significant number of the recorded avian fatalities occur during the non-operating season, November 1 to February 15 each year. For some species, more fatalities are recorded during the non-operation season than when the wind turbines are operative. If all avian fatalities were attributable to wind turbine operation, then there should be no fatalities during the non-operating season. Because a significant amount of the recorded fatalities occur during the non-operating season, it's clear that not all avian fatalities are attributable to operating the wind turbines. Because the operating season is more than twice as long as the non-operating season, the fact that there are more fatalities for some species during the non-operating season shows that there is a background mortality that the mitigation measures and SEIR do not analyze, thereby overestimating the avian impacts by wind turbines.

4.2 The removal of high risk turbines will reduce the avian mortality rates, resulting in overall greater benefits for the birds. When calculating avian mortality rates, the documents supporting the SEIR used a model of the APWRA that assumes High Risk Turbines ("HRTs") are installed and operational. HRTs are wind turbines in locations that the Alameda Co. Scientific Review Committee ("SRC") has determined to pose a higher risk to avian species. According to the SRC, when these wind turbines are removed or relocated, they no longer pose a high risk to birds.

Under the HRT analysis system, wind turbines are rated on a scale of 1 to 10 on likelihood of risk to avian species, with 10 being the greatest impact. As a mitigation measure, the SEIR proposes to remove or relocate all wind turbines with a rating of 8.5 or greater, which amounts to 21 HRT wind turbines.

²³ FSEIR p.26-40.

²⁴ Rattner, B. A., Horak, K. E., Warner, S. E., Day, D. D., Meteyer, C. U., Volker, S. F., Eisemann, J. D. and Johnston, J. J. (2011), Acute toxicity, histopathology, and coagulopathy in American kestrels (*Falco sparverius*) following administration of the rodenticide diphacinone. *Environmental Toxicology and Chemistry*, 30: 1213–1222. doi: 10.1002/etc.490.

²⁵ Exhibit B.

In the County's final staff report dated February 2, 2015 related to the SEIR, the County recommends removal of 21 HRT wind turbines. Because these wind turbines are currently operational, any avian impacts caused by such turbines are included in the calculated fatality rates. Yet, the avian mitigation as proposed is calculated as if the HRTs were not removed, thereby, "double dipping" on mitigation requirements.

Assuming that the HRTs have disproportionately higher impacts on birds, and because avian mortality rates in the APWRA are calculated with those HRTs installed, removal or relocation of the HRTs will necessarily reduce the effective avian mortality rates. AWI does not challenge the adequacy of the mitigation or the SEIR, and does not challenge the SEIR's ability to inform decision-makers on the potential environmental impacts of the proposed project. AWI merely points out that because of this difference in calculated and effective mortality rates, the identified mitigation methods in the SEIR are more than sufficient to address the wind farms' avian impacts. Therefore, the lowest fatality rate of 0.061 eagle fatalities per MW per year (as discussed later in this letter) should be used to calculate power pole retrofit mitigation, not the higher rate of 0.075 proposed by the County's final staff report

5. THERE IS OVERWHELMING EVIDENCE IN THE ADMINISTRATIVE RECORD TO SUPPORT ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS AND APPROVE THE PROPOSED PERMIT EXTENSION.

Adopting a Statement of Overriding Considerations is appropriate, supported by the record, and well within the County's legal authority. Beyond environmental considerations, CEQA also requires a decision-making agency to consider the social, technological, and statewide and regional benefits of a proposed project.²⁶ A Statement of Overriding Considerations ("SOC") gives a public agency the opportunity to approve a project based on "economic, legal, social, technological, or other benefits" in light of unavoidable environmental effects.²⁷ As previously mentioned, there are an overwhelming number of considerations that support extending AWI's CUPs through the end of the 2018 wind season.

The not-yet-adopted SOC, prepared by the Alameda County planning staff and attached to the staff report, states that the proposed project has many economic and environmental benefits that go beyond those considered in the SEIR.²⁸ As previously noted, continued operation of AWI's wind farms significantly reduces locally produced GHG emissions and toxic air pollution, which has long-lasting environmental, human, and wildlife benefits. Human and avian mortality will be reduced, and a reduction in the negative environmental by-products of conventional energy generation helps to prevent increased climate change due to global warming. Making a decision to continue promoting these benefits is perfectly aligned with Alameda County's Community Climate Action Plan.

Additionally, allowing AWI's wind farms to keep running will employ many Alameda County residents whose income supports the local economy. Income taxes that those residents pay, as well as the various taxes directly associated with the wind farms, help to support the local, state, and national governments.

In order for the County to adopt a SOC, the determination must be supported by "substantial evidence" from anywhere in the administrative record, and is not limited to information contained

²⁶ CEQA Statute and Guidelines § 15903(a).

²⁷ CEQA Statute and Guidelines § 15903(a).

²⁸ Final Supplemental Environmental Impact Report, Exhibit C.

in or referenced by the SEIR.²⁹ Here, there is more than sufficient evidence throughout the entire administrative record to support the County's adoption of a SOC in favor of granting a CUP extension. As explained in throughout this letter, the record contains a wealth of evidence lauding the environmental, economic, and social benefits of continued clean wind power operation.

The "substantial evidence" standard gives public agencies broad discretion when adopting a SOC. This standard is based on the fact that "the agency has the discretion to resolve factual issues and make policy decisions."³⁰ Courts are highly deferential to public agency decisions under this standard and will generally not substitute their judgment for the judgment of the lead agency. In reference to the "substantial evidence" needed to support a SOC, the court in *Uphold Our Heritage v. Town of Woodside* repeatedly stated that it's well within an agency's discretion under CEQA to determine whether "the specific benefits a project offers, outweigh any environmental effect."³¹ This cost-benefit analysis "lies at the core of the lead agency's discretionary responsibility under CEQA and is, for that reason, not lightly to be overturned."³² The net benefit of this wind power project to avian species, as well as the net benefit to the climate and environment as a whole, is well documented.

6. IN CONCLUSION, AWI RESPECTFULLY REQUESTS THAT THE BOARD OF SUPERVISORS EXTENDS THE CUPs ACCORDINGLY. In light of the foregoing, AWI requests that the Board of Supervisors adopts the Statement of Overriding Considerations attached to Alameda County's staff report; approves the application to extend the Conditional Use Permits for three years, 2016 through 2018; and adopts **Exhibit A** to this letter, which includes AWI's modifications to the recommendations found in Alameda County's staff report dated February 2, 2015, the substance of which is explained in the following sections.

6.1 Include the environmental, societal, economic, and climate benefits of wind power when adopting the Statement of Overriding Considerations. As previously discussed at length, extending AWI's CUPs for three years from 2016-2018 has enormous benefits to the climate, society, the economy, and to the environment, which includes offsetting 609 million of pounds of toxic air pollution and greenhouse gas emissions caused by fossil-fuel based electricity generation. Human and avian health reaps significant benefits from clean wind power's displacement of fossil-fuel emissions, including saving human and avian lives. Without considering the self-mitigating climate and environmental benefits of wind power, the avian impacts and related mitigation are over estimated. Climate change is reduced by offsetting greenhouse gas emissions, and the air is cleaner because fewer polluting chemicals and polluting particulate matter are discharged by fossil fuel based electricity generation. AWI's wind farms provide jobs to Alameda County residents, whose income helps to sustain the local, regional, and national economies. The operations and maintenance of AWI's wind farms provide \$103 million in direct and indirect benefits as well. All of these benefits are consistent with Alameda County's Community Climate Action Plan, and AWI respectfully requests that the Board of Supervisors considers these benefits when adopting a Statement of Overriding Considerations to extend the CUPs, attached to this letter as **Exhibit C**.

²⁹ CEQA Statute and Guidelines § 15093(a).

³⁰ *Save Our Peninsula Committee v. Monterey County Board of Supervisors*, 87 Cal.App.4th 99, 117 (2001).

³¹ See 147 Cal.App.4th 587, 603 (2007).

³² 147 Cal.App.4th 587, 603 (2007).

6.2 Extend the CUPs at 100% capacity for three years, 2016-2018 not 50% as proposed by the County staff report. Alameda County's staff report proposes to extend the CUPs on the condition that AWI is only allowed to operate at a total 50% capacity during the three year extension, i.e., operate 50% of its turbines for 3 years or 100% of its turbines for 1.5 years. This proposal ignores the substantial climate benefits that AWI's wind farm provides to the environment, and ignores the detrimental effects from the resulting fossil fueled-electricity generation on human and avian health. Permitting AWI to operate at full capacity for another three years promotes clean energy and all of its accompanying benefits to society, the economy, climate, and the environment. AWI has incorporated these changes into Exhibit A to this letter, and AWI respectfully requests that the Board of Supervisors adopts this change.

6.3 Correct the startup date in BIO-16 to be consistent with the historic operating period, starting up each year on February 15 at 12:01 AM. In order to comply with the Winter Seasonal Shut Down ("WSSD"), AWI shuts down all of its wind turbines on October 31 and resumes operation on February 15 at 12:01 am. However, mitigation measure BIO-16 (the mitigation measure in the SEIR that describes the WSSD) states that the shutdown ends on February 16. AWI has incorporated the change from February 16 to February 15 in Exhibit A to this letter, and AWI respectfully requests that the Board of Supervisors adopts this change.

6.4 Use a Golden Eagle fatality rate of 0.061 to derive the mitigation measures as outlined in the SEIR, not 0.075 as proposed by the County staff report. As previously discussed, the eagle fatality rates shown in the SEIR have not fully considered the following:

- > avian background mortality
- > removal of HRTs
- > the climate and environmental benefits of wind power

Not considering this information over-estimates AWI's impact on avian species, and results in over-mitigating AWI's avian impacts.

Alameda County's SEIR staff report dated February 2, 2015 suggests the consideration of three different fatality rates, 0.061, 0.075, and 0.085 eagle fatalities per MW per year, but recommends the middle value of 0.075. These different fatality rates are derived from different sets of operating years: 2008-2010, 2008-2012, and 2005-2010 respectively. However, none of the data sets fully incorporate background mortality rates, removal of HRTs, and the climate and environmental benefits of wind power. If these factors were included in the fatality rates, the rates would be lower, and would likely show the wind farms' net benefit to golden eagles. In spite of the over-estimation of the fatality rates, AWI is willing to comply with over-mitigation, based on the lower fatality rate of 0.061, resulting in 322 power pole retrofits during the 3-year extension. Adopting the 0.061 fatality rate is shown in AWI's changes to the County staff's draft project resolution, shown in Exhibit A to this letter, and AWI respectfully requests that the Board of Supervisors adopts this change.

6.5 Calculate power pole retrofit costs based on actual PG&E costs, instead of outdated USFWS estimates. In October 2014, AWI paid PG&E to install five power pole retrofits as avian mitigation. Rather than the \$7,500 per power pole retrofit sourced from U.S. Fish and Wildlife Service ("USFWS") guidance estimates, AWI incurred an average cost of \$1,069 per power pole retrofit. The USFWS estimated cost is over seven-times more than the actual PG&E cost. Therefore, the two rates are illustrated as follows:

- > USFWS suggested cost (and proposed by County staff)
= \$7,500/power pole retrofit x 322 poles = \$2.4 million
- > PG&E actual cost = \$1,069/power pole retrofit x 322 poles = \$344,000

When viewed in light of the proposed mitigation, USFWS over estimates power pole retrofitting cost by over \$2 million, which far exceeds any reasonable cost estimate. Such inaccurate and extraneous costs place an undue financial burden on AWI, especially when coupled with the County's staff report suggesting that mitigation funds be deposited well before the retrofits are scheduled. Further, extra and unjustifiable mitigation that cost \$2.4 million makes the project economically infeasible. Forcing AWI to incur millions of dollars in mitigation costs beyond the amount necessary to implement the proposed mitigation is a road block to Alameda County's continued dedication to wind power development. AWI has incorporated these changes to power pole retrofit cost estimates into Exhibit A to this letter, and AWI respectfully requests that the Board of Supervisors adopts these changes.

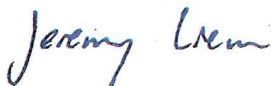
6.6 Allow AWI, not the County, to manage power pole retrofit mitigation funds. Alameda County's SEIR staff report suggests that AWI deposit funds into a trust account to pay for power pole retrofit mitigation. Rather than use the County as an intermediary to pay for the mitigation, AWI will pay these funds directly to PG&E to retrofit the power poles, and provide a report of the completed mitigation to the County. Submitting power pole retrofit funds, as currently calculated, in advance of the work performed places a huge financial burden on AWI, roughly \$2.5 million. Instead of depositing the retrofit funds with the County, AWI proposes submitting quarterly progress reports for the power pole retrofit mitigation. As well, AWI, as a company dedicated to electricity generation, transmission, and facilities management, is better suited than the County to implement, oversee, and verify power pole retrofitting. The above changes have been incorporated into Exhibit A to this letter, and AWI respectfully requests that the Board of Supervisors adopts the changes.

6.7 Provide more time to analyze and implement option BIO-17a, a Special-Status Species Mitigation Plan. BIO-17a of the SEIR provides AWI with mitigation alternatives to supplement or replace the power pole retrofit mitigation measures proposed by BIO-17. In order to implement BIO-17a, AWI will have to submit a Special-Status Species Mitigation Plan ("SSSMP") for approval by the County Planning Director. Because the SSSMP requires the development of a Resource Equivalency Analysis ("REA") which itself takes months to develop, a 60 day period following permit approval (as suggested in Exhibit A to the staff's report) is insufficient to develop and implement an SSSMP. Instead, AWI proposes to move the start of the 60 day SSSMP implementation period from the permit approval date to the permit effective date, February 15, 2016. These changes are shown in Exhibit A to this letter, and AWI respectfully requests that the Board of Supervisors adopts this change.

Thank you for your consideration.

Sincerely,

Altamont Winds Inc.



Jeremy Liem
Legal Counsel

EXHIBIT A

Altamont Winds Inc.'s proposed changes to Alameda County staff report and draft resolutions



02 February 2015

To: The East County Board of Zoning Adjustment

cc: Sandra Rivera, Assistant Planning Director, Alameda Co.

From: Rick Koebbe, President

Subject: Comments to the Alameda Co. FSEIR staff report and related documents
FSEIR permit (3 yr extension) request
86 MW Altamont wind farms

Altamont Winds Inc. (**Applicant**) has the following comments to the Alameda Co. FSEIR staff report and related documents, dated February 2, 2015, as follows:

1. EXHIBIT A, WRITTEN FINDINGS OF SIGNIFICANT EFFECT, page 3. We propose changing the text, as follows (shown in blue-line strikeout/underline):

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 permit ~~approval~~
effectiveness, February 15, 2016.

See attached Exhibit A, showing the entire document, with proposed changes. An explanation is provided below.

1.1 BIO-17a mitigation plan submittal timing is unreasonable. This mitigation plan will require a significant amount of time and effort to complete, probably at least 6 months. It's illogical to require that the applicant provide a plan in 60 days; instead, we propose any mitigation plan is provided 60 days from when the permit approval is implemented, on Feb. 15, 2016.

The remainder of this page left intentionally blank.

2. EXHIBIT B, MITIGATION MONITORING AND REPORTING PROGRAM, page 4. We propose changing the text, as follows (shown in blue-line ~~strikeout~~/underline):

The changes in the first section below simply clarifies/corrects typos, to be consistent with the related staff report documents.

FINAL SUPPLEMENTAL MITIGATION MONITORING AND REPORTING PROGRAM

ITAL MITIGATION MONITORING AND REPORTING PRORAM

Proposed Mitigation Measure	Timing
<p>BIO-16: Implement Seasonal Shutdowns to Reduce Avian Fatalities</p> <p>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 until February 15 of the following year. No operational modifications will occur during the February 46 <u>15</u> to October 31 period. 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 <u>until</u> February 15 of each year</p>
<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, (together identified as Alternative 1 in the analysis of project alternatives) is projected to result in the fatality of approximately one eagle (cumulatively, and statistically, 0.7–1.0) when compared to the existing avian baseline condition (the No Project Alternative) (2013 FEIR Table 3.2-5). Although the baseline fatality rate is higher, this mitigation measure addresses the impacts of the proposed project (with mitigation), which is approximately one additional eagle fatality. 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 29 utility poles as mitigation for the expected level of eagle fatality from the proposed project. AWI may contract directly with an electrical utility to fund this mitigation; however, a written agreement and evidence of the completion of the retrofits must be provided to the County CDA. USFWS has estimated the cost of retrofits at \$7,500 per pole, and therefore AWI may contribute \$217,500 (\$7,500 x 29 poles) to a third party mitigation account (approved by the County CDA) instead of contracting directly with a utility. <u>However, the cost of retrofits will be adjusted to the latest PG&E cost estimate or actual costs from October 2014, as provided by written documentation from PG&E, at \$1,069 per power pole retrofit.</u> The third party mitigation account holder would have the responsibility of completing the mitigation or contracting for the mitigation to be completed. Evidence of completion of mitigation must be provided to the County CDA within one year of approval of the proposed project.</p>	<p>Prior to decommissioning and reclamation activities; after decommissioning and reclamation activities</p>

See attached Exhibit B, showing the entire document, with proposed changes. An explanation is provided below.

3. STAFF REPORT, pages 12-13. We propose changing the text, as follows (shown in blue-line strikeout/underline):

PLANNING CONSIDERATIONS

Firstly, with respect to the primary request to operate the full 828-turbine, 85.8 MW wind farm for the three years between February 15, 2016 and October 31, 2018, for a cumulative three-year installed capacity of 182.4 MWs, County staff recommend that the use permits be extended ~~but to allow no more than one half of the MWs to be operated within that period, which may be either operated fully until June 22, 2017 (i.e., a total of 12 ¾ months out of the applicant's requested extension to allow 25 ½ months of operation, with winter season shutdown as provided by Mitigation Measure 16), at 50% at 100% capacity for all three years through October 31, 2018, or in other stages such that the three year installed or operating capacity of AWT's entire windfarm operations, with or without an asset exchange, may not be greater than 91.2 MWs, or one half of 182.4 MWs. The result of such a reduction in MWs would proportionally reduce the number of golden eagle, other raptors and avian species fatalities. The East County Board of Zoning Adjustments may specify that the CUPs will expire on June 22, 2017, or another later date if the applicant requests to operate fewer turbines over a longer period of time.~~

~~Planning staff consider this reduced level of operations to be somewhat comparable to, but notably more liberal than reverting back to the original 2005 CUP conditions, in which only 15 percent of the turbines were allowed to be operating between 2016 and 2018. It would provide for a total operational output in MWs from October 2013 to October 2018 of 220.0 MW, when compared to the other alternatives considered in the 2013 FEIR and as represented in Table 3-2 of the FSEIR (page 33). It is moderately more MWs of allowed output than Alternative 2 considered in the 2013 FEIR (30.5 more MW, compared to 189.5 under Alternative 2, which provided for cessation of operations after October 31, 2016).~~

Fourthly, the Board should agree on a fatality rate to be used for projecting the total number of golden eagle fatalities anticipated to result from the project, from among the three principal options: a) 0.061 based on the monitoring years 2008-2010; ~~b) 0.071 based on monitoring years 2008-2012; or c) 0.085 using monitoring years 2005-2010.~~ The fatality rate will then be used to determine the number of power pole retrofits to be required under Mitigation Measure BIO-17 (and as adjusted by half, assuming the first recommendation above is required). Further, this fatality rate shall be adjusted for any clean wind power climate benefits and background mortality, with use of best available information, and implemented under adaptive management techniques.

~~Finally, unless the applicant chooses to apply for an eagle take permit as described in Mitigation Measure BIO-17a (and submits a complete draft Eagle Conservation Plan and meets other USFWS requirements for an ETP) within six months of approval of the CUP modifications, the applicant should make a deposit of adequate trust funds prior to the start of each operational year (February 15th of each year, starting in 2016) that are dedicated to implementing Mitigation Measure BIO-17 and/or BIO-17a. Such deposits~~

for the use of power pole retrofits, or contributions to regional conservation of raptor habitat could be adjusted at the end of each operational year (2016 to 2018) based on actual expenditures and power pole retrofits completed, subject to approval by a Technical Advisory Committee (TAC) as will be structured under the APWRA Repowering Program EIR. However, the TAC is not required to approve accounting refunds from expenditures from power pole retrofits, if any.

Finally, the applicant will provide progress reports, on a semi-annual (twice yearly) basis, regarding the installation of its power pole retrofits (as it did with its power pole retrofits in 2014).

See attached Staff Report, showing the entire document, with proposed changes. An explanation is provided below.

3.1 Extend permits for 3 years. Since we're substantially mitigating the avian issues, we should be able to operate the project for 3 years (100%), until Oct. 31, 2018, as long as we provide the mitigation; not 50% as proposed by the Planning Dept. In addition, such extension is consistent with the County's Staff Report, Statement of Overriding Considerations, Exhibit C.

3.2 Use the lower fatality rate 0.061. We propose using the lower fatality rate of 0.061, because (a) the higher rates do not accurately include significant background mortality, nor any climate benefits (from the displacement of 609 million lbs of greenhouse gases and toxic air pollution) of clean wind power, which saves over 1,000 birds (derived via McCubbin-Sovacool report) and (b) historically inconsistent and varied avian monitoring data sets prior to 2008.

3.3 Applicant does not need to advance funds to the County for power pole retrofits. It's a huge financial burden on the applicant to submit power pole retrofit funds in advance of the actual work, at roughly \$1 million per year. The funds should be efficiently managed and conducted/spent by the applicant, not controlled by the County. County-controlled funds will burden and delay implementation of this mitigation. Instead, we propose quarterly reports to show progress with PG&E. The County cannot implement power pole retrofits any faster than the applicant, under any circumstance. Such funds must be paid from the applicant to PG&E in advance, once they provide an estimate for the work, with any adjustment accounting thereafter.

The remainder of this page left intentionally blank.

4. DRAFT RESOLUTION NO. Z-15-XX, pages 6-8. We propose changing the text, as follows (shown in blue-line strikeout/underline):

2. Beginning on February 15, 2016, the Permittee shall **not** be limited to operate its wind energy turbine facilities to have an installed total operating capacity of 91.2 MW over three years, either by operating all facilities until June 22, 2017 (i.e., a total of 12 ¾ months), or by shutting down 50% of its turbines through October 31, 2018, or in other stages such that the three year installed or operating capacity may not be greater than 91.2 MWs. The Permittee shall submit its plans to the Planning Director to operate a set number of turbines for a set number of months prior to each February 15 of the years 2016 to 2018, and cease operating all turbines after the installed and operating capacity in these three years reaches 91.2 MWs based on the number and months of operations reported in said plans.
4. Unless the Permittee chooses to apply for an eagle take permit as described in Mitigation Measure BIO 17a (and submits a complete draft Eagle Conservation Plan and meets other USFWS requirements for an ETP) within six months of account of adequate funds prior to the start of each operational year (February 15th of each year, starting in 2016), that are dedicated to implementing Mitigation Measure BIO 17 and/or BIO 17a. Such deposits for the use of power pole retrofits, or contributions to regional conservation of raptor habitat may be adjusted (supplemented with additional funds or refunded) at the end of each operational year (2016 to 2018) based on actual expenditures and power pole retrofits completed.

See attached Draft Resolution No. Z-15-XX, showing the entire document, with proposed changes.

These changes are consistent with our comments above.

Exhibit A

Written Findings of Significant Effects

In accordance with State Public Resources Code §21081 and CEQA Guidelines Section 15091, the following findings are made and supporting facts provided for each significant environmental effect that has been identified in the Final Supplemental Environmental Impact Report (final 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 final 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 EBZA bases its decision) and mitigation measures in support of the findings. For specific resource mitigation measures, the section and page number where the full text of the mitigation measure occurs is noted in the 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 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 EBZA relating to the SEIR, the approvals, and the project
- All information (including written evidence and testimony) presented to the EBZA by the environmental consultants who prepared the SEIR or incorporated into reports presented to the EBZA
- 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 EBZA certifies that the SEIR has been completed in compliance with CEQA. The EBZA has independently reviewed the record and the SEIR prior to certifying the SEIR and approving the project. By these findings, the EBZA 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 EBZA. The EBZA recognizes the SEIR may contain clerical errors. The EBZA reviewed the entirety of the SEIR and bases its determination on the substance of the information it contains. The EBZA 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 EBZA 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

The EBZA 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 EBZA 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 EBZA 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 permit [approval effective date, February 15, 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 Significant Irreversible Changes

CEQA Section 21100(b)(2)(B) requires that an EIR identify any significant effect on the environment that would be irreversible if the project were implemented. Section 15126.2(c) of the State CEQA Guidelines characterizes irreversible environmental changes as those involving a large commitment of nonrenewable resources or irreversible damage resulting from environmental accidents.

The project's significant and irreversible changes are discussed in the 2013 Final EIR beginning at page 5-10. The 2013 Final EIR explains that, although the timing of the proposed project operations and decommissioning would differ from the schedule set forth in the existing CUPs, no new construction or physical changes to the environment not previously contemplated in the CUPs are proposed as part of the CUP modifications; therefore no additional nonrenewable resources would be used in project implementation. Further, the 2013 Final EIR notes that wind turbine facilities are considered temporary uses, subject to eventual removal at the end of their useful lifespan or conclusion of use permits, whichever comes first. In addition to the wind farms, the project area is predominantly used for grazing, which could continue unimpeded. The existing wind turbines and associated facilities would therefore not be considered irreversible uses of the project area.

The project is not expected to result in environmental accidents that would cause irreversible damage. Compliance with required plans, such as the Altamont Pass Wind Farms Fire Requirements, would minimize the potential for accidents that could result in environmental damage.

Findings and Recommendations Regarding Growth-Inducing Impacts

Section 15126.2(d) of the State CEQA Guidelines states that an SEIR should discuss "...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. Production of electricity from the project facilities is ongoing and would not create additional availability of energy resources beyond those already permitted for the facilities.

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 PROGRAM

Impact	Proposed Mitigation Measure	Timing	Implementation	Monitoring
Impact BIO-1: Potential to cause a substantial adverse effect, either directly or through habitat modifications, on a special-status species.	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 until February 15 of the following year. No operational modifications will occur during the February 15 to October 31 period. AWI will notify County CDA each year when turbines have been shut down, and again when they have resumed operating.	November 1 to <u>until</u> February 15 of each year	Project Applicant	Reviewing Party County of Alameda, SRC Criteria Verify that seasonal shutdowns have been implemented Monitoring Action Verify each year between November 1 and February 15

	BIO-17: Mitigate for the Loss of Individual Golden Eagles, Raptors, and Special Status Avian Species by Retrofitting Electrical Facilities 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, (together identified as Alternative 1 in the analysis of project alternatives) is projected to result in the fatality of approximately one eagle (cumulatively, and statistically, 0.7-1.0) when compared to the existing avian baseline condition (the No Project Alternative) (2013 FEIR Table 3.2-5). Although the baseline fatality rate is higher, this mitigation measure addresses the impacts of the proposed project (with mitigation), which is approximately one additional eagle fatality. 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 29 utility poles as mitigation for the expected level of eagle fatality from the proposed project. AWI may contract directly with an electrical utility to fund this mitigation; however, a written agreement and evidence of the completion of the retrofits must be provided to the County CDA. USFWS has estimated the cost of retrofits at \$7,500 per pole, and therefore AWI may contribute \$217,500 (\$7,500 x 29 poles) to a third party mitigation account (approved by the County CDA) instead of contracting directly with a utility. <u>However, the cost of retrofits will be adjusted to the latest PG&E cost estimate or actual costs from October 2014, as provided by written documentation from PG&E, at \$1,069 per power pole retrofit.</u> The third party mitigation account holder would have the responsibility of completing the mitigation or contracting for the mitigation to be completed. Evidence of completion of mitigation must be provided to the County CDA within one year of approval of the proposed project.	Prior to decommissioning and reclamation activities; after decommissioning and reclamation activities	Project Applicant	Reviewing Party County of Alameda Criteria Check to ensure retrofitting of electrical poles has been conducted Monitoring Action Require measure as part of issuing grading/building permits. Verify compensation after decommissioning and reclamation activities.
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	<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 using a balanced mix of the options presented below, as well as considering new options suggested by the growing body of knowledge during the course of the project lifespan, 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>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, 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</p>	<p>Compensation measures as detailed in an approved Special-Status Species Mitigation Plan must be implemented within 60 days of the permit approval.</p>	<p>Project Applicant</p>	<p>Reviewing Party</p> <p>The County Planning Director, in consultation with the TAC.</p> <p>Criteria</p> <p>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.</p> <p>Mitigating Action</p> <p>Require measure as part of issuing grading/building permits. Verify compensation after decommissioning and reclamation activities.</p>
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	<p>Special-Status Species Mitigation Plan must be implemented within 60 days of the permit approval. Special-Status Species Mitigation Plans may be revised—and will be reviewed by the County.</p> <ul style="list-style-type: none"> <p>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.</p> <p>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.</p> 		
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EXHIBIT 2.1

PG&E power pole retrofit (PPR) costs

- > Actual PG&E 2014 PPR costs averaged \$1,069/pole
- > total cost to retrofit five (5) power poles: \$5,343
- > PG&E work performed October 15-16, 2014, 3.5 months ago.

> PG&E cost breakdown:

- engineering & administration:	\$74.00
- materials & field construction ("tie-in / meters"):	\$3,913.56
- federal & state income tax charge ("ITCC"):	\$1,355.77
Total	\$5,343.33 ÷ 5 poles = \$1,068.67/pole

The PG&E PPR contract dated September 10, 2014, is shown on the following pages.



September 9, 2014

VILLIAM DAMON
WINDWORKS INC, A ID CORPORATION
15850P JESS RANCH RD
TRACY, CA 95377

RE: Contract ID: 1179257: ALONG PATTERSON PASS

Dear WILLIAM DAMON,

Enclosed are gas and/or electric agreements for your project located at:

PATTERSON PASS & MIDWAY, TRACY, 94550

This letter summarizes the agreements for this project.

	Non-Refundable Payment	Refundable Option*	50% Discount Option*
Relocation / Rearrangement Costs	\$5,343.33	\$0.00	\$0.00
Less Credit (Engineering Advance, etc.)	\$0.00	\$0.00	\$0.00
TOTAL **	\$5,343.33	\$0.00	\$0.00
TOTAL PAYMENT DUE	\$5,343.33	OR	\$5,343.33

* Only applies to Rule 15 Refundable Amounts. Amount shown is less credit for associated Applicant work.

** The Income Tax Component of Contribution (ITCC) is included in the above charges when applicable.

Please sign both copies of the agreement and return one copy of the agreement to the address below along with your payment and retain one copy for your records. If the agreement is not returned to PG&E within 90 days of the date of this letter, the proposed agreement is canceled and PG&E may need to re-estimate the job.

Changes to the agreement, either to any of the terms or to the amount owing, are not permitted, and any change or interlineations voids the agreement. The payment of any amount less than the full amount shown will be deposited by PG&E, but PG&E will not begin any work on this contract until the amount is paid in full. The contract shall be deemed effective the date a fully executed copy is received by PG&E. Please allow 30 days from PG&E's receipt of the Agreement for construction to commence.

PG&E is committed to providing timely and efficient service and we look forward to continuing to work with you on this and future projects.

Should you have any questions regarding these contracts, please contact your project manager Christopher Callas at 209-942-1618 or CRCC@pge.com.

Please send the executed Agreements and payment to:

PG&E CFM/PPC DEPARTMENT
PO BOX 997340
Sacramento, CA 95899-7340

Sincerely,

Candace Briskey

Candace Briskey
Service Planning Supervisor



108888785E

Ref: Contract ID: 1179257: PATTERSON PASS & MIDWAY, TRACY, 94550



**Pacific Gas and Electric Company
Agreement to Perform
Tariff Schedule Related Work**

DISTRIBUTION:
☐ APPLICANT (Original)
☐ DIVISION (Original)
☐ ACCTG. SVCS.

REFERENCES:
 Notification # 108888785
 Contract # 1179257
 ERR-PM # 31099739
 GRR-PM #

WINDWORKS INC, A ID Corporation (Applicant) has requested PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (PG&E), to perform the tariff schedule related work as located and described in paragraph 3 herein. PG&E agrees to perform the requested work and furnish all necessary labor, equipment, materials and related facilities required therefor, subject to the following conditions:

1. Whenever part or all of the requested work is to be furnished or performed upon property other than that of Applicant, Applicant shall first procure from such owners all necessary rights-of-way and/or permits in a form satisfactory to PG&E and without cost to it.
2. Applicant shall indemnify and hold harmless PG&E, its officers, agents and employees, against all loss, damage, expense and liability resulting from injury to or death of any person, including but not limited to, employees of PG&E, Applicant or any third party, or for the loss, destruction or damage to property, including, but not limited to property of PG&E, Applicant or any third party, arising out of or in any way connected with the performance of this agreement, however caused, except to the extent caused by the active negligence or willful misconduct of PG&E, its officers, agents and employees. Applicant will, on PG&E's request, defend any suit asserting a claim covered by this indemnity. Applicant will pay all costs that may be incurred by PG&E in enforcing this indemnity, including reasonable attorneys' fees.
3. The location and requested work are described as follows: (Describe in detail the materials and facilities to be furnished and/or work to be performed by PG&E. If more space is required, use other side and attach any necessary drawings as Exhibits A, B, C, etc):

LOCATION: PATTERSON PASS & MIDWAY TRACY, 94550

DESCRIPTION OF WORK:

		Electric	Gas
Engineering & Administrative Cost		<u>\$74.00</u>	<u>\$0.00</u>
Value of Applicant Design Work	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Additional Applicant Design Plan Checks	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Facilities (Cable, Transformers / Gas Pipe)	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Trench, Conduits & Substructures	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Tie-In / Meters	(+)	<u>\$3,913.56</u>	<u>\$0.00</u>
Trench Permits & Land Rights	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Inspection Fees	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Sub Total	(=)	<u>\$3,987.56</u>	<u>\$0.00</u>
plus ITCC @ <u>34.0%</u> Electric <u>0.0%</u> Gas	(+)	<u>\$1,355.77</u>	<u>\$0.00</u>
plus Non Taxable Work	(+)	<u>\$0.00</u>	<u>\$0.00</u>
D.0405055 Line Extension Costs - Residential	(+)	<u>\$0.00</u>	<u>\$0.00</u>
D.0405055 Line Extension Costs - Non-Residential	(+)	<u>\$0.00</u>	<u>\$0.00</u>
less Value of Relocation Applicant Design Work	(-)	<u>\$0.00</u>	<u>\$0.00</u>
less Work Provide by Applicant	(-)	<u>\$0.00</u>	<u>\$0.00</u>
less Salvage	(-)	<u>\$0.00</u>	<u>\$0.00</u>
Total Payment	(=)	<u>\$5,343.33</u>	<u>\$0.00</u>



108888785E

4. Applicant shall pay to PG&E, promptly upon demand by PG&E, as the complete contract price hereunder, the sum of Five Thousand Three Hundred Forty-Three Dollars And Thirty-Three Cents (\$5,343.33)

Upon completion of requested work, ownership shall vest in: ☒ PG&E ☐ Applicant

Executed this 10th day of September, 2014

WINDWORKS INC, A ID Corporation

Applicant

By: William L. Damon

WILLIAM DAMON
Print/Type/Name

Title: Vice President

Mailing Address: 15850P JESS RANCH RD
TRACY, CA 95377

PACIFIC GAS & ELECTRIC COMPANY

By: Candace Briskey

Candace Briskey

Title: **Service Planning Supervisor**



108886785E

PG&E Agreement to Perform Tariff Schedule Related Work
Contract No. 1179257, ERR-PM No. 31099739, dated September 10, 2014
Retrofit five (5) power poles, Patterson Pass Road and Midway Road, near Tracy, CA

2209

WindWorks Inc.
15850P JESS RANCH ROAD
TRACY, CA 95377

WELLS FARGO BANK, N.A.
92-379-1241

	DATE	AMOUNT
Five Thousand Three Hundred Forty Three and 33/100 dollars	10 September 2014	\$5,343.33

PAY
TO THE
ORDER
OF

Pacific Gas and Electric Company
CFM/PPC Department
PO Box 997340
Sacramento, California 95899-7340

William Z. Dano

⑈002209⑈ ⑆124103799⑆2250002298⑈

WINDWORKS INC.

2209

PG&E Agreement to Perform Tariff Schedule Related Work
Contract No. 1179257, ERR-PM No. 31099739, dated September 10, 2014
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DRAFT MINUTES OF MEETING
EAST COUNTY BOARD OF ZONING ADJUSTMENTS
FEBRUARY 2, 2015
Expanded to Reflect Substantive Content¹ – For Appeal Hearing by the
Alameda County Board of Supervisors

REGULAR MEETING

CALL TO ORDER: *The Chair called the meeting to order at 1:35 p.m.*

MEMBERS PRESENT: Members Larry Gosselin, Chair; Jim Goff, Vice-Chair; and Jon Harvey.

OTHERS PRESENT: Sandra Rivera, Deputy Planning Director; Jana Beatty Weldon, Senior Planner; Andrew Young, Planner; Heather Littlejohn, County Counsel's Office; and Nilma Singh, Recording Secretary.

There were approximately twenty-eight people in the audience.

PLEDGE OF ALLEGIANCE

OPEN FORUM: Open forum is provided for any members of the public wishing to speak on an item not listed on the agenda. Each speaker is limited to three (3) minutes. *No one requested to be heard under open forum.*

NEIGHBORHOOD PRESERVATION AND ZONING ORDINANCE ABATEMENT: *None*

ALCOHOLIC BEVERAGE SALE REGULATION ADMINISTRATIVE HEARING: *None*

APPROVAL OF MINUTES FROM PREVIOUS MEETINGS

1. APPROVAL OF BOARD MINUTES ~ January 22, 2015

Member Goff made the motion to approve the January 22nd Minutes as submitted and Member Harvey seconded. Motion carried unanimously, 3/0.

CONSENT CALENDAR: *No items*

REGULAR CALENDAR:

- 2. ALTAMONT WINDS, INC., MODIFICATIONS TO EXISTING (YEAR 2005, AS MODIFIED IN 2013) CONDITIONAL USE PERMITS, PLN2014-00028 / Final Supplemental Environmental Impact Report (FSEIR) ~ to certify by resolution the FSEIR for item 2.**
Staff Planners: Sandra Rivera and Andrew Young

¹ Complete except as noted parenthetically.

Ms. Rivera introduced the item and Chris Knopp, Project Manager for the SEIR. Mr. Knopp, with a PowerPoint presentation, discussed the following: the purpose of his presentation, the proposed project, the planned asset exchange; the project area, the SEIR process schedule; public comments & responses; and clarifying the mitigation measures and calculation of the numbers involved. (The presentation took approximately 20 minutes and summarized information in the Final SEIR and in the staff report. The PowerPoint presentation is included in the Board package for the appeal).

Member Harvey asked Mr. Knopp about the net [result of the] EIR that would apply to this project change [(permit modifications)]. For the record, and for the audience and for himself, he asked what is the preferred alternative that the EIR recommends. Mr. Knopp replied that the preferred alternative would be the alternative identified in the 2013 FEIR, which was Alternative 3, the permit extension, because it is the project. Member Harvey replied back that that was not how he understood it. Staff member Sandra Rivera asked Member Harvey if he was referring to the Alternatives, or the [alternative] mortality rates [discussed in the Power Point presentation]; Member Harvey replied that it was his understanding that EIR's have three alternatives, typically, and one is the preferred alternative. Member Harvey asked, for this EIR, what is the preferred alternative. Ms. Rivera replied that for this Supplemental EIR, there is only the no project alternative and the project. So, Member Harvey replied, it reverts back to the original EIR; Ms. Rivera affirmed that was correct. Member Harvey continued, asking if that was the phased approach, with shutdown to start in 2015.

Staff Member Andrew Young explained that the preferred alternative defined in the 2013 EIR was the CUPs that were approved in 2013, defined as Alternative 1 [in the 2013 EIR]. The current SEIR does not identify a preferred alternative, separate from the 2013 EIR. He suggested counsel may wish to advise on the adequacy of that, but expressed the opinion that the no project alternative would be the preferred alternative. Of course, he noted, CEQA requires that [in such a case], the lead agency should identify another alternative to the no project alternative. So, based on the SEIR, would be the project. Member Harvey asked if that was as proposed by the applicant, and Mr. Young affirmed that was the case as far as the SEIR is concerned, and that was the reasonable way to apply CEQA in this case. Member Harvey said he would have to ask questions about that later, and the Chair stated he would ask the question in a different way.

The Chair (Member Gosselin), asked for confirmation that the Board is essentially reconsidering something we've considered before. Mr. Young replied in the negative, that the Board's choices were between the proposed project; the no project alternative that is *not* the no-project alternative is the project. The Chair asked for that to be repeated, and Mr. Young stated again that the no project alternative is the preferred alternative; the Chair indicated he understood that supported their decision in July 2013.

Chairman Gosselin said he had a question about the overriding considerations. He said that in the same way that the Board needs to certify the EIR, the Board needs to agree with the overriding considerations. Ms. Rivera indicated that was correct.

The Chair stated that he took note in the Final SEIR/Response to Comments that most of the comment letters were in the form of testimony regarding the project, and not the environmental review. He asked if the Board could consider those as part of the record. Ms. Rivera affirmed that, and indicated that there are two items before the Board, that require two actions, and are therefore separate. However, like other recent wind farm projects before the Board, the discussions could be taken together.

The Chair said he had a question about the time frame, and noted there had been a "hurry up" to schedule this hearing today for the purposes of an appeal. He asked beyond that appeal, what is the purpose of the "hurry up", and if there was another reason. Ms. Rivera said AWI could speak to that more, but her understanding is that there are contracts with PG&E that will expire in March, said they needed to get through the appeal in March in order to determine their next steps.

Member Harvey said he had a follow-up question about overriding considerations, if it was typical that they were qualitative in nature, as they are in this case. The Statement identifies economic benefit, environmental benefit, there's "this and that" benefit, and somehow the Board is meant to weigh that against the [environmental] impacts. He asked if that was done normally in a qualitative way, and not quantified. Ms. Rivera replied that to her understanding, it could be both qualitatively and quantitatively, if the Board chooses. Member Harvey said he appreciated the difficulty staff has had in determining the validity or certainty of numbers that one could produce; however, it appeared the Board has to jump to an individual value judgment vs. another. He asked if that was what the Board was expected to do. Ms. Rivera affirmed that was the case.

The Chair invited staff to continue with the next section of the presentation. Member Goff asked if the Board should take action on the EIR first. Mr. Young said the Board could probably proceed to take comment on, and to take action on the SEIR; Ms. Rivera countered that the Board should receive the entire presentation first.

Mr. Young continued the PowerPoint presentation related to the project, and indicated that these slides reflect the considerations that went into preparation of the staff report. The applicant asserts that the extensions are necessary for various reasons that are not necessarily related to CEQA – financial, tax policy, and other reasons. He indicated the County was under a "spotlight" of attention from the federal [resource agency], the state Attorney General who oppose the approval of any extension. In addition, the state resource agency and the East Bay Regional Park District indicated they would only support approval with conditions requiring an eagle take permit or other strong conservation measures. Audubon California and Save Mount Diablo would also oppose any approval of the extension. There are also comments in the record from John Humphrey representing the Rooney property, Marie Cooley representing Ralph Properties II, and a letter that is in the appendices of the SEIR from Bob Cooper withdrawing his original comments, due to his satisfaction with a site visit, that addressed his concerns with hazardous waste issues. Additionally, with respect to the lands owned by the Waste Management Authority, authorization to [participate] in the application was withdrawn. Information from the applicant indicates that if the asset exchange occurs, that issue will be eliminated. Information now available indicates that asset exchange

will occur prior to any appeal hearing before the Board of Supervisors. So if the BZA takes an action today, it can remove those affected parcels from the resolution.

Lastly, the Board is advised that they may deny the proposed project, which would provide for the permits to expire on October 31 of this year as they are currently permitted. And after the board has certified the EIR, should it choose to do so, then the Board would take comments on the proposed project, deliberate among the board members, and at staff's request, that the Board make a decision on the rate of eagle mortality to be applied for the implementation of Mitigation Measure 17.

Finally, the Board is requested to consider staff's recommendations to modify the project and its conditions. Referring to a slide in the presentation, Mr. Young said it outlined the program that staff has concluded would be not necessarily advisable, but an option for the Board, to cut the MWs and reduce by 50% the output. Staff thinks that this gives the applicant a certain amount of flexibility in how it continues to operate under these amended conditions. That 50% limit could be distributed over all three years, or operated fully in 2016 and reduced thereafter. Another option is to cease all operations in June of 2017; or lastly, 75% in each of the next two years. That phased approach is meant to be similar to going back to the 2005 permit conditions and the phased reductions they required. However it does allow for more MW production than one other alternative.

Mr. Young concluded the presentation with some additional conditions that were recommended, to remove all HRT-rated turbines, consistent with 2013 recommendations to remove selected HRTs, and as recommended by the applicant, to report to the BZA regarding its progress towards repowering. Lastly, the trust fund is proposed if the applicant pursues both Mitigation Measures 17 and 17a, in order to provide financial commitments to implement those measures.

The Chair observed that there appear to be two focuses of the trust fund accounts – avian mortality funds, and all those others land-based resource funds. It just says compensation in the SEIR. He asked if the value of those funds had been determined; Mr. Young replied that the value would rely on preparation of a Resource Equivalency Analysis.

Member Harvey noted that calculating the number of power pole retrofits in the SEIR, would be based on the golden eagle fatality rates. At some number, there may be more retrofitted power poles than the population can even utilize. He wished to know if the staff knew what that number was. He asked if there were 400 golden eagles present in the Altamont Pass area, even during the winter months. Mr. Young replied and said a good question might be if there are enough power poles that golden eagles would land on in the course of three years; it is not necessarily the population of golden eagles relative to the number of power pole retrofits. The number of power poles that could be retrofitted is probably quite vast; if the mitigation can provide for the maximum number of retrofits to make them safe for golden eagles, then it is a worthy pursuit.

Member Harvey asked if, like the HRTs, it would be useful to know where the high-risk or high-opportunity power poles exist. Going from zero to some number there's probably a lot of benefit, but then doubling or tripling the number from there, there might be a

diminishing benefit. He wondered if there was anyone who could speak to that, since what staff has asked the Board to do, is pick a mortality rate, and that is going to drive the number of power pole retrofits, and maybe that money is better spent elsewhere.

Ms. Rivera said it was their understanding that PG&E has identified power poles that are hazardous, in a program, so they understand the priorities for retrofitting power poles. She added that AWI had taken part in that program, based on the 2013 approval and conditions, so they went to PG&E to find power poles that are the project area. That was the priority established in the conditions. She added that she understands there are thousands of power poles to be retrofitted throughout the state, but the priority will be in the Altamont area for this program. Member Harvey asked if this meant these could be power poles outside the project area, and Ms. Rivera agreed that was the case.

Chairman Gosselin asked if, with respect to the power pole retrofits, the board has the authority to remove such requirements, and just leave that to the agencies. He noted there are several options beyond the power pole retrofits, which he recognized were the default "go-to" [strategy], and the information we've received so far indicates the agencies are going with that. He said the Board can continue to allow the agencies to go with that, but do not necessarily have to make it something that the County directs, and asked staff to verify that. Ms. Rivera replied that mitigation measures 17a was created to provide those options. The Chair asked if the Board could eliminate 17, and just go with 17a. Ms. Rivera replied she believed they could.

County Counsel staff Heather Littlejohn stated that the determination that the Board makes on the SEIR can determine what the appropriate mitigation is, and separately, what the appropriate conditions are. The decision needs to be based on substantial evidence that justifies that decision.

The Chair asked if there were additional questions from the board members, and having none, said he wished to discuss how the board would proceed on receiving testimony, and breaking down the various components and our evaluation. He asked if the board would like to break up (or divide) the hearing between the SEIR comments, findings of overriding considerations, and the project itself and modifications. Member Goff agreed to "break it up", and Member Harvey asked for clarification, if the board would be voting separately on the statement of overriding considerations. The Chair replied that it was not something they would vote on separately, but had to consider. He asked staff if that was correct and Mr. Young replied that yes, that was correct. Mr. Young said that CEQA does not call for it to be acted on separately; it is just an exhibit to the second resolution provided in the Board's package. The Chair continued and asked, if the board does not make findings of overriding considerations, that would direct where the Board would go. Mr. Young confirmed that. Member Harvey asked if that would prevent them from certifying the SEIR, and the Chair replied that they would still be able to certify the SEIR, because it provides the environmental review required. Member Harvey then agreed on "breaking up" the discussion.

Ms. Littlejohn stated that because the Supplemental EIR identifies significant environmental impacts that can't be mitigated, the overriding consideration would be

necessary for project approval. Therefore the board can certify the EIR separately, and then when you take up the project decision, is where you would take up the overriding consideration – if the Board does not break it up [into constituent parts].

The Chair said he understood that the Board could start talking about the overriding considerations at the beginning of its deliberations. Member Harvey said he disagreed with Member Goff and thought it should be all taken together. Member Goff clarified that he meant he did not want to hear testimony about the project, when they are trying to make decisions about the SEIR. Member Harvey said he wished to get testimony on everything, before he made a decision on anything. He said if we do it separately this meant each speaker would have to separate their comments about the EIR and then the project. He said he did not expect the Board could have success with them being able to do that, that their comments will be limited to only the EIR or the project, and they'll have to come up twice. The Chair said he would ask each speaker to first address the adequacy of the SEIR, and then ask them to address the project. Member Harvey agreed.

Chairman Gosselin said he wished to bring up something we've been accepting as normal protocol, that typically on these issues, we accept testimony, we ask further questions of staff, have discussion, and then we accept testimony again. He asked the Board if they were all comfortable with that process. And he said the second time we accept testimony, our graciousness is sometimes interpreted by the public as a "free-for-all", and they start directing questions at staff, and talking among themselves. So, he asked, does the Board wish to have staff interact with the second wave of testimony as it is occurring, either by the Board redirecting questions to staff or should the Board [interact(? – audience member coughed over audio)] as well. Members Gough and Harvey agreed, that questions could be directed to staff as needed.

The Chair stated that the first item of business is to read into the record comment letters received. He confirmed with staff that they are now part of the record. He described the first correspondence from Marie Cooley, the managing partner for Ralph Properties II, with comments supporting the project, partly for the economic benefit, and he also supports the mitigation efforts made by AWI. The other communication is from John Humphrey, who represents the Rooney property, with similar comments, about the positive stewardship offered by AWI, as well as to the Rooney property, and asks for support of the CUP application.

Public testimony was called for, and provided direction on speaker cards.

Evelyn Cormier, Audubon Society, Ohlone Chapter, said their chapter covered the APWRA area, and urged the Board not to certify the SEIR and not approve the project. She said they had been involved with the APWRA since 2004. She noted the past extinction of birds as a result of human activity, and cautioned that together with climate change, the wind turbines would have adverse effects on golden eagles. She cited the agreement with other operators to reduce avian fatalities by 50% in the APWRA, and said this project would set that progress back. She said the APWRA needs to move forward with repowering, because some wind power companies have acted responsibly through the repowering process. AWI has repeatedly asked to continue to operate the old

wind turbines, putting off repowering and killing more birds. She said she was there to speak on behalf of the birds, and urged the board to deny the project.

Member Goff asked the speaker to identify inadequacies she saw in the SEIR. She replied that it was that AWI is not being [required] to take down the old turbines and towers that are the main cause of the avian mortality. The new wind turbines have been demonstrated that they are safer for birds. The original turbines are the ones that are the most harmful to birds. She admits when they were first installed she was very excited, but had no idea that those towers would have such effects, especially on golden eagles and other raptors. Ever since then, we have been lamenting about our imperfect knowledge of what was going to happen. And so we have sought remedies ever since then, in trying to protect the birds.

Cindy Margulis, Audubon Society, Golden Gate Chapter, stated that they had significant insight into the EIR, and noted that the applicants themselves recognize that the impacts are significant and unavoidable, but would proceed with this project if it were approved. Those [impacts] could be completely eliminated, she said, by not certifying the EIR, and not proceeding with the project.

The Chair interrupted, and said it appeared that the speaker had found that the EIR had [adequately] represented the impact. The speaker replied back that, no, the EIR does not address all of the impacts. She added that she represents a chapter with thousands of members in Alameda County, and that her organization is extremely opposed to the project, and the EIR proposed for the project. She said her friends from California Audubon would go into the details of the deficiency of the EIR process, but she wished to speak regarding her opposition to, and the history of the project. She said they had been involved for 10 years with operators in the region, working with them to create an ecological, accountable effort in the Altamont so we can have green power there. The scope of the EIR represents a complete step backwards. In 2013, the County recognized this and required that the turbines be shut down after 2015, because the alternative was to do what they're trying again. She said because we know better we can do better. The Board is a committee for the County. The County recognized there was a serious impact to the birds, and we know from the repowering process, that you can get approximately a seven-to-one reduction in terms of the number of turbines in the APWRA and number of blades that pose a danger to birds and bats in the Altamont. You can't get that without repowering, she said. She wished to have the focus on repowering, instead of this time consuming EIR process, that is trying to delay what they're supposed to be doing, according to the settlement. It does not make sense to approve this extension now, and the county is at risk of violating CEQA, because [AWI would be] unjustifiably killing birds at a rate that is not anywhere near the rate that is allowed by the Fish and Wildlife Service for the species that are in question.

In conclusion, she said the Board should recognize that the EIR put before it is inadequate, and that certifying it as an accountable picture of what is going on, is not correct. Such a certification she said would not be doing due diligence [by the BZA]. She added that you absolutely not proceed with the project that the EIR is trying to obfuscate by hiding facts, and being data-deficient, by substituting numbers. If you look

at the numbers that were presented today, you're looking at two or three times the legal allowable limit for bird kills, for golden eagle population. She said it is not acceptable, or what we in 2015 should be doing. Certainly not in Alameda County where she lives, she added, and where her organization is headquartered. She thanked the Board for allowing her to speak, and reminded the Board that in 2013 it made a decision not to allow that alternative, which is what they are proposing again in 2015. That was disallowed. The idea was that repowering would proceed. (the remaining comments repeated her other statements).

Ariana Rickard, Audubon Society, Mt. Diablo Chapter, read her written letter in opposition to the SEIR certification. She commented that Contra Costa County had proceeded with its repowering program, where avian mortality has been significantly reduced. She added that he would be unfair to the other companies that are proceeding with repowering. (the remaining comments repeated other statements made by others).

Laura Cosgrove, Audubon Society, Santa Clara Valley Chapter, also read her written letter in opposition to the certification of the SEIR and the project, focusing on burrowing owl habitat and mortality resulting from turbine operations as a violation of state law. She noted that burrowing owls are a species of special concern in California, and that its population continues to dwindle. The only reason they're not designated as threatened or endangered, is that they have a large population in Southern California. However, the area in Southern California with that population is being intensely developed. Burrowing owls are harmed by old generation wind turbines, such as those used by AWI. They are one of the species that benefits the most from repowering projects. According to the SEIR, the current project will kill at least 77, or up to 242 more burrowing owls. That would be, she said, a huge hit. Each of these killings is a violation of the Migratory Bird Treaty Act, and makes recovery of the burrowing owl population that much harder. (the remaining comments repeated other statements made previously or by others).

Michael Lynes, Director of Public Policy, Audubon California, read comments from his written letter opposing certification, saying that it was fundamentally flawed, and did not adequately address comments Audubon California had submitted on the Draft EIR. First, he wanted to remind the Board why they objected to the EIR – regardless of policy reasons to reject the application altogether, and that the EIR is fundamentally flawed, is that when in 2013 this was looked at before, the County itself deemed it infeasible – this Alternative 3, to continue operating to 2018. The main reason the County stated this was that it puts off repowering. This aspect is not addressed in the staff report, or in the EIR, in its cumulative impact analysis.

From a legal perspective, he believes it represents piecemealing, in that they took one step in 2013, and now they put in place the next step, so each time the Permittee gets a little more, and meanwhile the environment takes a bigger hit. To be frank, if this EIR is certified, and if the project is approved as recommended by staff to go to 50 or 75 percent, he would expect to see another application for another extension in 2016, and 2017 and probably 2018. Why wouldn't the applicant do this, given the history so far.

He wanted to draw attention to an issue raised by the East Bay Regional Park District, and in the state Attorney General's letter also, the baseline. The baseline for this project should be, he said, starting in 2016, there are no operating turbines, so that any impact that occurs above that [should be recognized]. That is not how the project was analyzed in the EIR. We understand the rationale, but we think it is incorrect. It was mentioned before [in our comment letter, based on U.S. Fish and Wildlife Service estimates], that the [rate of eagle] take is about 12 percent [per year], and that if the project were compliant, it would not be over about 5 percent per year. So the effect is very significantly over what the federally recognized rate should be.

Changing to the issue of inadequate mitigation, he said he recognizes that the USFWS considers power pole retrofits as a primary mitigation measure to use for golden eagles. He said he has two major problems with that approach, first that while it could benefit other species such as bald eagles and red-tailed hawk, it does not benefit burrowing owls, which are species of special concern that is on the decline in California.

Next, he said the EIR did not explore other mitigation measures, such as radar, or as the applicant has indicated, controlling rodenticide use. We agree that [rodenticide] is a major problem for raptors, and could be a mitigation measure.

The other measures are open-ended. The [County, in the Final SEIR] did remove some of the more problematic measures – we had a real problem with the \$580 reference, but those that remain, for habitat conservation, while admirable, CEQA requires that for such an open-ended goal, the agency establish parameters in the EIR so that the public and decision-makers can actually buy into that mitigation measure. It is confusing, talking about power pole retrofits, and conservation, and seems to give the illusion that the measures are more robust than they actually are. Under CEQA, they are completely inadequate the way they are written now.

The repowering milestones that are presented are not mitigation measures to be considered. There's no real accountability. He said he wished to remind the Board that in [2005] the company agreed to a 12-year tiered [or phased] process for repowering. This is nine years later. It was known that these limits were coming, and it didn't move, it didn't act. So the idea that there will be new milestones in the next three years while they're working on [repowering] is not persuasive. And regarding the process of getting an eagle take permit, since it is in AWI's response letter, saying that it had a meeting last October, his conversation with a USFWS wildlife biologist said that there had been no progress made since that initial meeting. It appears that the meeting was held solely so that AWI can report that the meeting was held, but no real progress was made. As detailed before, they have met with AWI and promises are made, and nothing comes of it. So we don't believe credence should be given to the idea that somehow the milestones mitigate [for the project].

Finally, regarding cumulative impacts, we pointed out in our letter that the EIR needed a complete evaluation of the impacts on eagles and other avian species, such as burrowing owls, which are on the decline in California. The reason they are not on the endangered species list is that they have a major stronghold in Imperial County, but Imperial County

is going through a major drought, and if they suffer there, than the resident population in Alameda County becomes that much more important.

Also, the EIR does not address how it would adversely affect repowering overall. The County “pretty much promised” in 2013 that those modifications would facilitate repowering, because it would be more efficient, and everyone would be on the same timeline. We can see that that is not what is happening now.

In conclusion, he said he encouraged the Board to look at the other comments received, such as from the Park District, such as on the baseline mortality rates, and from the A.G.’s office, which addressed the problems with the Statement of Overriding Considerations.

Member Gosselin posed a question to Mr. Lynes, which he said he had also asked at the hearing to receive comments on the Draft SEIR, which whether or not there were *any* mitigation measures that would be acceptable to Audubon and allow it to accept approval of the CUP extension. Mr. Lynes replied that he had thought about it, and concluded that it had to be demonstrated to us that there is no significant impact, but the logic of the EIR is that there is a significant and unavoidable impact. So the EIR didn’t get to that level.

Brian Mathews, Alameda County Waste Management Authority, noted that the Authority owns property in the Altamont Hills, stated his opposition to the certification of the SEIR as inadequate for a number of reasons, and that the Board should not certify the SEIR or approve the project. The EIR does not quantify the impact on migrating avian species adequately, or address mitigation measures [to that impact sufficiently]. He said the project proposes to “power up” during the winter shutdown period, which is currently now shut down, and the EIR doesn’t adequately address that. It does not adequately address the No Project Alternative, of repowering. The project has significant and “overriding” impacts. A repowered project has less impacts. The SRC and its avian wildlife specialists have all agreed that repowering is the approach to take. We have been forced to repower for ten years or better, and this is giving AWI another chance to kill birds and [disregard] the public and continue to enhance its revenue. CEQA requires the Board to consider all the impacts; we don’t feel this has been done so far.

The baseline of the EIR should have been based on a repowered baseline. If the Board approves this project, you’ll need legal counsel as to whether it would make the County accomplice in the federal violation of the Migratory Bird Treaty Act.

We’ve heard about the asset swap, for two or three years, and we have to ask, what is the delay? Instead of asking if the swap would impact the project or not, let’s see it done, so you actually know what the project is. The asset exchange isn’t clearly defined enough.

The Authority has not signed the application as a [participating] landowner for the CUP extension. We understood in 2013, when the Authority did sign it, that they would shut down the turbines that are killing birds [after] 2015. We supported that effort to line up AWI with the others for repowering, and get on the same timeline. We don’t think the EIR adequately addresses the fact that we’ll have a lot of overhead power lines on our

property not removed. This means the property west of the Authority's property – Corbett, Hanson and Lim, cannot transmit power across our property, or from the Ralph property to the east of the Authority lands. This was not analyzed or discussed in the Project Description. If the Board certifies the EIR, even if the impacts are less [or reduced by mitigation], it doesn't identify what the project is.

Finally, the decision-making process should align repowering of this project with other repowering projects. It will reduce impacts on avian species. Our recommendation is, do not certify the EIR, adopt the no project alternative, and shut down by [the end of] 2015. Also, do not adopt the [Statement] of Overriding Considerations. There are alternatives not to have these impacts at all.

C.J. Dunton, property owner, spoke regarding the EIR, or as he would refer to it, the "Economic Impact Report" because if the project is not approved, there will be an economic cost to the County, and in particular county charities. In his case, in Alameda County, there would be a loss of charitable donations of about \$50,000 a year that has to be thought of. He stated that his family has owned the property since 1880, and described other family history in Alameda County. He also suggested that other property owners make other charitable donations and employ people. He said he would not be able to donate those funds without the wind farm lease income. Those charitable contributions went to two rooms at the Valley Community Care Hospital, and a children's care facility in San Leandro. Income from this project stays in Alameda County, he said. He added that he was offended by persons who do not live in Alameda County and still want to tell us what to do. He said people do not question the effect of vineyards, which do not [accommodate habitat for] burrowing owls. Vineyards use fake raptors to chase off the songbirds. He repeated his statement that the EIR was an economic impact report, because it is shutting down an income stream to the people that work in the area.

Morgan McGovert, Altamont Winds Inc., Senior Vice President, said he wished to provide background information on AWI as a company, and also the work AWI is doing for repowering. Altamont Winds is a small company based in Alameda County, in business in the Altamont since 1998. They operate 828 turbines and employ about 40 people. He stated that the Board knows that no one has successfully repowered in the Altamont Pass in Alameda County. However, he said, AWI is committed to repowering as soon as possible. Yet, AWI is a small company, not one of the billion-dollar competitors in the Altamont, and therefore cannot put millions of dollars at risk as quickly as they are trying to repower. It is for this reason we are requesting the CUP extension. It will allow us to establish the necessary cash flow to support the immensely expensive repowering process in the Altamont, and as soon as possible. For the past year AWI has made substantial progress toward repowering. In March of 2014 we submitted our application for the Summit wind power project, and have executed repowering lease agreements, and completed project layout and design. Preparation of the project specific EIR has begun with environmental field surveys in the Altamont Pass including wetlands and wildlife habitat by our planning consultant. We have begun consultations with various stakeholders, agencies and filed the actual electrical interconnection application.

However he said, there remain substantial obstacles to repowering as quickly as AWI would like. Firstly, there's the completion of the project EIR. As mentioned, an independent engineer has been hired by the County to prepare the project specific EIR, which will take approximately eight more months to complete a cost of approximately \$500,000. Secondly, for the eagle take permit, AWI has begun consultations with the Fish and Wildlife Service, about applying for and obtaining an eagle take permit. This may require additional avian studies, and possibly a federal environmental impact statement as well. This process could take up to 24 months, and cost approximately one million dollars. For the interconnection expansion studies, AWI has submitted its application in early 2014, and is now 12 months into the study process and has about 14 months to go, and \$750,000. For a new power purchase agreement, PG&E does not need any renewable energy until the 2018-19 time frame, so AWI has to market the energy to other utility providers in California. Our power purchase agreements cannot be executed until after the receipt of permits and the interconnection agreement. Also these negotiations take 6 to 12 months, and require about \$3.5 million upon execution. These items, totaling almost six million dollars, have to be completed before the final two obstacles which are project financing, and wind turbine procurement and construction. Project financing requires 4 to 6 months, after the permits, interconnection agreements and power contracts are all in place, then procurement and construction takes approximately 16 months after financial closure of the project. The due to the immensely costly and time-intensive process, the earliest AWI would be able to repower is in 2018.

Mr. McGovert concluded that today they are requesting the continuation of the CUPs to 2018, that will allow our small local company to continue to spend millions of dollars for repowering as soon as possible.

Member Harvey asked Mr. McGovert if AWI is able to extend their power purchase agreements between 2015 and 2018, or is that how they are able to continue operating, if they cannot get new [agreements]. Mr. McGovert replied that AWI will not be able to get new [agreements] and AWI is not able to extend the old ones either. If our permits were extended, we plan to sell wholesale electricity into the CAISO market, not under a power purchase agreement. Member Harvey said that he now understood there was an alternative way to sell electricity, and then continued, asking for confirmation that the earliest they could repower was 2018 and if that was the "drop-dead" date AWI is asking for. He continued further, and noted that those things do not often align.

Mr. McGovert replied that it was hard to say, but early 2018 [was possible], but AWI wants to repower as soon as possible. That is it; if it is not done in 2018, then that would be it. We do not believe we would be able to continue. That is the timeframe for us, as a company that doesn't have a billion dollars behind us.

The Chair noted that Mr. McGovert opened the door to some financial questions, into your company, and opened the door to some timeframe issues. Mr. McGovert had indicated AWI's inability to achieve certain tasks for repowering by 2015, based on the timeline, so his question was, when did AWI become aware of these timeline [constraints] and the inability to achieve them by the 2015 deadline. Mr. McGovert indicated he could not easily reply, because each was a different issue. The Chair

continued, and said that a bunch of issues had been “dumped” on the Board, and the Board is being asked, essentially, or to paraphrase, [to accept AWI’s argument that] “this is hard” and “we want you to be good guys” and recognize it is hard. Board Chair Gosselin said that he wanted to take this a step further. He said he had asked for information during the EIR hearing, but recognized that was not the appropriate place for it, but he was trying to get a handle on what sets AWI apart from the other companies. What he had heard so far was that AWI is small, and does not have the same income stream. He asked Mr. McGovern if there was more to it than that.

Mr. McGovern replied that was primarily it, because most, if not all of these issues could be overcome if we did have that kind of money. AWI just cannot afford to take all these risks, for example, with an eagle take permit, proceeding without having a [project-] specific EIR certified, without having CAISO interconnection, and generation interconnection agreement in hand, without having a power contract in hand to proceed, and AWI has to get financing to build these projects on our own balance sheet. Buying wind turbines, for example. All of these things that these billion-dollar companies can do, to the speed up [the process], in the hope of repowering. So, he concluded, [AWI’s small size] is the primary differentiator. AWI just does not have the resources to throw at risk. If it doesn’t happen, then “Oh well. We can’t do it.”

Chris Bokides, Project Engineer, AWI, offered to go over how the avian mortalities were estimated, and discuss the [state] Department of Water Resources prey poisoning and how that impacts background avian mortality. He made a PowerPoint presentation to the Board, describing the multiplication of installed capacity in MW-Years, by the mortality rates to estimate fatalities. So the result would be 11.1 eagle fatalities over the life of the project.

In 2014, avian fatalities were up, and AWI wondered why, since they were not operating more turbines in 2014 (short recess of less than a minute to bring up PowerPoint), so we researched it and discovered Dept. of Water Resources have an extensive prey poisoning program all along the aqueduct, that they believe contribute substantially to background mortality. He showed photos of the poison on the ground, and a map of the poison sites.

He went on to describe the climate and air quality benefits that would result from the three year permit extension. Over three years, over 609 million pounds of air pollution offset from the wind farm operation, with human health and avian benefits, of reduced heart attacks, premature mortality, asthma attacks, and many other illnesses that mostly affect children and the elderly. The three year extension will avoid 952 avian deaths.

With the 609 million lbs. of toxic pollution offsets, 952 birds saved including eagles, and taking into account avian background mortality which is estimated to be about 47 percent, or about 5.2 golden eagles blamed on the wind farms, and taking into account the 322 power pole retrofits which will save 11.1 golden eagles [projected to be] over the life of the project – summing all those up, you get 5.2 eagles saved over the life of the project, not including [those saved through] climate benefits, but just based on the mortality rates [used in the SEIR].

Jeremy Liem, Attorney representing AWI, discussed the proposed mitigation measures, that go beyond the self mitigating effects [of reduced air pollution]. To date we have spent over \$16 million in mitigation costs to avoid impacts on avian species. This amount includes monies lost with the annual shutdown, as well as the wages we have paid to the Scientific Review Committee, the facilitator, and the avian monitoring program, which we fund to mitigate the environmental impacts of our project.

One of the mitigations we're involved with is the winter seasonal shutdown. Every winter we shut down the turbines for 3 ½ months in the belief that it's the winter seasonal migration period for many avian species. The shutdown has a severe impact on our revenue, affects all the wind farms, and reduces the ability of the state to achieve its goals for more sustainable energy. A second mitigation measure we've applied is the removal of high risk turbines. AWI has paid to investigate whether specific wind turbines pose unreasonable risk to birds. AWI has removed the highest number of high risk turbines, and continue to remove the highest risk turbines, to reduce impacts on avian species. We have removed 92 turbines, 49 of which were ranked by the SRC to be the most hazardous to avian species, and we anticipate shutting down another 21 highly ranked wind turbines by October 31st of this year.

Our third mitigation measure is the use of visual deterrents. One method we use is black blade technology. It is a patented blade painting technology to reduce motion smear – intended to make a moving thing appear as a single object.

Rick Koebbe, President, AWI, discussed the time line and with a PowerPoint, discussed his comments that had been submitted in writing, including recommendations: 1) Exhibit A, MM BIO-17a – 60 days from implementation date, Feb 16, 2016 vs. permit approval; 2) modify MM BIO-16 language to be consistent with Exhibit B; 3) inclusion of benefits of clean wind power to wildlife; 4) delete mitigation requirements for background mortality; 5) use lower eagle fatality rate - 0.061; 6) allow AWI to manage power pole retrofit funds; 7) establish \$1,069.00 as the typical cost of each power pole retrofit instead of \$7,500; and 8) extend permit for 3 years to Oct 31, 2018. In response to questions from Board members, he further discussed finances, source of funding, and repowering expenses/budget. He reported their only investor was the Boilermakers and Blacksmiths Union. They fund the company 100 percent. They want to support repowering. They are not directly involved, because it is a different funding mechanism, but they won't put money at risk, because it's a pension trust fund, but he (Mr. Koebbe) has to fund the repowering project out of his cash flow to fund the development process.

Member Gosselin asked if he had offered a reduction in lease fees for extending the CUPs, and he replied no; he also has not increased wages for his employees, nor any for himself. Member Gosselin also asked what is the cost of repowering; he replied about \$6 million; what would the interest rate/return on investment be? Mr. Koebbe declined to state, but urged the Board not to weigh the decision only on the financial issues.

Member Gosselin stated the Board has a good collective memory, but he apologized for putting Mr. Koebbe in the spotlight [of financial questions].

Koebbe wished to emphasize that no one has repowered there; they are very difficult to achieve. Cannot breach confidentiality, but it is difficult. Member Gosselin asked if there were things that could be done – across all issues, including repowering and operations, that would reduce these difficulties? Feedback and to suggest changes to the mitigation measure development process? Mr. Koebbe, there has been no mechanism of that kind. The SRC is made up of five members whose sole goal has been to reduce avian impacts, but though their charter included consideration of the benefits of renewables, they didn't look at that. Every time we went to them with an idea, they ignored it, unless they could shut down turbines. We went, for example, with our black blade technology, to put up 300 turbines with a field test, which they rejected, because they didn't want the turbines running, they just wanted to turn them off. Member Gosselin asked if it was the SRC themselves, or someone they were consulting; Mr. Koebbe replied back that he was sure it was the SRC members themselves. They were biased [towards] turning off wind turbines as the only solution. Could they have done a better job, he asked, and answered 'certainly'.

Member Harvey mentioned there had been an issue [or a contention] that there would be 'double dipping' if you remove high-risk turbines; he said he assumed you wouldn't be counting those [for the staff recommendation to reduce capacity by 50%]. Ms. Rivera replied that basically the impacts were determined just from MWs, and not from an HRT ranking. So, if the turbines are removed, the MWs are reduced [somewhat]. Member Harvey continued, and asked about the power pole retrofits, if AWI would be charged the actual cost, or the \$7,500 amount? Ms. Rivera replied that the mitigation is about the power poles, and not the cost. The costs are provided for reference but the objective is the retrofits. Member Harvey confirmed his understanding that AWI would only have to pay the actual cost, and not the \$7,500 [per pole retrofit].

Mr. Koebbe interjected, saying that he understood he would have to advance the \$2.4 million, when it would only cost \$322,000. Member Harvey asked if this was true; Ms. Rivera replied back that it was one of the proposals, but she thought it was supposed to be a midway point, not the \$7,500 cost basis. Andrew Young explained that the staff report used an average of \$2,500 per power pole, based on the range provided of between \$1,000 and \$4,000. Member Harvey asked if the County had the ability to determine the actual cost, and Mr. Young replied back that the information provided by [the Applicant] for the PG&E cost was obviously very useful. He added that the intention was not for the County to administer those funds, but just to obtain some documentation that those funds had been deposited.

The Chair asked if there were any other speakers, and deferred one speaker from making a 'rebuttal' statement. Public testimony was closed. The Board discussed the certification of SEIR, Findings and action options.

Member Goff began, saying that the EIR is intended to assist us, to answer the question of whether or not there is enough information in the EIR to make a decision about the Project. The Chair added that the EIR is supposed to discuss environmental impacts, potential mitigation measures, and Member Goff agreed, but for clarification, restated that the test was whether as a whole the EIR provided the needed information, and not so

much the details of each piece fitting exactly into place. More specifically, he asked if the Board did not agree with a certain piece of the EIR, do we have to disagree with the whole EIR, the whole information packet. He continued and said there was disagreement "among the EIR"; The Chair agreed that EIRs could go in different directions with certain [details or levels of] information, but the bottom line is whether there are significant impacts, and whether there is potential mitigation for those impacts, whether it can be mitigated, and what we are going to adopt as mitigation. The Chair added that he found that in this report, that it provided him with the foundation to move on to consider the application [itself].

Member Goff asked, if the Board did not certify the EIR, what would that do to the process – would it put brakes on the project? The Chair agreed, and asked staff to confirm that the County would have to redo the SEIR, recirculate it. Mr. Young replied and said it would be his interpretation of the requirements to go forward. County Counsel Heather Littlejohn agreed that the project could not be approved if the SEIR is not certified. Member Harvey asked if there were an appeal process for that, and Ms. Littlejohn said yes. Member Harvey stated that it could be a lot of time, perhaps enough time that the project would become "dead in the water".

Member Goff stated that he believed the EIR had a lot of information in it, regardless of how you interpret it. We know there are flaws in it, like different ideas of what the baseline should be, or different ways of looking at it brought to us by the public, but as a whole, it assists me with making a decision for the process.

Member Harvey said for him, the EIR has to provide a solid platform in order to make a decision on the application, and the EIR, by itself, is [meant to be] there to provide that platform. The project is ultimately asking for overriding considerations, and he said he was having difficulty finding justification for that, based on the bigger picture. It is hard, he said, to not look at this "top-down" and not just "bottom-up".

The Chair asked staff if the EIR has an obligation to provide enough information to address the overriding considerations, or is [separate] testimony supposed to flesh that out for the Board. Ms. Rivera said that the intent of the overriding considerations is to point out what the EIR determines as significant and unavoidable, and that gives the reasoning to the decision-makers, but [the EIR] is not supposed to justify, it is just to be an informational document. The Chair replied back that obviously the overriding considerations go beyond the impacts.

The Chair stated that regardless of what could have been included in the SEIR, he said it does provide the information that he would need to consider the environmental impacts. It did [describe] that there are significant impacts and what those were, and that there needs to be mitigation provided and that there are unavoidable adverse impacts. The next question – unless there is further discussion – is whether or we certify the EIR, it is a two-stage process.

County Counsel Heather Littlejohn suggested that the Board should review the Draft Resolution which has a list of the findings that will need to be made to certify the SEIR. They need to be the findings that the Board is ready to make.

Member Harvey stated that his concern remained about the “slippery slope” of approving the SEIR, it would provide a path for something other than repowering, we’re opening the door to extending it again, with another supplemental EIR in 2018, and [perhaps] another supplemental EIR from another wind energy operator. He said he would like to know if that is what is coming. The Chair asked if that comment was about the project, and Member Harvey replied back that it was about the EIR, and not project.

The Chair then asked if the EIR could address future eventual [outcomes]? Ms. Littlejohn replied back that the Board’s decision on the EIR should be based on its content, and whether it complies with CEQA, adequate information and notice, etc., and so she said again that the Board should focus on the content of the SEIR.

The Chair asked to confirm where in the Resolution the findings were made. Member Goff asked if the Chair wished to go over them one at a time, and Member Harvey agreed, and each member read and consented to the first finding, and then Member Harvey suggested that the second finding was in dispute, saying that the Board had heard testimony from [the public] indicating they were in disagreement about the EIR, and he cannot [dismiss those remarks] so he would set that aside. The Board concurred with the next several findings, and then Member Goff remarked on finding no. 8, beginning with “No new comments or information has been submitted...”, and upon consideration indicated his agreement. Member Harvey stated that with regard to no. 8 he believed that the Board had received testimony from the public, that if it were incorporated into the EIR, the Board would have more robust mitigation, and could possibly better balance that mitigation with the unavoidable impacts.

The Chair asked Member Harvey if he would be able to balance that based on the testimony, and Member Harvey replied no, not based on the testimony he’d heard.

After some discussion of the procedure, such as taking up the overriding considerations separately, and by Member Goff, what the value would be to discuss the project if the Board cannot agree on the EIR, the Chair indicated that the Board would proceed to take action on the SEIR before considering the project itself.

Public testimony was re-opened re adequacy of the SEIR. Brian Mathews indicated from the basis of what he had heard, the Board appears ready to certify the SEIR. He stated that some of the testimony that has come before you is a smoke-screen, is obfuscating and is diversionary – a mea culpa – that really isn’t here for the Board to decide. AWI has been at the table for 15 years and has smart people, and could have joined in with the other operators, but instead have gone with one diversion, then another, and try to work one angle and then another. It is time to say “enough”. The EIR is inadequate, it doesn’t look at the baseline properly, and based on that alone, you cannot certify this EIR. The baseline should have been based on a repowered project in this area, as opposed to allowing this to go on. He raised a question to staff that the Resolutions still shown the

[ACWMA's] property as subject to these Resolutions, and when those parcels would be removed. Staff confirmed that the Resolutions would be amended prior to action to strike or remove the Authority's parcels from the Resolution.

Mr. Mathews continued and addressed the contention by AWI that they would [save] 52, or 5 "extra" birds because of the positive effects of renewable energy. That is based on a really flawed assumption that any [replacement] energy is going to be produced by coal or climate-changing burning of gas. There is hydro-electric, there's other wind, there's solar – that's at least three sources of energy to replace what would be lost by [not extending] these wind turbines. And the assumption that we're going to have 900 tons of greenhouse gases is a false assumption. The Board cannot use that as testimony, or it would be ill-advised to use that as testimony, or a basis to determine that the SEIR is adequate, because, that is a false assumption being suggested by the proponent. He closed, saying that he doesn't mean to suggest that the Authority is insensitive to small business, or businesses that are wanting to repower, and that the Authority finds the Applicant to be a good partner, but it is time to move on, and 'get with the program'. If AWI had spent their time on getting this EIR done, and getting repowering done, and had worked with the AG, they would be right on schedule, but instead they've spent two years "fooling around" with this extension.

C.J. Dunton spoke, repeating his prior statement that the EIR should be deemed an Economic Environment Report, because the economics come into effect. If it is about birds, let's call it a Bird Report. He described reports of birds being killed in December, when the turbines are shut down, and asked why there was not a report on 580, which had gone from nothing to 15 lanes wide in some places. He can recall when there was no 580, and not many birds, because the farmers shot them, because they were getting the chickens and the lambs. Nobody raised hell in those days. The economy comes into effect, and affects the environment. Birds are not the only part of the environment.

Mike Lynes spoke, and stated that he would limit his remarks to certain aspects of the EIR and the draft Resolution, particularly no. 3 - that "The Board certifies that the Final SEIR reflects the County's independent judgment and analysis." He reminded the Board that in 2013 the same Board reviewed the current proposal and found it to be infeasible. And yet today, the Board is prepared to certify an EIR that would lead to the alternative. He can only believe there are other pressures at work here, than the "County's independent judgment and analysis." You have heard political pressure, the economic argument, and he also recognizes the economic role of benefits to people versus benefits to the environment. He said there may be reasons that the County did not really analyze this project in its entirety. With regard to finding no. 8, whether or not "new comments or information has been submitted" I think even AWI themselves had questions about the adequacy of the EIR, because it didn't include all the "co-benefits" of wind power to the project itself. They would not say that's a reason not to certify the EIR, but it goes towards the question of whether the EIR is effective. The EIR appeared very rushed. So, not only does it not address the Applicant's desire to consider co-benefits, it does not fully consider cumulative impacts, burrowing owls, and as far as benefits go, does the Board really understand power pole retrofits? Are they in the project area and are they going to save those birds? How is it going to be implemented? So, in conclusion, he

believes testimony has been submitted that throws into question whether or not the EIR is adequate.

The last issue he wanted to raise was the baseline, because it is a huge gaping hole in the EIR, because it looks at the 2013 baseline, where operations would continue, as opposed to everything shutting off at the end of this year, which they should. That's the true baseline for the time of analysis. That's a major problem we have with the [analysis].

Cindy Margulis noted that the 'end result' of the EIR was that there would be significant unavoidable impacts if you proceed with the project. She said if you proceed with the project, the County would potentially be in violation of state and federal law. Secondly, what the applicant is asking for – is “Gee, we’re over-mitigating, we’re actually going to [save] birds” – that’s just not rational. You’re seeing with this project, that is costing the tax-payers a lot of money, that they are trying to wiggle out of their commitments. They previously agreed to repower. Repowering is in the interest of Alameda County. The EIR does not identify any benefit to *not* repowering on schedule as previously agreed. And that is a glaring oversight.

Finally, Ms. Margulis said she had never believed that the environment and economics are automatically in conflict with each other. Here in Alameda County it is in our interests to have the kind of power that gives us the maximum mega-wattage, with the least environmental impact. All of these species have a role in the ecosystem in which we live. And when you kill one golden eagle, according to mortality figures, you are actually potentially killing much more. Depending on when you kill that bird, and the stage that its family is in, you’re potentially endangering the entire life of that eagle. So the impact is potentially much more than what is in the specific [numbers shown in the] EIR.

So, she concluded, do not certify the EIR, because you would be [in conflict with] CEQA, going against [U.S.] Fish and Wildlife, and you’re going against what is in the best interest of Alameda County, which is to repower on the most rapid schedule possible that was agreed to by all the other power vendors. She urged the Board to act accordingly.

Public testimony was closed. Ms. Rivera stated that the Board should consider that the purpose of the Supplemental EIR – because the Board had certified the original EIR in 2013 – it is to supplement that EIR with any available new information.

Member Harvey asked if the overriding considerations were part of the action on the EIR and was advised by the Chair that it would be separate. The Chair held up an edition of CEQA, and asked who else had a copy at hand. He continued, and stated that every ordinance or guideline leaves a degree of “wiggle room” and rarely establishes any absolutes, and that is his read of CEQA.

Member Harvey stated that with respect to finding no. 3, “that the Final SEIR reflects the County’s independent judgment and analysis” that he was assured that that was the case, which is not to say that personally that it may not be enough, or accurate enough, but that he thought the Board Members were influenced by different things at different levels and

that will be reflected when the Board votes. With regard to no. 8 (about “new comments or information”, he said Mr. Lynes made his point exactly, that there was significant testimony today about there not being enough in the EIR and that there was significant disagreement on both sides of the issue about the information that was in the EIR. He said he could not know the right ‘answer’ but knows that the questions are out there, and it is not enough, and therefore he cannot vote to certify the EIR.

Member Goff made the motion to certify the SEIR and the Chair seconded. Motion carried 2/1 with Member Harvey dissenting.

The Chair stated that the Board would move next to the permit extensions themselves, and that there are two [main] issues to the permit, one is the overriding considerations, and the other is the permit, recognizing that the Board has to adopt those overriding considerations, too. He pointed out that the Board will not separately be approving or disapproving the Exhibits.

The Chair announced a brief recess to review Exhibit C, the Statement of Overriding Considerations.

3. **ALTAMONT WINDS, INC., MODIFICATIONS TO EXISTING (YEAR 2005, AS MODIFIED IN 2013) CONDITIONAL USE PERMITS, PLN2014-00028** ~ Application to extend 16 conditional use permits (CUPs) for three (3) years, through October 31, 2018, under specified conditions, beyond their current expiration date of October 31, 2015, for operation of an estimated 828 existing utility-scale wind turbines with a combined existing (current) generation capacity of 85.8 megawatts (MW), located throughout the approximately 14,436-acre Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), in the eastern portion of Alameda County, adjacent to Interstate I-580, on up to 58 parcels bearing 58 separate Assessor’s Parcel Numbers. Approval by resolution is contingent on a separate resolution to certify the FSEIR (see item 1), as well as adopting written findings of the significant impacts of the permit modifications, a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program (MMRP).

Staff Planners: Sandra Rivera and Andrew Young

The Board discussed Exhibit C, Statement of Overriding Considerations, project impacts, and lack of substantial evidence to support the Statement. The Chair asked the other Members if they had any comment, and Member Harvey stated that he thought the Statement should provide clear evidence “staring him in the face”, but that he is unable to see that evidence. While he sees economic benefits for a few people, he see wide[spread] other impacts. Member Goff said he agreed 100%, and the Chair also indicated 100% agreement as well. The Chair said he had read relevant sections of CEQA during the recess and adding to what staff has shared in the report, per Section 15093(b), “the statement of overriding considerations shall be supported by substantial evidence in the record.” The state Attorney General sent comments to the County on that subject, and

the Chair said he believed he had to agree with the Attorney General's opinion, that there is not *substantial* evidence in the record for overriding considerations. As part of the testimony, the Chair indicated he had raised questions in the hope that he would receive any overriding, substantial evidence, and he said, he wasn't able to receive it. So he wanted to know what could be done at this point to address that issue. The only thing he could rely on was what he had asked at the previous hearing, which was whether there could be mitigation [agreed upon] that would compensate for the impacts of this project.

The Chair stated that there's been a lot of debate about the benefits of wind power production, and nobody is disputing that. The dispute is about old generation wind power production versus new generation wind power production. That's the discussion the Board is having today. New generation wind power production has been promised since 2004 as the best alternative for mitigation. That's the direction the process has been going in, and the effort that is being made by everybody. We are being asked to consider, whether or not, the public would like to exchange its public property, and that property is raptors, for the benefit of a single company. That is what the issue boils down to. He said he had been looking for overriding considerations to help him with that, and all that he could come up with was that the charges for mitigation reflect the compensation that the public would have the right to expect for this application. The Chair noted that he had asked the Audubon speakers to address that, and they may now do so, but if they do not wish to, that is also fine. He said he had also asked the representative of the East Bay Regional Park District to address that, or not, if they don't choose to.

With that, he re-opened the public hearing and public testimony was called for, with a request to be brief, not to repeat comments made before, and simply queue up. However, since there was a speaker card submitted, and he had not spoken before, he called for Juan Pablo Galvan to speak first.

Juan Pablo Galvan, Land Use Planner for Save Mt. Diablo, said he was surprised by the comments made by the Applicant, because he expected them to say, they were sure they would be repowering by 2016 or 2017, and instead it seems they don't expect to repower in 2018, if ever. He respects the viewpoint of the small business person, but did not believe the situation was akin to Walmart undercutting the small independent operator – as if NextEra were like Walmart undercutting AWI. Instead, it seems like AWI is structured with an inability to comply with regulations that have been in place for years. Given the focus throughout the area on repowering, repowering does not seem unreasonable if all the other companies are able to do it.

Michael Lynes said he would just like to touch on an issue he had not raised before, which was the issue of equity to stakeholders. The reason is, that when Audubon signed the Settlement [Agreement], Audubon took a lot of flak from the Center for Biological Diversity and the Sierra Club, who said Audubon was "selling out" the birds, "selling out" the wildlife, but that they had settled because they saw the way forward was repowering, and that's what we worked on. In 2010, we settled with NextEra and gave away some rights we had under the prior agreement, but we went ahead with Next Era because we were looking forward to repowering. We did the same thing when we had to give up on the NCCP [Natural Communities Conservation Plan]), which was extremely

expensive for the companies – they didn’t want to do, but we gave up on it because it was clear from the County that we needed to [move] forward with the Programmatic EIR, and that was the best way forward to repowering. In 2013, Audubon opposed the permit modifications for AWI, but Audubon did not appeal it, or litigate it because we understood the County’s reasoning for doing it, which was to facilitate repowering, and get everybody in the same place. So Audubon said “alright” with a plan that at the end of 2015, everything goes off. And now, with the EIR and the decision before the County, the County is telling us that all that good faith is for naught. That really, it was just about extending the permits further.

It has been brought up before, about fairness for the other companies. But in closing he asked, if the project is approved today, for what reason would the County not consider it again, the next time this applicant comes to you. And that is not good public policy or government.

The Chair asked Mr. Lynes again, if there were any mitigation measure – with nexus to the project – that would address their concerns. Mr. Lynes replied back that the problem was that in the confines of the EIR – which has now been certified – there is possible mitigation, but it would have to reduce impacts to be less than significant impacts. The Chair asked if those criteria could be laid out, and Mr. Lynes replied that it would take a team of [stakeholders] – Audubon, the County, the companies, to come up with a real conservation strategy that would actually do that. The Chair concluded that the Board would have to actually continue this hearing. Mr. Lynes added that he did not want to volunteer AWI into that process. He said the NCCP process fell apart because of the complexity of getting a conservation benefit for the different species. It would be a long, arduous process to get there. He said he thinks we could, but he didn’t think they were in a position today, based on the possibility [of such an agreement]. The Chair said he had a suggestion, because there is a way of doing things that hasn’t been done by the agencies. The agencies have the freedom to just look at a commitment to mitigate, and that is legally binding. So a deposit of funds into a trust account could be considered a legally binding commitment – with an outline for the use of those funds. Mr. Lynes replied back that he thinks he address the law on that subject in his letter, and the law requires fairly well-defined parameters of what you’re actually going to do with those funds or for that mitigation. He said he doesn’t feel that is present at this point in the process, for this project. The Chair acknowledged the comment but said he disagrees on that, that he did not think a high level of specificity was required. But the intent to get to that specificity is required. This time does not allow us to research the code, but if there were a continuation then such information could be considered.

Doug Bell, EBRPD, said he wanted to discuss mitigation and possible mitigation strategies [and the use of trust funds]. He said he thought the intent would be proper to follow, where one could put together a type of landscape level mitigation, that could improve the situation entirely – somewhere along the lines of an NCCP/HCP that was proposed a few years ago – to go beyond just a set number of retrofits. So there are efforts that would go above and beyond power pole retrofits. He would caution against the idea promulgated by AWI that would reduce mitigation options or reducing funding

for specific programs. The Chair asked Dr. Bell if continuation would enable more research into how that would work would be helpful, and Dr. Bell affirmed that it would.

Brian Mathews, ACWMA, reported that the Authority signed the CUP applications for the modifications in 2013 for operations through 2015, under the auspices and knowledge that [AWI's turbines] would be shut down on the same schedule as anyone else. This application is a "second bite at the apple." The Authority did not sign the second, current application for modifications, because AWI is not fulfilling their promises that were given on the last one. So the Authority [does not recognize any] credibility by AWI that they will follow through, and [not] just do what they want [to do]. For this discussion of mitigation, and additional things that could be done – is a fleece. It would just distract them from the repowering project, that they need to get done anyway. Starting another committee or another process, or spending money, gives them a diversionary tactic around the process that has been agreed upon, and that all the scientists, the public, the stakeholders, the County, the landowners, have an understanding of. He said he suggests that the Board just cut that off, as not productive towards repowering, which is the most effective way of mitigation of killing more birds.

Rick Koebbe, AWI, in rebuttal, said it is their intent to repower in 2018. He said if they do not, they will never be back for another permit extension. Ever. He offered to swear as such. He said the assertions that they would be back [for another extension] is just to "throw you off". He said all the land leases for repowering expire in 2018 [(if repowering is not complete)]. If they do not repower in 2018, they will not be back in 2019. He assured the Board that they would not be back for another extension. There is no scheme to just operate the turbines "and make a lot of money." That is the furthest from the truth. AWI is only here to get the repowering done. We make this much money (*using a pinching gesture*); any cash we make is going towards repowering.

The overriding considerations, he continued, were the same ones the board approved in 2013, so, he said he was surprised they were no longer valid and that the Board no longer sees the benefit. There's a climate benefit, economic benefits to the landowners, County tax revenues, all kinds of benefits to the project, and society, overall. Some of the commenters here in the audience said AWI had made promises. He said he had kept all the promises he had made. He said he did not promise [in 2013] not to come back for a permit extension, but promised to get the repowering done, and will do it if the Board gives AWI the permit extension. He said he did not promise to get the repowering done by the end of 2015. That was why he did not sign a Settlement Agreement. He said AWI is different, it is smaller, and can't do things that other companies can. If we don't get the permit extension, and there's no cash flow, we can't repower, he said.

Public testimony was closed. Board Chair Gosselin asked if the Board cannot make the findings of overriding considerations, if it would disallow the Board from going any further in evaluating the CUP extensions. If the Board cannot make those findings, then the Board would obviously be voting not to approve the application. He continued and asked if it would be helpful for the Board to make findings specific to that condition, or if it was enough just not to make the findings that are required to approve it. Counsel advised that whatever discussion the Board thinks is appropriate, that come into your

decision, whether or not you can make than required findings of overriding considerations, the board is certainly free to make whatever decision you choose. She added that the more substance there is to the findings, it is always beneficial.

The Chair said the Board should now determine if the other Members agree with Member Harvey's sense that there is not enough to make the overriding considerations. Member Harvey agreed, saying that the information he did have was not a compelling "weight" that was tipping him towards making the substantial overriding considerations. The Chair stated what he had said before, that the only way he could make the overriding considerations, was if they could increase the mitigation funding that would address the public's concern about the damage being done [to avian safety].

The Chair continued and said there were two ways to value the loss of natural resources. One is ascribing a value to the community a value that represents the perception of loss – i.e., community value. He said the Board is not doing that; we are instead using Resource Equivalency Analysis, which is more of a technical exercise, and which looks at ways of reproducing the habitat or the effort that is necessary to reproduce the lost resource. It is a tool used, for example, with major oil spills, to quantify the lost resource and assign values to that quantification. The community value system is a much more arbitrary kind of system and that is typically done by conducting massive surveys and asking the public what they think things are worth. And though that has not been part of the process, the Board has obtained a sense of that from the testimony received. It is not an issue of the public wanting money, for birds that are killed; instead what he said he had heard, over and over again, is that the public will accept [some degree of] avian mortality, but the public wants to know that a serious effort is being made to reduce it as much as possible, so that is the issue. That is the reason that a lot of the testimony received today is pertinent to the application we heard in 2013, but it is no longer pertinent, because the issue now is repowering and that is what the public is asking for.

So the Chair said that, if the mitigation was [expansive] enough the public might consider it. And he said he thinks in order to receive further testimony on [acceptable mitigation] the Board would have to continue it. So the options are, he said, either continue it or decline the application.

Member Harvey said looking ahead at the process staff made a really aggressive attempt at trying to "water down" the application and install a lot of mitigation, in the draft Resolution they prepared, and crafted some language that the Board could get their heads around. However, he said the Board did not come close. Even the applicant's "showstopper" was [very distant] from what staff was proposing and some of the [staff's] "showstoppers" are not even real issues. So he said he wasn't sure the Board was going to get through this without an appeal anyway.

The Chair agreed, but added that a continuation provided for a small chance may move us away from an appeal process but as mentioned by Mr. Lynes, would require some conferencing away from our board to reach agreement on that.

Member Goff said he recognized that the Chair had a vision [for this mitigation]; the Chair replied he did not have such a vision; Member Goff said he did not see any mitigation that one could throw at this, as long as one had to use a baseline of no turbines turning. The Chair said he had heard a little bit of a vision from Dr. Bell, and maybe less of a vision from Mr. Lynes.

Member Harvey said the most fair thing they could do for the applicant was to take action today, to allow them to make a better pitch to the Board of Supervisors. The Chair said that gets us to the point for making findings and providing guidance to staff with findings specific to the Board's decision. He said the Board had put a lot of time into this and the Supervisors will have a lot of items on their agenda.

Member Harvey said the supervisors will get a certified EIR; The Chair interjected and asked if the certification would get appealed or if it would be separate; Counsel explained that there were two separate actions. The Chair recognize that somebody could appeal the certification. Member Harvey said that if he had ideas about how to move this forward he would certainly share them but he said he does not know what he could add.

Member Goff asked if the Chair wanted separate findings such as for economic benefit environmental benefit etc. The Chair agreed and said if the Board can state each of those, it will justify our decision, and provide useful information to the Supervisors, as well as the applicant.

The Chair stated the first finding, that the Statement of Overriding Considerations does not meet the requirements of CEQA Guidelines Section 15093 for such a Statement. Secondly, based on testimony and evidence before the BZA, the economic benefit of this specific project does not exceed the value of the impact on biological resources. Thirdly, no evidence has been presented or substantiated that no project or no other wind power project will move forward should this application be denied and the argument that there would be a loss of jobs would not be sufficient to outweigh the unavoidable adverse environmental risks of the project.

The Board agreed that those findings were sufficient. Member Goff said it would be unfair to continue this to the end of the month. Member Harvey said the Resolutions the way they are crafted now, are vehemently opposed by the applicant and would be a "non-starter". He added that the applicant would be appealing it themselves were we to adopt it as it is stated, and the Board does not have the time now to re-craft those. Part of the reason the Board is taking an action now, he said, is so the Applicant can have an opportunity to have a different result. The Chair agreed that there was a potential for a different result. Member Harvey agreed and said we did not create this timeline.

Member Harvey made the motion for a denial and Member Goff seconded. Motion carried unanimously, 3/0.

STAFF COMMENTS & CORRESPONDENCE: *None*

COMMISSION ANNOUNCEMENTS, COMMENTS AND REPORTS: *Member Gosselin provided an update formation of an Ad Hoc Committee to advise on the formation of the APWRA Technical Advisory Committee, reporting that the Committee has been formed with two members and discussion on another, with plans for a total of four members.*

ADJOURNMENT: *There being no further business, Member Goff moved to adjourn the meeting at 5:00 p.m. Member Harvey seconded the motion. The motion was carried 3/0.*

ALBERT LOPEZ, SECRETARY
EAST COUNTY BOARD OF ZONING ADJUSTMENTS



**ALAMEDA COUNTY CDA
PLANNING DEPARTMENT**

STAFF REPORT

TO: EAST COUNTY BOARD OF ZONING ADJUSTMENTS
HEARING DATE: FEBRUARY 2, 2015

GENERAL INFORMATION

**APPLICATION: MODIFICATIONS TO 16 EXISTING CONDITIONAL USE PERMITS
(APPROVED YEAR 2005, AS MODIFIED IN 2013), PLN2014-00028**

APPLICANT: ALTAMONT WINDS, INC.

REQUEST: To extend 16 conditional use permits (CUPs) for three (3) years, through October 31, 2018, under specified conditions, beyond their current expiration date of October 31, 2015, for operation of an estimated 828 existing utility-scale wind turbines with a combined existing (current) generation capacity of 85.8 megawatts (MW).

LOCATION, SPECIFIC PERMITS, OPERATORS, PROPERTY OWNERS AND PARCEL NUMBERS: The existing turbines are located throughout the approximately 14,436-acre Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), in the eastern portion of Alameda County, bisected by Interstate I-580, on up to 58 parcels bearing 58 separate Assessor's Parcel Numbers.

Conditional Use Permit Numbers, Facility Permittee/Land Owner family names and Assessor's Parcel Numbers (APNs) as follows:

C-8036, Altamont Infrastructure Company/Frick & Costa, APN: 099B-5680-015-00;
C-8037, Altamont Infrastructure Company/Pombo, APNs: 099B-6300-002-01, 099B-6300-002-02, 099B-6325-002-03, 099B-6325-002-04 and 099B-6425-001-06;
C-8134, Altamont Infrastructure Company/Rooney, APN: 099B-6125-002-00;
C-8137, Altamont Infrastructure Company/Mulqueeney, APNs: 099A-1800-002-03, 99A-1800-002-04, 99b 7890-002-04, 99B-7890-002-05, 99B-7900-001-05, 99B-7900-001-07, 99B-7910-001-01, 99B-7925-001-03, 99B-7925-001-04, 99B-7925-002-04, 99B-7925-002-05, 99B-7975-001-00, 99B-7980-001-00, 99B-7985-001-03, 99B-7985-001-04, 99B-7985-001-05, 99B-7985-001-06 and 99B-8050-001-00;
C-8191, WindWorks Inc./Mulqueeney, APN: 099B-7910-001-01;
C-8216, WindWorks Inc./Alameda County Waste Management Authority, APN: 099A-1810-001-00;
C-8232, Altamont Infrastructure Company/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/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 and 099B-7300-001-05;
C-8241, Altamont Infrastructure Company/Walker Family Trust, APNs: 099B-6100-002-10, 099B-6100-002-12, 099B-6100-002-12, 099B-6100-003-10, 099B-6100-003-11, and 099B-6100-003-13;
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;

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

ZONING: A-BE 160 and A-BE-320 (Agriculture, Minimum Building Site Area 160 and 320 acres, respectively) Districts, intended to promote implementation of general plan land use proposals (or designations) for agricultural and other non-urban uses, to conserve and protect existing agricultural uses, and to provide space for and encourage such uses in places where more intensive development is not desirable or necessary. (Section 17.06.010). Permitted uses include a variety of agricultural and agricultural support uses, including crop, vine and tree farms, animal husbandry, wineries, fish hatcheries, trails, and on qualified building sites, single family and secondary dwelling units. Conditionally permitted uses include privately-owned wind electric generators.

GENERAL PLAN DESIGNATION: The site is subject to the East County Area Plan (ECAP), adopted in 1994 and amended substantially in November 2000 by the voter-approved Ordinance/Initiative Measure D. The ECAP designates the site as Large Parcel Agriculture (LPA), and establishes minimum parcel sizes for specific areas of the East County (100 acres for the subject parcels) and maximum building intensity (floor area ratio or FAR). Subject to the provisions, policies and programs of the ECAP, the LPA designation permits one single family residence per parcel, agricultural uses, agricultural processing facilities, public and quasi-public uses, quarries, landfills and related facilities, "windfarms and related facilities, utility corridors and similar uses compatible with agriculture."

ENVIRONMENTAL REVIEW: A Final Supplemental Environmental Impact Report (FSEIR) has been prepared that evaluates the potential environmental impacts of the application to extend for three years the existing CUPs, and which is "tiered" from an EIR that was certified by the EBZA on July 18, 2013 for modifications approved on the same date, to allow full operation of the 828 existing turbines through October 31, 2015.

RECOMMENDATIONS:

The Board of Zoning Adjustments should receive a staff presentation, take public comment on the FSEIR and on the subject application, review the draft resolutions and exhibits, including the Mitigation Monitoring and Reporting Programs (MMRPs) for the project, certify the Final SEIR by adoption of a draft Resolution for the purpose of CEQA, and approve the proposed CUP modifications (PLN2014-00028) by adoption of the second Resolution and proposed conditions.

PERTINENT FACTS:

Physical Features: The subject CUPs are widely distributed across the Alameda County portion of the Altamont Pass Wind Resource Area (APWRA). The project location containing AWI's existing wind turbines falls within an approximately 14,196-acre portion of the 50,000-acre APWRA. The APWRA extends across the northeastern hills of Alameda County and a smaller proportion of Contra Costa County to the north. The region is generally characterized by rolling foothills of annual grassland. The area in which the CUPs are permitted is mostly treeless with relatively steep terrain on the west and gently rolling hills on the east toward the floor of the Central Valley. The underlying landscape generally consists of undeveloped grazing land. Major features of the area include the wind turbines, ancillary

facilities, an extensive grid of high voltage power transmission lines, substations, microwave towers, a landfill site, Interstate 580, railroad track lines, ranch houses, and clusters of rural residential homes on Dyer and Midway Roads.

History/Background: The 16 subject CUPs were initially approved by the EBZA in November 2003 and January 2004 with conditions, as the continued operation of existing wind farm facilities, including turbines and infrastructure. These permits, along with 13 other CUPs approved on those dates, and another two CUPs approved in 2006, were approved with a determination that they were categorically exempt from CEQA as the continued operation of existing facilities. A total of 31 CUPs were operating under a common set of conditions after the Alameda County Board of Supervisors approved a resolution in September of 2005 which provided for operation of the wind farms through 2018 but with phased decommissioning requirements, in the expectation that repowering of the APWRA – replacing the older generation turbines with newer and substantially fewer, larger and more efficient turbines – would be well under way after 2010. After litigation by a coalition of environmental advocacy organizations in 2006, a Settlement Agreement was approved in 2007 by three of the four wind energy companies that required greater commitments to repowering and cessation of most of their operations after 2015. As a result of the Settlement Agreement, the conditions of approval applicable to the turbines beneficially owned by the Settling Parties were substantially changed; however, AWI (the current applicant) was not one of the Settling Parties, and therefore remained subject to the original conditions adopted in 2005. More detailed history and background on the year 2005 CUPs is provided in the prior staff report on the public hearing on the Draft SEIR on December 18, 2014.

In 2013, AWI obtained approval of its application (PLN2011-00102) to modify these same CUPs, to eliminate the requirements of the year 2005 CUPs for phased decommissioning, which more specifically required removal of 10 percent of its original 920 turbines by September 30, 2009 (92 turbines), an additional 25 percent by September 30, 2013 (35 percent cumulative, or 322 turbines), an additional 50 percent by September 30, 2015 (another 460 turbines), and the remaining 15 percent of turbines (138) by September 30, 2018. The first phase of decommissioning took place in 2009, at which time AWI removed 10 percent of its 920 turbines. Together with the elimination of phased decommissioning, AWI also sought under that application to remove the requirements for winter seasonal shutdown, and proposed that 100 percent of AWI's turbines would be decommissioned by the end of 2015. The modifications approved in 2013 (July 19, 2013, by Resolution Z-13-36) were the subject of an EIR to address both the CUP modifications and decommissioning activities, as required by the year 2005 CUPs. On the basis of the 2013 EIR, the County denied the request to eliminate the winter seasonal shutdown and instead approved an alternative with continued seasonal shutdown, consistent with other wind farm operators, but with expiration on October 31, 2015.

The 2013 approval also instituted a Mitigation Monitoring and Reporting Program (MMRP) which primarily applied to ground-disturbing activities associated with repowering, but also required that the seasonal shutdown established in the prior years by the County be maintained through the life of the project (Mitigation Measure BIO-16), and retrofit off-site electrical facilities (i.e., power poles) proportional to the number of projected eagle fatalities (Mitigation Measure BIO-17). The County confirms that the seasonal shutdowns occurred on schedule since 2013, and that the power pole retrofits required by the MMRP were completed in October of 2014. In addition, removal of high-risk turbines (HRTs, aka hazardous-rated turbines), required by the 2013 conditions of approval (not by the MMRP), was completed by October of 2014.

PROJECT DESCRIPTION

The current project proposal is a request to modify 16 existing Conditional Use Permits (CUPs), approved in 2005 and modified in July 2013 (PLN2011-00102), for continued operation of the wind farm assets of

Altamont Winds, Inc. (AWI), now comprised of 828 wind turbines with a rated capacity of 85.8 MW. Specifically, AWI's request would provide for the wind farm turbines to continue operating through October 2018, as a change from the current expiration of the CUPs on October 31, 2015. While the CUPs as approved in 2005 provided for operations through September 2018, they also required phased shutdown and removal, with a combined 35 percent of all turbines removed by September 2013 and an additional 50 percent removed by September 2015, so that only 15 percent of the original number of turbines would be operating between 2015 and 2018. The modifications approved in 2013 in effect exchanged the phased shutdown requirement for a complete shutdown in October of 2015, in order to initiate repowering of its wind farm assets in 2016.

The Applicant, AWI, contends that its progress in developing a repowering program for its turbines is constrained by ongoing commercial and regulatory difficulties, and that the CUP modifications allowing it to operate through 2018 are necessary in the event that circumstances beyond AWI's control prevent it from initiating repowering in 2015 or in a financially feasible manner after the current CUPs expire in 2015. AWI proposes to operate through 2018 only on the condition that it has diligently pursued repowering of its wind farm assets, and can demonstrate that circumstances beyond AWI's control have delayed completion of the repowered project. Conditions of approval would require an bi-annual review to document AWI's efforts to repower its assets.

Asset Exchange. Concurrently with the request for an extension through 2018, AWI is in discussions with another wind farm operator, Green Ridge Power LLC (an operating entity of NextEra Energy Resources, aka NEER), for an exchange of wind turbine assets. Specifically, approximately 300 wind turbines currently owned by AWI south of I-580 would be acquired by Green Ridge and a roughly equal number of wind turbines would be acquired by AWI north of I-580. As proposed, and under assurances from both companies, such an exchange will not increase the capacity or quantity of AWI's operating turbines. Green Ridge will shut down and remove the turbines it will acquire, for the purpose of repowering.

The asset exchange is recognized in the FSEIR and certain aspects of it are discussed, such as that it would result in a decrease of roughly 1.7 MW in AWI's rated annual capacity, and that it would result in a moderate reduction in the number of operating high-risk turbines (HRT), specifically those rated 8.5 to 10.0 for their relative risk of striking birds. The asset exchange and the reduced number of HRTs to be operated was also the subject of some comments on the Draft SEIR, that asserted that such calculations of benefit were unreasonably describing it as a means of mitigating impacts on birds, or adjusting the assessment of avian mortality impacts. The response to these comments in the FSEIR indicates that the asset exchange is not directly part of the project, and neither of the possible decreases in MWs or HRTs described in the DSEIR were intended to suggest the impact of the project on avian mortality was mitigated or reduced in a substantive way. The DSEIR in fact described the effect as having no statistical importance.

RESPONSES TO COMMENTS ON THE DRAFT SUPPLEMENTAL EIR

The Draft SEIR (DSEIR) circulated for the purpose of public and agency comment between November 17, 2014, and January 12, 2015, having been extended for 10 additional days beyond the original 45-day comment period in recognition of the winter holiday period. The County held a public hearing to obtain verbal comments on the DSEIR on December 12, 2014. A Final SEIR (FSEIR) was prepared as a complete revision of the Draft SEIR with Appendices containing comments on the DSEIR, master responses to frequent or prominent comments, responses to individual comments, a version showing changes to the DSEIR (deletions and insertions), notification documents, and assorted other materials. The DSEIR and FSEIR were prepared by Power Engineers, Inc. under County supervision.

The 2014 SEIR is a supplement to the 2013 EIR, which was certified in July 2013 as a complete assessment of the environmental impacts of AWI's existing operations, and of proposed modifications to operate all of AWI's 828 turbines through the end of 2015 without a seasonal shutdown, as well as three alternatives or scenarios: 1) operations through October 31, 2015; 2) operations through October 31, 2016; and 3) operations through October 31, 2018. All alternatives assumed full operations (no additional decommissioning), and included 3-½-month seasonal shutdowns. The SEIR is not intended to re-evaluate the assessment of those impacts, but is meant to provide additional, detailed analysis of the impacts attributable to the third alternative (to operate through 2018), which are limited almost exclusively to biological resources and in particular, avian mortality. Some additional analysis of hazardous materials was completed due to concerns raised by an area resident, but did not identify any significant impacts. More broadly speaking, the SEIR provides useful information regarding the asset exchange, new comparisons between the current project and its alternatives, revised mortality rates for focal raptor species, additional mitigation options, and provides for further public review of the current proposal. As with the 2013 EIR, the analysis quantifies effects on the four focal raptor species that were the subject of the 2007 Settlement Agreement, including golden eagle, red-tailed hawk, burrowing owl and American kestrel, as well as all bird species known to inhabit the APWRA. The DSEIR used the same method as the 2013 EIR to quantify the relative, projected number of bird deaths in the years 2013 to 2018, which was the range of years used in the 2013 EIR to show avian mortality impacts and changes due to that proposal, between the baseline (no project) conditions (with phased shutdown and decommissioning between 2013 and 2018) and complete shutdown in 2015.

The Executive Summary (Table ES-4) briefly outlines the impacts that were identified, and topic areas that were excluded from the analysis as not relevant or applicable to the site location or nature of the project. The SEIR's analysis of the current proposal's impacts identified only one significant, overarching environmental impact (among the specific determinations required by CEQA), which were the significant and unavoidable adverse impacts on biological resources, and the same significant impact as defined in the 2013 FEIR: *Impact BIO-1* – the potential to cause a substantial adverse effect, either directly or through habitat modifications, on special-status avian species.

To address impact BIO-1, the 2014 SEIR identifies three distinct mitigation measures, two of which were previously included in the 2013 EIR, namely continuing the winter seasonal shutdown (Mitigation Measure 16), and retrofitting electrical power poles (Mitigation Measure 17). To further mitigate and compensate for the projected level of avian mortality resulting from the proposed CUPs extension, the DSEIR identified Mitigation Measure "BIO-17a" (i.e., a subdivision of BIO-17), as a suite of five optional measures to supplement Mitigation Measure 17 and provide a means of compensation for the loss of special-status avian species, including golden eagles, by enabling contributions to conservation efforts. This measure was adopted almost verbatim and directly from the *Program EIR* (PEIR) for the *Altamont Pass Wind Resource Area Repowering* that was certified in November, 2014, and as outlined in the DSEIR, could include measures "outlined" in a programmatic eagle take permit, contributing to raptor recovery activities, raptor conservation, and regional raptor habitat conservation efforts. Contributions to raptor recovery activities and raptor conservation efforts were to be based on the estimated average cost of each raptor recovery reported in the PEIR (\$580, based on an interview with staff of the California Raptor Center at the University of California, Davis), for use in a Resource Equivalency Analysis (REA) to calculate appropriate costs for land conservation.

However, after certification of the PEIR, that average recovery cost was refuted by the Raptor Center as having been taken out of context, and because no substitute dollar amount was identified, the FSEIR was changed to remove those two components of Mitigation Measure BIO-17a that were associated with that recovery cost estimate. Another component of the suite from the 2014 PEIR, described as "Other Conservation Measures Identified in the Future" was also eliminated in the FSEIR as it would only apply in the long term, beyond 2018. The remaining options under Mitigation Measure BIO-17a would now

require contributions to regional conservation of raptor habitat by funding conservation easements within the APWRA or its bordering eco-region if approved by the County, held by an organization dedicated to managing conservation lands, based on a well-reasoned REA approved by the USFWS and the County, and according to a specific timetable, would remain as a strategy acceptable by the County to mitigate impacts on raptors. The impacts would not be reduced to less than significant levels, however. These changes would maintain the intent of Mitigation Measure BIO-17a to provide options for the applicant to diversify its mitigation program as defined in the 2013 EIR, which was limited to retrofitting power poles.

Major Comments and Master Responses. The County received nine letters of comment and some verbal comments at the public hearing. The majority of the comments fell into a limited number of common themes, for which the County prepared Master Responses, as summarized below.

- *Fatality Calculation and Use of MW-Years.* Several commenters, including members of the APWRA Scientific Review Committee, stated that it appeared that fatalities were being calculated on the basis of only a portion (0.708) of a “MW-year” as defined in the annual APWRA-wide Monitoring Reports to reflect the winter season shutdown, and that no such “subtraction” should have been applied. The County responds in the FSEIR that no such subtraction occurred, and that all of the comparisons of the proposed project with the existing CUPs, or with the prior baseline of phased decommissioning, all account for the seasonal shutdown. Simply stated, each scenario is measured on the basis of the cumulative total MWs of installed capacity operating or permitted to operate between October 1, 2013 and October 31, 2018, and as such are “scored” by the same metric.

Although there was a bias in estimating impacts of the 2013 proposal for operations without a seasonal shutdown, due to the likelihood of substantially higher fatality rates during the peak winter migration season, this is a separate issue, and none of the scenarios under consideration at the present time involve operations during the winter season shutdown.

- *Baseline for Analysis.* Some commenters believed the impacts of the current project proposal should be measured on the basis of the current CUPs that disallow any operations after October 31, 2015, in order to show the project’s levels of avian mortality in sharp contrast to conditions with no AWI-turbine operational related impacts. The response indicated that the County retained the use of the same baseline as used in the 2013 FEIR, of continued operations with phased decommissioning through 2018, because of the need (as described above as well) for comparing each scenario on the same metric.
- *Asset Exchange and Reduction of HRTs.* Some commenters questioned if the description of the asset exchange and the resulting modest reduction in the number of operating HRTs (high-risk turbines) in the APWRA at large, and modestly lower MWs of operating capacity were intended as a mitigation measures or in other ways give ‘credit’ to the asset exchange and the project in general. The response in the FSEIR makes it clear that neither the asset exchange or reduction of HRTs are treated as mitigation measures, though it is recognized that it will help facilitate repowering of the APWRA on those parcels south of I-580 that AWI will exchange or trade ‘away’ for assets north of I-580, where repowering will occur somewhat later, after 2015.

It was clarified in the FSEIR that the asset exchange is *not* an actual component of the project but merely a likely means of ‘disentangling’ assets in the APWRA that have historically over-lapped.

- *Inadequacy of Mitigation Measures.* Numerous commenters expressed concerns that the mitigation measures identified lacked certainty of implementation, such as that Mitigation Measure BIO-17a was an option rather than a requirement. Additionally, the details and number of power pole retrofits to be required under Mitigation Measure BIO-17 were not sufficiently clear to some commenters. The FSEIR responses to these issues consists of clarifications that the Measures are required, and reassurances that the suite of optional and supplemental measures available under Mitigation Measure

BIO-17a can be implemented effectively. The FSEIR response cites Table 3-3 as the basis for estimating total golden eagle fatalities attributable to the operations between 2016 and 2018 and the determination that retrofitting 322 power poles would be sufficient mitigation. The basis on which the retrofit of 322 power poles was determined is discussed separately below (see *Power Pole Retrofits Under Mitigation Measure BIO-17*).

The FSEIR also provided for changes to Mitigation Measure BIO-17a to eliminate the reliance on a disavowed estimate of the cost of an individual raptor recovery (\$580). Two of the five options that were considered to be reliant on the 2014 Program EIR-based dollar amount of \$580 were deleted from Mitigations Measure 17a, as well as the general and long-term-oriented “Other Conservation Measures Identified in the Future.”

- *Cumulative Impacts on Avian Populations.* A few comments, including some from the SRC, asked why the DSEIR did not evaluate in broader terms the deaths of avian predators on local or regional breeding, wintering and migratory populations, or other cumulative impacts. The FSEIR response acknowledged the cumulative impact but noted that as a Supplement to the 2013 FEIR, it would be inappropriate for the SEIR to add a new or expanded scope of assessment or methodology to define new impacts. The response also states that Mitigation Measures BIO-16, -17, and 17a are all intended to address cumulative impacts on all bird species, and that BIO-17a enables the wider ecological issues to be addressed through an REA to provide landscape-scale analysis and subsequent compensation and conservation strategies. Lastly, the FSEIR indicates that the cumulative impacts of other wind and energy projects in the APWRA were considered in the 2013 FEIR, and that the impacts of the project were categorized as cumulatively significant and unavoidable.
- *Current Monitoring Data.* Some commenters requested that the SEIR incorporate the latest Avian Monitoring Reports to estimate APWRA-wide avian mortality rates, to include bird years 2011 and 2012. The FSEIR responded that for consistency between the 2013 FEIR and the SEIR, the 2008-2010 mortality rates should be used as the basis for consistent analysis of avian impacts between the 2013 project and the current proposal. However, mortality rates from the later Monitoring Reports were included in the FSEIR in Table 3-5, to provide the range of estimated fatalities from the different mortality rates. Most importantly, the mortality rates for golden eagles including the later years were within the range established by the earlier years (0.085 for the period 2005 to 2010, and 0.061 for the years 2008 to 2010). As such, the use of later Avian Monitoring Report data did not substantially change the estimated range of projected fatalities. Nevertheless, and in consideration of the entire record, staff recommends that the mortality rates from later periods be included and that the response should be deemed to be revised accordingly in the resolution to certify the SEIR and in the Findings of Significant Impacts.
- *Overriding Considerations.* Several commenters asserted that the SEIR does not contain the background information necessary to support a Statement of Overriding Considerations, needed for project approval. The FSEIR response notes the comments, but characterizes them as primarily directed at the merits of the project itself rather than the adequacy of the DSEIR analysis. In addition, while the SEIR describes some of the intended benefits of the project (page 23, Section 2.3, Project Need and Objectives), which may contribute to the content of the Statement of Overriding Considerations, the Statement does not normally rely solely on the analysis in an EIR, and the FSEIR response notes that it may be based on information from the 2013 FEIR, the SEIR, or other information in the record. The FSEIR response acknowledges that the current project, substantially the same as Alternative 3 as described in the 2013 FEIR, was deemed infeasible in 2013, but concludes that the FSEIR is only intended to inform the County’s decision makers and the public about the potential environmental effects of the CUP modification currently proposed by the applicant.

Power Pole Retrofits Under Mitigation Measure BIO-17. Mitigation Measure BIO-17 as defined in the FSEIR is intended to provide for 29 power pole retrofits per projected golden eagle fatality, consistent with the 2013 FEIR. The following discussion is intended to provide some clarification with respect to statements in the DSEIR regarding Mitigation Measure 17 as described in the FSEIR. Firstly, the DSEIR and FSEIR state, on pages 37-8:

The proposed project with implementation of mitigation measure BIO-16, (together identified as Alternative 1 in the analysis of project alternatives) is projected to result in the fatality of approximately one eagle (cumulatively, and statistically, 0.7–1.0) when compared to the existing avian baseline condition (the No Project Alternative) (2013 FEIR Table 3.2-5).

This statement was directly copied from the 2013 FEIR description of Mitigation Measure BIO-17, and thus only applies to the 2013 proposed project, not the current 2014 proposal. However, revisions to the text in the FSEIR clarify that “this mitigation addresses the impacts of the 2013 project proposal (with Mitigation Measure BIO-16), which is approximately one additional eagle fatality.” The FSEIR also adds text explaining the basis for calculating the one additional eagle fatality, and that the currently proposed project (2014) would have a notably greater number of projected eagle fatalities – 11.1 – requiring 322 power pole retrofits.

As reported in Table 3-3 (and duplicated as Table ES-1), on the basis of the *2008-2010 Bird Year Adjusted Fatality Rates*, the current project would result in 3.7 annual estimated fatalities, or 11.1 estimated fatalities over the three-year period 2016-2018. The total estimated fatalities for the period 2013 to 2018 was 19, all of which data is derived from Tables 3-1 and 3-2, using the average fatality rates from the 2008-2010 bird years (i.e., 0.061×60.8 MW of operating capacity per year = 3.7; or for the whole period, 2013 to 2018, 0.061×311.0 MW of cumulative operating capacity = 19). However, to clarify, the projected 19 fatalities represent a “gross” number, including the number of fatalities anticipated to occur in the same period under the existing CUPs – 7.9 (statistically), a difference of 11.1 fatalities – the same as the three-year total in Table 3-3. It should be emphasized again that these results are based on the 2008-2010 fatality rates, which had special merit in the 2013 FEIR, in that they represented the years in which the winter seasonal shutdown was fully in effect, whereas it was only partly implemented in the years 2005 to 2007.

The Executive Summary of the FSEIR, which was intended to summarize the content of the text body (Chapters 1.0 to 3.0) of the FSEIR, also contains a statement (page 5) clarified below the subject excerpt:

Use of power poles for the mitigation of all estimated golden eagle fatalities projected to result from the current proposal to operate through 2018 – a range of 19.0 to 26.4 such fatalities between 2013 and 2018 [2013 FEIR, Table 4-2, *Adjusted Species Fatality Rates for Each Alternative, Based on an Average Fatality Rate (Fatalities per Megawatt per Year)*] would require the retrofitting of between 551 and 722 power poles, including at least 322 poles during the proposed three-year CUP extension.”

Although the range of 19 to 26.4 fatalities is represented in Table 4-2 of the 2013 FEIR, it also represents the “gross” number of fatalities projected from 2013 to 2018 and includes fatalities that would occur otherwise under the prior existing CUPs as they had been approved in 2005, between October 1 of 2013 and October 31, 2018. As such, the last portion of this statement could be rephrased to say “*could* require the retrofitting of between 551 and 722 power poles *due to the “gross” number of projected avian fatalities, but based on the “net” increase in projected fatalities, compared to conditions without the 2013 permit modifications, only a minimum of 322 pole retrofits would be required* during the proposed three-year CUP extension.” However, the FSEIR Executive Summary correctly concludes that AWI will retrofit 322 utility poles as mitigation for the currently proposed (2014) project.

Table 3-1 in the DSEIR also included fatality rates based on Avian Monitoring Reports from the period 2005 to 2010, and 2005 to 2011, and in response to some comments received on the DSEIR, Table 3-1 was supplemented with the fatality rates from 2005 to 2012. Table 3-5 was also amended to show average fatality rates for the period 2008 to 2012, which the County recognizes as having the greatest number of years (i.e., more supporting data) during which time the winter season shutdown was in full effect. However, some minor formatting and typographic corrections to Table 3-5 as revised for the FSEIR are necessary, as shown below with changes underlined, and with some additional explanatory footnotes.

TABLE 3-5 COMPARISON OF ADJUSTED SPECIES FATALITY TOTALS OF FOUR FOCAL SPECIES, BASED ON AN AVERAGE FATALITY RATE (FATALITIES PER MEGAWATT PER YEAR)
(UPDATED)

SPECIES	AVERAGE FATALITIES PER MW (2005-2010/2008-2010/ <u>2005-2011/ 2005-2012/ 2008-2012</u>)	PROJECTED NUMBER OF FATALITIES UNDER THE 2013 FEIR PROPOSED PROJECT ¹	PROJECTED NUMBER OF FATALITIES UNDER 2013 FEIR BASELINE CONDITIONS ²	PROJECTED NUMBER OF FATALITIES UNDER 2013 FEIR ALTERNATIVE 3 ³	PROJECTED NUMBER OF FATALITIES FOR YEARS 2016-2018 ⁴
American Kestrel	0.496/0.443/ <u>0.59/0.577/0.571</u>	85.5-113.9	51.6-68.7	137.8-183.5	80.8-107.6
Burrowing Owl	0.721/0.425/ <u>0.78/0.70/0.52</u>	82.1-150.6	49.5-90.9	132.2-242.6	77.5-142.3
Golden Eagle	0.085/0.061/ <u>0.08/0.081/0.075</u>	11.7-16.4	7.1-9.9	19-26.4	11.1-15.5
Red-Tailed Hawk	0.449/0.286/ <u>0.44/0.411/0.35</u>	55.2-86.7	33.3-52.3	88.9-139.6	52.2-81.9

Notes:

¹ This column of data is a remnant of Table 3.2-5 in the 2013 FEIR which represents the 2013 proposal to eliminate seasonal shutdowns; the results were also determined to be biased low in the 2013 FEIR.

² These baseline conditions represent the 2005 CUPs with phased decommissioning through 2018.

³ Alternative 3 is identical to the current 2014 project proposal, for the purposes of this table.

⁴ These results represent the increment of additional focal species fatalities attributed to the 2014 project proposal, based on the lowest and highest fatality rates in the 2nd column and the increment in cumulative MWs for the period 2016-2018.

It should be noted that the updated mortality rates for golden eagle in the various periods (2005 to 2011, 2005 to 2012, and 2008 to 2012), all fell within the lowest and highest mortality rates previously used in the 2013 FEIR (0.061 to 0.085 eagle fatalities per MW per year). If the lowest and highest fatality rates are considered, the potential increment of additional eagle fatalities for the three-year period 2016 to 2018, as shown in the last column of Table 3-5, would range between 11.1 and 15.5 (respectively using the fatality rates from 2008 to 2010, and 2005 to 2010).

Although using different fatality rates would result in different total projected fatalities, the FSEIR used the rate of 0.061 eagle fatalities per MW per year, based on the 2008 to 2010 period as the “final” rate and interpreted it to be consistent with the 2013 FEIR. Most importantly, as discussed above, based on the three years of operating capacity between 2016 and 2018 (182.4 MWs) the current project would result in 11.1 golden eagle fatalities, and require 322 power pole retrofits to mitigate the project’s impacts under Mitigation Measure BIO-17. Master Response 6 of the FSEIR states that “For consistency between the 2013 FEIR and the DSEIR, the 2008-2010 fatality rates should be used as the basis for comparing avian impact analysis.” In this case, the DSEIR and FSEIR used the lowest result (11.1) and not the highest result (15.5). It is common practice in CEQA and the policy of the County to base its identification of required mitigation measures on the worst-case condition, which in this case is a potential result of 15.5 (statistical) eagle fatalities, for which, based on the rate of 29 power pole retrofits per potential fatality,

would require 450 power pole retrofits, not 322. However, the County considers the highest rate of eagle mortality, 0.085 per MW per year, based on the years 2005 to 2010, to be the *least* representative of current conditions, because half of the years on which it is based did not include the fully implemented winter season shutdown. Based on comments received on the DSEIR, it appears that the rate based on the years from 2008 to 2012, as noted above, represent the largest number of years (i.e., more supporting data) during which time the winter season shutdown was in effect. It should also be recognized that the 2013 FEIR used a worst-case result to determine that the net increase in fatalities from approval of the 2013 project was 1.0, rather than the least-case result of “0.7”, based on the 2008 to 2010 mortality rates.

Alternatively, using the updated average golden eagle mortality rate of 0.075 per MW per year from the years 2008 to 2012, the result of operating a net additional 182.4 MW of installed capacity through 2018 would be 13.7 additional golden eagle fatalities, for which – assuming the use of Mitigation Measure BIO-17 and power pole retrofits to exclusively mitigate for all raptor impacts, at the USFWS-sanctioned rate of 29 power pole retrofits per projected golden eagle fatality, the applicant would have to retrofit a minimum of 397 power poles. This number represents a smaller amount than the range indicated in the Executive Summary of 551 to 722, is based on a rate reported in the FSEIR (Table 3-5), falls within the range of projected fatalities for the project, is considered to be supported by the FSEIR and would be acceptable to the County as mitigation. More importantly, it is based on a total of five years of monitoring during the current regime of 3½ months of winter season shutdown, and may be a more reliable and authentic mortality rate available at this time.

Combining Mitigation Measures BIO-17 and BIO-17a. Because the SEIR provides for some or all of the impacts to be mitigated through Mitigation Measure BIO-17a, the applicant may choose to combine power pole retrofits with some of the options identified with BIO-17a. For example, the applicant may retrofit 200 power poles under BIO-17, and under BIO-17a, provide for mitigation of the full range of special status species through contributions to conservation strategies during the four-year remaining life of the CUPs as modified.

Other Concerns. In response to a specific comment in response to the Notice of Preparation from a resident on Dyer Road, regarding the appearance of oil or other lubricants being released from leaking turbine generators or other equipment, including along the turbine blades, the DSEIR and FSEIR provided information on the potential of a significant leak of hazardous materials into the environment. As discussed in the prior staff report for the Public Hearing, the DSEIR determined that the impacts were less than significant and did not warrant the requirement for any mitigation measures; no different findings were made for the FSEIR. After the close of the comment period, the Dyer Road resident, Bob Cooper, submitted an e-mail to County staff reporting on a site tour on January 20, 2015, in which he indicated he was satisfied that what he believed was leaking oil was in fact rust stains, and that maintenance of the turbines was adequate. The e-mail is included in the FSEIR (Appendix B), but as it was received late, was not responded to directly in the FSEIR, nor did it require a response or change any determination in the FSEIR.

GENERAL/NON-CEQA-RELATED COMMENTS ON THE PROJECT

Many comments received on the DSEIR expressed strongly negative opinions regarding the merits of the project, that were not appropriate to be addressed in the FSEIR. Comments from the U.S. Fish and Wildlife Service (USFWS), the California Department of Justice/Office of the Attorney General, the East Bay Regional Park District (EBRPD), Audubon California (Audubon), and Save Mount Diablo (SMD), may be summarized as follows.

- The USFWS noted that approximately 31 golden eagle fatalities were recorded at AWI facilities in the APWRA since late 2009, when eagle take permit regulations were first promulgated, but without

the benefit of any permit. Additionally, the Service stated that in spite of their encouragement of AWI to apply for such a permit, and indications by AWI of their intent to apply, the Service has not received a permit application from AWI or taken other steps to reduce its impacts on the species protected by the Migratory Bird Treaty Act (MBTA) or the Bald and Golden Eagle Protection Act (BGEPA). It was also noted that the golden eagle and other special-status species deaths attributable to AWI operations represent violations of the MBTA and BGEPA, and though enforcement has been withheld for those wind energy companies actively engaged in repowering, AWI is not doing so, and for this reason the Service recommended that the County deny the permit modifications.

AWI provided the County with a letter response to the DSEIR comment letter from USFWS, and it is attached to this staff report.

- The Attorney General opened its letter with opposition to the permit modifications on the grounds that it would “create serious inequities for other turbine operators and will undercut current efforts to repower” the APWRA, and that the DSEIR does not provide substantial evidence to support the required statement of overriding considerations and is otherwise legally inadequate. Primarily, the AG’s office considers repowering to be the more feasible alternative to lessen the significant environmental impacts of the project, and cited case law wherein a lead agency was found to have abused its discretion where the record did not support the finding that other less damaging alternatives were infeasible. It points out that the current record of evidence shows that Alameda County has already made a determination that repowering the APWRA with new turbines is a feasible alternative. The letter closes with a recommendation to the County to not certify the SEIR, and to deny the request.
- The EBRPD expressed its opinion that the finding made in 2013 that Alternative 3 (addressed in the prior 2013 FEIR and roughly the same as the current project proposal) would “very substantially increase the avian mortality impacts compared to the project and all other alternatives... [and] is considered infeasible” would be unchanged, and should continue to be found to be infeasible. The District does not explicitly state that it opposes the permit modifications, but more simply states that the permit extensions would delay repowering – and continue what it considers visual effects that would otherwise be removed.
- Audubon California’s letter begins with an observation that the County previously determined in 2013 that the extension of operations to 2018 were “infeasible” and that removal of the existing turbines after 2016 would be the best means of promoting repowering of the APWRA at large. Most of the comments address the DSEIR and CEQA issues, but others express the opinion that AWI would be given an unfair competitive advantage over other wind energy companies in the APWRA that are pursuing repowering, that the County would be complicit in the killing of golden eagles and other protected species by approving the extension, and as the project would delay repowering and result in higher levels of avian mortality, it should be denied.
- Save Mount Diablo expressed its opposition to the project due to the increases in avian mortality, but primarily addressed its remarks to the DSEIR.

PLANNING CONSIDERATIONS

Planning staff have carefully considered the current project proposal, the FSEIR analysis, the comments from the public, private organizations and government agencies, and support approval of the project in part, with limits on the scale of the permitted operations, additional conditions of approval and related requirements for implementation of the identified Mitigation Measures BIO-16, BIO-17 and BIO-17a. The Board of Zoning Adjustments may choose to approve the project application as proposed with no changes, or it may choose to deny the request. Under the existing CUPs approved in 2013 (Condition 5, Expiration), the applicant has no express or implied right to operate existing turbines under these Permits after October 31, 2015. The Board may consider the assertion by the applicant that in order for it to

operations in a financially feasible manner beyond 2015, and thereby approve the project as proposed. County staff recognize that there are certain overriding considerations, as described in Exhibit C to the draft Resolution, related to local jobs and renewable energy. Alternatively, the Board may consider Planning staff's following recommendations.

Firstly, with respect to the primary request to operate the full 828-turbine, 85.8 MW wind farm for the three years between February 15, 2016 and October 31, 2018, for a cumulative three-year installed capacity of 182.4 MWs, County staff recommend that the use permits be extended ~~but to allow no more than one half of the MWs to be operated within that period, which may be either operated fully until June 22, 2017 (i.e., a total of 12 ¼ months out of the applicant's requested extension to allow 25 ½ months of operation, with winter season shutdown as provided by Mitigation Measure 16), at 50% at 100% capacity for all three years through October 31, 2018, or in other stages such that the three-year installed or operating capacity of AWI's entire windfarm operations, with or without an asset exchange, may not be greater than 91.2 MWs, or one half of 182.4 MWs. The result of such a reduction in MWs would proportionally reduce the number of golden eagle, other raptors and avian species fatalities. The East County Board of Zoning Adjustments may specify that the CUPs will expire on June 22, 2017, or another later date if the applicant requests to operate fewer turbines over a longer period of time.~~

~~Planning staff consider this reduced level of operations to be somewhat comparable to, but notably more liberal than reverting back to the original 2005 CUP conditions, in which only 15 percent of the turbines were allowed to be operating between 2016 and 2018. It would provide for a total operational output in MWs from October 2013 to October 2018 of 220.0 MW, when compared to the other alternatives considered in the 2013 FEIR and as represented in Table 3-2 of the FSEIR (page 33). It is moderately more MWs of allowed output than Alternative 2 considered in the 2013 FEIR (30.5 more MW, compared to 189.5 under Alternative 2, which provided for cessation of operations after October 31, 2016).~~

Secondly, staff believes the applicant should be required to shutdown all turbine sites it currently operates or could operate after the asset exchange, with an HRT rating of 8.5 or greater. The elimination of hazardous-rated turbines (HRTs) has been shown by the preponderance of evidence over many years to reduce the number of avian fatalities, and has been part of the conditions of approval in various forms for the CUPs since 2005.

Thirdly, in order to assure the applicant honors its statements that it is taking all possible steps to engage in repowering of its APWRA assets except under specific conditions that it contends are outside of its control, the applicant should be required to submit a report semi-annually (twice yearly) to the Board of Zoning Adjustments describing, relative to each of the potential obstacles to repowering outlined as "Circumstances Outside of AWI's Control" in the FSEIR (page 25).

Fourthly, the Board should agree on a fatality rate to be used for projecting the total number of golden eagle fatalities anticipated to result from the project, from among the three principal options: a) 0.061 based on the monitoring years 2008-2010; ~~b) 0.071 based on monitoring years 2008-2012; or c) 0.085 using monitoring years 2005-2010.~~ The fatality rate will then be used to determine the number of power pole retrofits to be required under Mitigation Measure BIO-17 (and as adjusted by half, assuming the first recommendation above is required). Further, this fatality rate shall be adjusted for any clean wind power climate benefits and background mortality, with use of best available information, and implemented under adaptive management techniques.

~~Finally, unless the applicant chooses to apply for an eagle take permit as described in Mitigation Measure BIO-17a (and submits a complete draft Eagle Conservation Plan and meets other USFWS requirements for an ETP) within six months of approval of the CUP modifications, the applicant should make a deposit of adequate trust funds prior to the start of each operational year (February 15th of each year, starting in 2016)~~

that are dedicated to implementing Mitigation Measure BIO-17 and/or BIO-17a. Such deposits for the use of power pole retrofits, or contributions to regional conservation of raptor habitat could be adjusted at the end of each operational year (2016 to 2018) based on actual expenditures and power pole retrofits completed, subject to approval by a Technical Advisory Committee (TAC) as will be structured under the APWRA Repowering Program EIR. However, the TAC is not required to approve accounting refunds from expenditures from power pole retrofits, if any.

Finally, the applicant will provide progress reports, on a semi-annual (twice yearly) basis, regarding the installation of its power pole retrofits (as it did with its power pole retrofits in 2014).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DRAFT RESOLUTION NO. 15-XX
AWI PERMIT MODIFICATIONS, PLN2014-00028
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C-8243, Altamont Infrastructure Co./Alameda County Waste Management Authority: APNs: 099A-1770-002-01, 099A-1770-002-02, 099A-1770-002-03, 099A-1780-001-04, 099A-1790-003-00 and 099A-1810-001-00; and

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

WHEREAS, on September 22, 2005 the Alameda County Board of Supervisors approved Resolution Number R-2005-453, on appeal of the East County Board of Zoning Adjustments decisions on November 13, 2003 and January 29, 2004 to conditionally approve a total of 29 conditional use permits (CUPs) for the maintenance and continued operations of existing wind turbines, including one permit (C-8191) held by WindWorks, Inc. (as an operating partner of Altamont Winds, Inc.), thirteen (13) permits held by Altamont Infrastructure Company LLC (a management company which does not own individual turbines) on behalf of Altamont Winds, Inc. and three other companies (SeaWest Power Resources, LLC, Altamont Power, LLC {a subsidiary of FPL Group, Inc. and ESI Energy LLC} and enXco., Inc., collectively the Wind Power Companies) that own turbines (or "beneficially own"), thereby approving with findings included that the CUPs, including those CUPs listed above, were exempt from the California Environmental Quality Act (CEQA), and with conditions modified from the original Board of Zoning Adjustments decision, said Resolution and conditions are incorporated herein by reference (hereinafter the "Permit Extensions"); and

WHEREAS, on January 12, 2006 the East County Board of Zoning Adjustments adopted Resolutions Z-06-03 and Z-06-04, respectively approving two Conditional Use Permits, C-8216 and C-8243, allowing continued operation of existing turbines by WindWorks, Inc. (C-8216), and Altamont Infrastructure Company LLC (C-8243) on separate sites in the APWRA, said use permits having not been included in Resolution R-2005-453, but made subject to the same conditions therein by Resolutions Z-06-03 and Z-06-04; and

WHEREAS, Resolutions R-2005-453, Z-06-03 and Z-06-04, among other conditions, established an Avian Wildlife Protection Program and Schedule (AWPPS, Condition 7), with detailed requirements established in Exhibit G to reduce avian mortality by removing turbines identified as hazardous to avian wildlife, removing derelict turbines, shutting down turbines during winter months when bird use increases, and for the purpose of implementing the repowering program, permanently removing 10% of the existing turbines by September 30, 2009, an additional 25% by September 30, 2013, an additional 50% of the original turbines by September 30, 2015, and the remaining 15% of turbines by September 30, 2018; and

WHEREAS, Resolutions R-2005-453, Z-06-03 and Z-06-04 also required the Permittee to sponsor preparation of an Environmental Impact Report (EIR) to evaluate the environmental effects of the repowering program, the phased removal of turbines and existing operations (Condition 8); and

WHEREAS, in 2005 a coalition of five regional Audubon groups (Golden Gate Audubon Society, Ohlone Audubon Society, Mount Diablo Audubon Society, Santa Clara Valley Audubon Society and Marin Audubon Society, collectively Audubon) and CARE petitioned the Alameda County Superior Court to set aside Resolutions R-2005-453, and subsequently Z-06-03 and Z-06-04 on various grounds, including that such action violated the County's General Code and CEQA, whereupon Audubon, CARE, the County and the Wind Power Companies agreed to participate in mediation and negotiations which led to a Settlement Agreement among the petitioners, the County, and three companies (the "Settling Companies") that own turbines in the APWRA but not including Altamont Winds, Inc. (the "Non-Settling Company"), with the objective of achieving a 50 percent reduction in the mortality rates of four avian raptor species (American kestrel, burrowing owl, golden eagle and red-tailed hawk) by November 1, 2009, adding a conservation planning component to the approved CUPs in consultation with the California Department of Fish and Game (CDFG, recently renamed the Department of Fish and Wildlife or CDFW) regarding such a component and enabling other programs and contingency adaptive management measures; and

WHEREAS, on January 11, 2007 the Alameda County Board of Supervisors adopted Resolution R-2007-111, which authorized the County's participation in the Settlement Agreement and amended the CUPs, thereby replacing Exhibit G (Avian Wildlife Protection Program and Schedule) of the prior Resolution R-2005-453, with Exhibit G-2 for the turbines beneficially owned by the Settling Companies (the "Applicable Turbines"), and Exhibit G-2 for turbines beneficially owned by the Non-Settling Company (Altamont Winds, Inc.) which for all intents and purposes was identical to the original Exhibit G, and made other changes to the conditions of approval of the prior Resolutions for the Applicable Turbines of the Settling Companies, including eliminating the requirement for an EIR to be prepared on the specified schedule and certain requirements related to relocation of identified Tier 1 and Tier 2 hazardous turbines; and

WHEREAS, Altamont Winds, Inc. applied in 2011 to modify its sixteen (16) use permits by eliminating selected requirements of Exhibit G-2 of Resolution R-2007-111 for the remaining life of the permit (years six through eight and years nine through thirteen: October 2010 to September 2018) and require termination of the CUPs on December 31, 2015, or more specifically:

- a) Eliminate the requirement for the annual 3½-month winter season shutdown, from November 1 of each year to the following February 15;
- b) Eliminate the requirement for repowering or permanent shutdown of an additional twenty-five (25) percent of currently operating turbines (10 percent of its turbines having been permanently shut down by September of 2009);
- c) Replace the requirement for repowering or permanent shutdown of an additional fifty (50) percent of operating turbines by September 2015 with a requirement that 100

percent of all originally approved turbines be permanently shut down on December 31, 2015; and

- d) Add a requirement that the County consider the human health, wildlife and climate benefits of wind power generated in the APWRA when making regulatory and use permit decisions;

WHEREAS, the Planning Department determined that the proposed permit modifications of 2013 would result in potentially significant adverse environmental impacts and therefore be a project subject to the California Environmental Quality Act (CEQA), and that completion of an Environmental Impact Report (EIR) 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, Altamont Winds Inc. and Windworks Inc. filed the subject application in early 2014 requesting extension of its permits through the end of 2018, which was one of the alternatives considered in the 2013 FEIR (Alternative 3), but for which the Board made findings in July 2013 to reject as infeasible and as likely to result in the next highest level of avian mortality after the proposal to operate without the winter season shutdown, and in order to address continued operations only and not the effects of decommissioning addressed in the 2013 EIR, provide the basis for findings in support of operations through 2018, incorporate new mitigation options and provide for adequate public review, the County required the preparation of a Supplemental Environmental Impact Report (SEIR) ; and

WHEREAS, a Draft SEIR was completed on November 17, 2014, which made the same findings as the original 2013 EIR of significant adverse impacts, either directly or

through habitat modifications, on special-status avian species, and identified the same mitigation measures applicable to ongoing operations as the 2013 EIR but also identified a new Mitigation Measure 17a to provide optional strategies to mitigate impacts on special-status avian species; and

WHEREAS, the East County Board of Zoning Adjustments held a public hearing on said application at the hour of 1:30 p.m. on the 18th day of December, 2014 for the purpose of receiving comments on the Draft SEIR, and again at 1:30 p.m. on the 2nd day of February, 2015 for the purpose of receiving comments on the project proposal, in the City of Pleasanton Council Chambers, 200 Old Bernal Avenue, Pleasanton, California; and

WHEREAS, the Planning Department submitted a Staff Report to the Board 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-XX** on February 2, 2015 to certify that the Final SEIR has been completed in compliance with CEQA, that the Final SEIR was presented to the Board and reviewed and considered the information contained in the Final EIR, that the Final EIR reflects the independent judgment of the Board; and

WHEREAS, the Board has considered Exhibit A (Written Findings of Significant Effects), Exhibit B (Mitigation Monitoring and Reporting Program) and Exhibit C (Statement of Overriding Considerations) of this Resolution, each of which are required by State and Local CEQA Guidelines; and

WHEREAS, East County Board of Zoning Adjustments has determined that extension of the Conditional Use Permits as conditioned herein, including implementation of the Mitigation Monitoring and Reporting Program attached as Exhibit B, would provide for all of the significant effects on the environment to have been eliminated or substantially lessened where feasible, as indicated in the Written Findings of Significant Effects attached as Exhibit A, and that there are remaining significant effects on the environment found to be unavoidable which 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, Z-06-03, Z-06-04 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 East County Board of Zoning Adjustments did hear and consider all said reports, recommendations and testimony as hereinabove set forth;

NOW THEREFORE BE IT RESOLVED, that this East County Board of Zoning Adjustments does hereby find the following with respect to the requested Conditional Use Permit extensions:

1. That the recitals above are accurate and are hereby adopted as findings of this Board of Zoning Adjustments; and

2. The Board shall require Mitigation Measure 17 to 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;

~~OR 2. The Board shall require Mitigation Measure 17 to be implemented on the basis of the average golden eagle fatality rate (0.075) obtained from the Avian Monitoring Reports results for the bird years 2008 to 2012, in recognition that such a rate represents the largest number of years (i.e., more supporting data) during which time the winter season shutdown was in effect;~~

~~OR 2. The Board shall require Mitigation Measure 17 to be implemented on the basis of the average golden eagle fatality rates (0.085) obtained from the Avian Monitoring Reports results for the bird years 2005 to 2010, in recognition that such a rate represents the worst case rate and the worst case rate available in 2013 used to calculate Mitigation Measure 17 under the 2013 EIR;~~

BE IT FURTHER RESOLVED that the Board of Zoning Adjustments does hereby amend the subject Conditional Use Permits approved by Resolutions R-2005-453, Z-06-03, Z-06-04, R-2007-111, Z-13-35 and Z-13-36, held in separate files in the offices of the

Community Development Agency, Planning Department, 224 West Winton, Rm. 111, Hayward, CA, 94544), subject to the following amended 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 to 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. Beginning on February 15, 2016, the Permittee shall **not** be limited to operate its wind energy turbine facilities ~~to have an installed total operating capacity of 91.2 MW~~ over three years, ~~either by operating all facilities until June 22, 2017 (i.e., a total of 12 ¾ months), or by shutting down 50% of its turbines through October 31, 2018, or in other stages such that the three-year installed or operating capacity may not be greater than 91.2 MWs. The Permittee shall submit its plans to the Planning Director to operate a set number of turbines for a set number of months prior to each February 15 of the years 2016 to 2018, and cease operating all turbines after the installed and operating capacity in these three years reaches 91.2 MWs based on the number and months of operations reported in said plans.~~
3. By October 31, ~~2015~~ 2013, 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.
4. ~~Unless the Permittee chooses to apply for an eagle take permit as described in Mitigation Measure BIO 17a (and submits a complete draft Eagle Conservation Plan and meets other USFWS requirements for an ETP) within six months of account of adequate funds prior to the start of each operational year (February 15th of each year, starting in 2016), that are dedicated to implementing Mitigation Measure BIO 17 and/or BIO 17a.~~

~~Such deposits for the use of power pole retrofits, or contributions to regional conservation of raptor habitat may be adjusted (supplemented with additional funds or refunded) at the end of each operational year (2016 to 2018) based on actual expenditures and power pole retrofits completed.~~

5. 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 Resolution ~~Z-13-35~~ this Resolution.
6. Indemnity: The Permittee shall defend, indemnify and hold harmless Alameda County and its agents, officers and employees from any claim, action or proceeding against Alameda County, and/or its agents, 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. 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.
7. Repowering Progress Reporting. The Permittee shall submit a report semi-annually (twice yearly) to the Board of Zoning Adjustments describing, relative to each of the potential obstacles to repowering outlined as "Circumstances Outside of AWI's Control" in the FSEIR.
8. Expiration: This permit shall expire on October 31, 2018 one month after its 13th (thirteenth) anniversary. The Permittee(s) shall have no express or implied right to operate existing turbines under these Permits after October 31, 2018.

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.

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

EXHIBIT B

Bibliography of Recent Documentation on Rodenticide Poisoning of Raptor Species

Anticoagulant Rodenticides: Secondary Poisoning of Wildlife in California, Stella McMillin, California Department of Fish and Game, Wildlife Investigations Laboratory (Dec. 12, 2012).

Rodenticides: Rodenticides can harm wildlife; please use carefully, California Department of Fish and Wildlife (last viewed February 9, 2015). <https://www.wildlife.ca.gov/LivingwithWildlife/Rodenticides>.

Anticoagulant Rodenticide Fact Sheet, Oregon Department of Fish and Wildlife (Dec. 4, 2013).

Poisoning of Wildlife With Anticoagulant Rodenticides in New York, Ward B. Stone, Joseph C. Okoniewski, James R. Stedelin, Journal of Wildlife Diseases, Vol. 35 No 2 (Apr. 1999).

Protecting Raptors from Rodenticides, William Quarles, Common Sense Pest Control Quarterly, Vol. XXVII, No. 104 (Jan. 2011).

Poisons Used to Kill Rodents Have Safer Alternatives, Ted Williams, National Audubon Society, (Jan. 2013).

Peet's Coffee and Poisoned Raptors, Iliana DeBare, Golden Gate Audubon Society (Aug. 1, 2012).

Update – Risks to Raptors From Anticoagulant Rodenticides, Scott Thomas, Sea and Sage Audubon Society (Apr. 17, 2014).

Rodent-killing Poisons Also Kill Foxes, Haws, Other Wildlife, Jonathan Evans, Center for Biological Diversity (Dec. 11, 2012).

California Bans Retail Sale of Super-toxic Rat Poisons, Jonathan Evans, Center for Biological Diversity (Mar. 20, 2014).

Super Toxic Rat Poison, Environmental Protection Information Center, (last viewed Feb. 9, 2015). <http://www.wildcalifornia.org/actionissues/pollutionpot/supertoxicratpoison/>

Rodenticides and Raptors – A Deadly Relationship, The Hungry Owl Project (Jan. 20, 2006).

Rodenticides are Killing California Hawks, S.E. Smith, Care2 (Jul. 13, 2014).

Household rat poison linked to death and disease in wildlife, Martha Groves, Los Angeles Times (Apr. 16, 2014). <http://www.latimes.com/local/lameratpoison20140418story.html#page=1>

EXHIBIT C

Statement of Overriding Considerations from Alameda County Staff Report

Exhibit C

Statement of Overriding Considerations

Pursuant to the requirements of CEQA Sections 21002, 21002.1, and 21081 and Section 15093 of the State CEQA Guidelines, the EBZA finds that approval of Modifications to the Conditional Use Permits (2013) for Altamont Winds, Inc., the potential environmental impacts of which have been evaluated in the Final Supplemental EIR, and as indicated in the above findings, will result in the occurrence of significant effects which are not avoided or substantially lessened, as described in the Written Findings of Environmental Significance. 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

Further, as required by CEQA Section 21081(b) and State CEQA Guidelines Section 15093, the EBZA finds that the unavoidable significant effects listed above are outweighed by specific findings that the project, as mitigated by the measures identified in the EIR, would provide overriding economic and region-wide and statewide environmental benefits. There are no legal, social, technological or other benefits known to the County, nor are such benefits required to be provided (they are only examples of reasons that may be applicable). Specifically, the project will provide the following benefits:

Economic Benefits

The project will maintain the electrical production from the AWI windfarm as has been in place since the beginning of 2013, or a maximum of 85.8 MW, 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 represents 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 Altamont Winds, Inc. to continue operating at its full capacity through 2018 would also serve to maintain a greater number of jobs and higher tax revenue from the production of electricity.

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 under construction in Hayward) that would in part serve to replace electrical energy production capacity that would be eliminated if the project were not approved.

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 31, 2018 and required removal by 2020 will further assist in these repowering efforts.

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. 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 are limited.

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. 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, to the least acceptable level.



February 13, 2015

Via Federal Express & Email

Maria Palmeri
Alameda County Planning Department
224 West Winton Ave., Room 111
Hayward, California 94544

RE: Appeal of the certification of the Supplemental Environmental Impact Report for the
Altamont Winds, Inc. proposed Conditional Use Permit modifications

Dear Ms. Palmeri:

Audubon California, Golden Gate Audubon Society, Santa Clara Valley Audubon Society, Marin Audubon society, and Mount Diablo Audubon Society (collectively "Audubon") write to appeal the February 2, 2015 decision by the Alameda County East Board of Zoning Adjustments (EBZA) to certify the Supplemental Environmental Impact Report (SEIR) for the proposed project of modifying 16 Conditional Use Permits (CUPs) for Altamont Winds, Inc. (AWI). The Planning Department code for this action is PLN2014-00028.

Written and oral testimony regarding the SEIR has repeatedly demonstrated that the document fails to meet the requirements of the California Environmental Quality Act (CEQA) on several grounds, including, but not limited to:

- reliance on an incorrect baseline for bird mortality that results in an underestimation of bird mortality due to the project;
- underestimation of projected bird mortality due to flawed analysis;
- failure to acknowledge that the Altamont Pass Golden Eagle population current has a 12% mortality rate due to wind turbines when the Fish & Wildlife Service has determined that local mortality from wind projects should not exceed 5%;
- failure to adequately identify and assess all significant impacts arising from the project;
- failure to adequately assess cumulative impacts;
- failure to adequately identify and assess all reasonable mitigation measures and to propose feasible mitigation measures that would reduce the severity of potential impacts from the project;
- incorrectly deferring mitigation and/or inadequately describing mitigation measures, which prevented the public and decision-makers from assessing their adequacy; and
- failure to acknowledge that approval of the project would have additional impacts, including the potential delay of repowering in the Altamont Pass and disruption to monitoring efforts, and would contradict the reasons for approving the modifications in 2013.

Because the SEIR fails to meet the requirements of CEQA, the EBZA erred. We ask that the Alameda County Board of Supervisors overturn the EBZA and determine that the SEIR is inadequate and cannot be certified until revised to meet CEQA's standards.

Thank you for processing this appeal. Audubon will subsequently submit additional materials to more fully explain the SEIR's inadequacies and reasons for this appeal. Should you need additional information, please do not hesitate to contact me at (916) 737-5707 ext. 102 or mlynes@audubon.org.

Respectfully submitted,



Michael Lynes
Director of Public Policy
Audubon California

Cindy Margulis
Executive Director
Golden Gate Audubon Society

Nancy Wenninger
Conservation Chair
Mount Diablo Audubon Society

Barbara Salzman
President
Marin Audubon Society

Shani Kleinhaus
Environmental Advocate
Santa Clara Valley Audubon Society



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

February 13, 2015

Chris Bazar
Agency Director

Albert Lopez
Planning Director

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William Damon
Altamont Winds, Inc.
15850 Jess Ranch Road
Tracy, CA 95377

Re: Conditional Use Permit Modifications, PLN2014-00028, Alameda County (East) Board of Zoning Adjustments

Your application, PLN2014-00028, to modify and extend 16 Conditional Use Permits, originally approved by Resolution R-2005-453 of the Alameda County Board of Supervisors on September 22, 2005, and by Resolutions Z-06-03 and Z-06-04 of the East County Board of Zoning Adjustments on January 12, 2006, and as modified by the Board of Zoning Adjustments by Resolution Z-13-36 on July 18, 2013, for the maintenance and continued operations of existing wind turbines in the Altamont Pass Wind Resources Area (APWRA) of Alameda County, has been denied subject to Resolution Z-15-04 of the East County Board of Zoning Adjustments (EBZA), dated February 2, 2015.

Also on February 2, 2015, prior to the action to deny PLN2014-00028, the EBZA certified the Supplemental Environmental Impact Report (SEIR) prepared to evaluate the proposed modifications of application PLN2014-00028.

This action may be appealed within ten (10) days after the action by the Board of Zoning Adjustments on February 2, 2015, by submitting a letter to the Planning Department, 224 W. Winton Avenue, Room 111, Hayward, CA 94544. As the ten-day period falls on a County holiday (Lincoln's Birthday), the appeal period was extended by one additional day, ending on Friday, February 13, 2015. The project applicant will be charged actual County costs for consideration of appeals. An appeal fee of \$250.00 must be submitted by anyone else appealing an action. The application number, PLN2014-00028, any specific condition appealed, and the reason for the appeal should be clearly stated in the letter.

We are in receipt of letters of appeal from Jeremy Liem, Altamont Winds, Inc., of the EBZA decision under Resolution Z-15-04 to deny Conditional Use Permit PLN2014-00028, and from Audubon California and affiliated regional chapters of the decision of the EBZA under Resolution Z-15-03 to certify the Final Supplemental Environmental Impact Report. These appeal letters will be provided upon request, and will be available on the Planning Department's website at least ten (10) days prior to a hearing by the Board of Supervisors on these appeals.

If you have any questions on this matter, please contact Andrew Young at (510) 670-5400.

Very truly yours,

Albert Lopez
Planning Director

Enclosures: Resolution Z-15-03, Certifying Supplemental Environmental Impact Report
Resolution Z-15-04, Denying Application PLN2014-00028

cc: Affected property owners, responsible government agencies and interested parties

**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**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, on September 22, 2005 the Alameda County Board of Supervisors approved Resolution Number R-2005-453, on appeal of the East County Board of Zoning Adjustments decisions on November 13, 2003 and January 29, 2004 to conditionally approve a total of 29 conditional use permits (CUPs) for the maintenance and continued operations of existing wind turbines, including one permit (C-8191) held by WindWorks, Inc. (as an operating partner of Altamont Winds, Inc.), thirteen (13) permits held by Altamont Infrastructure Company LLC (a management company which does not own individual turbines) on behalf of Altamont Winds, Inc. and three other companies (SeaWest Power Resources, LLC, Altamont Power, LLC {a subsidiary of FPL Group, Inc. and ESI Energy LLC} and enXco., Inc., collectively the Wind Power Companies) that own turbines (or "beneficially own"), thereby approving with findings included that the CUPs, including those CUPs listed above, were exempt from the California Environmental Quality Act (CEQA), and with conditions modified from the original Board of Zoning Adjustments decision, said Resolution and conditions are incorporated herein by reference (hereinafter the "Permit Extensions"); and

WHEREAS, on January 12, 2006 the East County Board of Zoning Adjustments adopted Resolutions Z-06-03 and Z-06-04, respectively approving two Conditional Use Permits, C-8216 and C-8243, allowing continued operation of existing turbines by WindWorks, Inc. (C-8216), and Altamont Infrastructure Company LLC (C-8243) on separate sites in the APWRA, said use permits having not been included in Resolution R-2005-453, but made subject to the same conditions therein by Resolutions Z-06-03 and Z-06-04; and

WHEREAS, Resolutions R-2005-453, Z-06-03 and Z-06-04, among other conditions, established an Avian Wildlife Protection Program and Schedule (AWPPS, Condition 7), with detailed requirements established in Exhibit G to reduce avian mortality by removing turbines identified as hazardous to avian wildlife, removing derelict turbines, shutting down turbines during winter months when bird use increases, and for the purpose of implementing the repowering program, permanently removing 10% of the existing turbines by September 30, 2009, an additional 25% by September 30, 2013, an additional 50% of the original turbines by September 30, 2015, and the remaining 15% of turbines by September 30, 2018; and

WHEREAS, Resolutions R-2005-453, Z-06-03 and Z-06-04 also required the Permittee to sponsor preparation of an Environmental Impact Report (EIR) to evaluate the

environmental effects of the repowering program, the phased removal of turbines and existing operations (Condition 8); and

WHEREAS, in 2005 a coalition of five regional Audubon groups (Golden Gate Audubon Society, Ohlone Audubon Society, Mount Diablo Audubon Society, Santa Clara Valley Audubon Society and Marin Audubon Society, collectively Audubon) and CARE petitioned the Alameda County Superior Court to set aside Resolutions R-2005-453, and subsequently Z-06-03 and Z-06-04 on various grounds, including that such action violated the County's General Code and CEQA, whereupon Audubon, CARE, the County and the Wind Power Companies agreed to participate in mediation and negotiations which led to a Settlement Agreement among the petitioners, the County, and three companies (the "Settling Companies") that own turbines in the APWRA but not including Altamont Winds, Inc. (the "Non-Settling Company"), with the objective of achieving a 50 percent reduction in the mortality rates of four avian raptor species (American kestrel, burrowing owl, golden eagle and red-tailed hawk) by November 1, 2009, adding a conservation planning component to the approved CUPs in consultation with the California Department of Fish and Game (CDFG, recently renamed the Department of Fish and Wildlife or CDFW) regarding such a component and enabling other programs and contingency adaptive management measures; and

WHEREAS, on January 11, 2007 the Alameda County Board of Supervisors adopted Resolution R-2007-111, which authorized the County's participation in the Settlement Agreement and amended the CUPs, thereby replacing Exhibit G (Avian Wildlife Protection Program and Schedule) of the prior Resolution R-2005-453, with Exhibit G-2 for the turbines beneficially owned by the Settling Companies (the "Applicable Turbines"), and Exhibit G-2 for turbines beneficially owned by the Non-Settling Company (Altamont Winds, Inc.) which for all intents and purposes was identical to the original Exhibit G, and made other changes to the conditions of approval of the prior Resolutions for the Applicable Turbines of the Settling Companies, including eliminating the requirement for an EIR to be prepared on the specified schedule and certain requirements related to relocation of identified Tier 1 and Tier 2 hazardous turbines; and

WHEREAS, Altamont Winds, Inc. applied in 2011 to modify its sixteen (16) use permits by eliminating selected requirements of Exhibit G-2 of Resolution R-2007-111 for the remaining life of the permit (years six through eight and years nine through thirteen: October 2010 to September 2018) and require termination of the CUPs on December 31, 2015, or more specifically:

- a) Eliminate the requirement for the annual 3½-month winter season shutdown, from November 1 of each year to the following February 15;
- b) Eliminate the requirement for repowering or permanent shutdown of an additional twenty-five (25) percent of currently operating turbines (10 percent of its turbines having been permanently shut down by September of 2009);

- c) Replace the requirement for repowering or permanent shutdown of an additional fifty (50) percent of operating turbines by September 2015 with a requirement that 100 percent of all originally approved turbines be permanently shut down on December 31, 2015; and
- d) Add a requirement that the County consider the human health, wildlife and climate benefits of wind power generated in the APWRA when making regulatory and use permit decisions;

WHEREAS, the Planning Department determined that the proposed permit modifications of 2013 would result in potentially significant adverse environmental impacts and therefore be a project subject to the California Environmental Quality Act (CEQA), and that completion of an Environmental Impact Report (EIR) was required by Condition 8 of Resolution R-2005-453 (and Condition 8 of Resolution R-2007-111); and

WHEREAS, an EIR was prepared in compliance with CEQA to evaluate the permit modifications, ongoing operations and future decommissioning impacts associated with repowering as required by Condition 8 of Resolution R-2007-111, and the East County Board of Zoning Adjustments held a public hearing and certified the Final EIR (FEIR) on July 18, 2013; and

WHEREAS, on July 18, 2013 the East County Board of Zoning Adjustments approved by Resolution Z-13-36 Alternative 1 as defined in the FEIR, as a version of the application to modify the use permits allowing for undiminished operation (without phased decommissioning as required under the AWPPS program of the 2005 CUPs) of the applicant's turbines, providing for continued winter seasonal shutdowns between November 1 and the following February 15 of each year, removal or relocation of individual turbines with a Hazardous Rated Turbine (HRT) ranking of 9.5 and 10.0, retrofitting of power poles to compensate for projected golden eagle fatalities and expiration on October 31, 2015; and

WHEREAS, the applicant has complied with the conditions of approval under Resolution Z-13-36 to continue the winter season shutdowns, remove designated HRT turbines and retrofit the requisite number of power poles in coordination with a local utility provider; and

WHEREAS, Altamont Winds Inc. and Windworks Inc. filed the subject application in early 2014 requesting extension of its permits through the end of 2018, which was one of the alternatives considered in the 2013 FEIR (Alternative 3), but for which the Board made findings in July 2013 to reject as infeasible and as likely to result in the next highest level of avian mortality after the proposal to operate without the winter season shutdown, and in order to address continued operations only and not the effects of decommissioning addressed in the 2013 EIR, provide the basis for findings in support of operations through 2018, incorporate new mitigation options and provide for adequate public review, the County required the preparation of a Supplemental Environmental Impact Report (SEIR); and

WHEREAS, a Draft SEIR was completed on November 17, 2014, which made the same findings as the original 2013 EIR of significant adverse impacts, either directly or through habitat modifications, on special-status avian species, and identified the same mitigation measures applicable to ongoing operations as the 2013 EIR but also identified a new Mitigation Measure 17a to provide optional strategies to mitigate impacts on special-status avian species; and

WHEREAS, the East County Board of Zoning Adjustments held a public hearing on said application at the hour of 1:30 p.m. on the 18th day of December, 2014 for the purpose of receiving comments on the Draft SEIR, and again at 1:30 p.m. on the 2nd day of February, 2015 for the purpose of receiving comments on the project proposal, in the City of Pleasanton Council Chambers, 200 Old Bernal Avenue, Pleasanton, California; and

WHEREAS, the Applicant attended the hearings on December 18, 2014 and February 2, 2015 during which it presented evidence to the East County Board of Zoning Adjustments in support of its application, including presentations on February 2, 2015 by its President, Senior Vice President, Project Engineer and Legal Counsel and submission of evidence regarding the Applicant's description of the project's benefits, such as green energy and jobs; and

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

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

WHEREAS, it satisfactorily appears from affidavits on file that proper notice of said public hearings was given in all respects as required by law; and

WHEREAS, the East County Board of Zoning Adjustments approved Resolution Z-15-03 on February 2, 2015 to certify that the Final SEIR has been completed in compliance with CEQA, that the Final SEIR was presented to the Board and reviewed and considered the information contained in the Final EIR, that the Final EIR reflects the independent judgment of the Board; and

WHEREAS, the Board has considered Exhibit A (Written Findings of Significant Effects), Exhibit B (Mitigation Monitoring and Reporting Program) and Exhibit C (Statement of Overriding Considerations) of this Resolution, each of which are required by State and Local CEQA Guidelines; and

WHEREAS, the East County Board of Zoning Adjustments did hear and consider all said reports, recommendations and testimony as hereinabove set forth;

NOW THEREFORE BE IT RESOLVED, that this East County Board of Zoning Adjustments does hereby find the following with respect to the requested Conditional Use Permit extensions:

1. That the recitals above are accurate and are hereby adopted as findings of this Board of Zoning Adjustments; and
2. The proposed Statement of Overriding Considerations does not meet the requirements of Section 15093 of the CEQA Guidelines in that it does not identify economic, legal, social, technological or other benefits of the project that outweigh its unavoidable adverse environmental risks, or that are supported by substantial evidence in the record; and
3. Based on testimony received, and the evidence before the Board, that the economic benefit of the proposal to extend for three years the existing CUPs does not exceed the value of impacts on biological resources; and
4. No substantial evidence has been presented that no repowering project, which was the principal intent of the prior Resolution Z-13-36, or that no other wind power project, will move forward should the application be denied, nor has substantial evidence been provided that there would be a loss of jobs as a result of disapproval of the application sufficient to outweigh the unavoidable adverse environmental risks of the project; and

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

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

86 MW ALTAMONT WIND FARMS
MODIFICATIONS TO EXISTING CONDITIONAL USE PERMITS
FINAL SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT (SEIR)

PUBLIC HEARING – CERTIFICATION OF FINAL SEIR

FEBRUARY 2, 2015



ALAMEDA COUNTY | Community Development Agency



PURPOSE OF PRESENTATION

- **Provide Brief Review of 86 MW Altamont Wind Farms Project – CUP Extension to 2018**
- **Review Public Comments on Draft SEIR and Associated Responses**
- **Additional Discussion of SEIR Document**

PROPOSED PROJECT

- Extension of operations of 16 existing CUPs set to expire on October 31, 2015 (as amended in July 2013)
- **Specifically, extend CUP through October 31, 2018** for operation of 828 turbines with a rated capacity of 86 MW, under specified conditions

KEY PROJECT COMPONENTS

- 828 existing operating
- 155 acres within a 14,196-acre area
- Nameplate capacity of 85.8 MW
- Operating output capacity of 60.8 MW with winter season shutdown

86 MW Altamont Wind Farms
Draft SEIR

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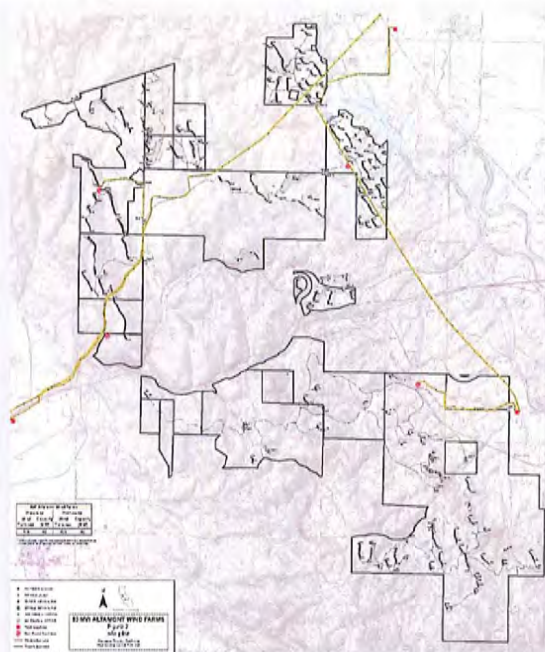
ASSET EXCHANGE

- Not part of project application or for approval, but informational and geographically relevant
- Exchange approximately 300 wind turbines south of I-580 for an equal number of wind turbines owned and operated by Green Ridge Power LLC, north of I-580.
- Exchange will not increase the capacity or quantity of AWI's operating turbines.
- Asset exchange will physically separate shared assets and allow for unencumbered and geographically consolidated operations.

86 MW Altamont Wind Farms
Draft SEIR

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PROJECT OPERATIONAL AREA



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SEIR PROCESS SCHEDULE

Distribute Notice of Preparation (NOP)	9/15/14 – 10/15/14
Prepare Draft SEIR <ul style="list-style-type: none"> Evaluate only the additional environmental effects attributable to the additional 3 years of operations proposed by AWI Recommend mitigation measures to avoid/reduce impacts 	10/15/14 – 11/14/14
Circulate Draft SEIR for public review <ul style="list-style-type: none"> Scientific Review Committee Public Hearing for comments (EBZA) 	11/17/14 – 1/12/15 (extended) 12/11/14 12/18/14
Respond to comments / prepare Final SEIR <ul style="list-style-type: none"> Circulate Final SEIR 	1/12/14 – 1/23/15 1/23/15
EZBA Hearing	2/2/15

86 MW Altamont Wind Farms
Draft SEIR

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PUBLIC COMMENTS AND RESPONSES

Major Public Comments

- **Fatality Calculation and Use of MW-Years**
- **Baseline for Analysis**
- **Asset Exchange and Reduction of HRTs**
- **Inadequacy of Mitigation Measures**
- **Cumulative Impacts on Avian Populations**
- **Current Monitoring Data**
- **Overriding Considerations**

86 MW Altamont Wind Farms
Draft SEIR

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PUBLIC COMMENTS AND RESPONSES

Fatality Calculation and Use of MW-Years

Comment

Fatalities were calculated using only 0.708 of a MW-year, and that such a "subtraction" resulted in flawed or underestimated projections of avian mortality.

Comment originated with the SRC and was repeated by others

Response

- The fatalities were calculated on the basis of only the fatality rates obtained from the Avian Monitoring Reports, and the MWs of each scenario over the entire analysis period, operate between October 1, 2013 and October 31, 2018.
- No subtraction occurred. All scenarios include a seasonal shutdown – 60.8 MWs of installed capacity allowed to operate each year, out of 85.6 MWs. Same as past 6 years.
- Each scenario is therefore measured or "scored" by the same metric.
- Bias recognized in 2013 for estimate of impacts of the 2013 proposal for operations without a seasonal shutdown, due to the likelihood of substantially higher fatality rates during the peak winter migration season, but none of the scenarios currently under review involve operations during the winter season shutdown.

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PUBLIC COMMENTS AND RESPONSES

Baseline for Analysis

Comments

The proposed extension of operations from 2016 to 2018 should have been analyzed by comparison with conditions with no operations in the same period, as under current CUPs, in order to show in more sharp relief the project's levels of avian mortality.

Response

- The Supplemental EIR used the same baseline as in the 2013 FEIR: continued operations with phased decommissioning through 2018, because of the need to compare each scenario on the same metric.
- However, a comparison with the current CUPs expiration on October 31, 2015 is clearly evident in the FSEIR on Table 3-3, on page 33, which shows the net increase in avian fatalities over three years.

PUBLIC COMMENTS AND RESPONSES

Asset Exchange and Reduction of HRTs

Comments

SEIR appeared to give 'credit' to the asset exchange, because it would reduce the number of HRTs (high-risk turbines), and modestly lower the total MWs of operating capacity

Response

- FSEIR makes it clear that neither the asset exchange or reduction of HRTs are treated as mitigation measures, though it is recognized that it will help facilitate repowering of the APWRA on those parcels south of I-580 that AWI will exchange or trade 'away' for assets north of I-580.
- It was clarified in the FSEIR that the asset exchange is *not* an actual component of the project but merely a likely means of 'disentangling' assets or physically separate certain historically shared (or common) project assets.

PUBLIC COMMENTS AND RESPONSES

Inadequacy of Mitigation Measures

Comments

Mitigation measures identified lacked guarantee and certainty of being implemented, such as how Mitigation Measure BIO-17a was an option rather than a requirement. In addition, the number of power pole retrofits to be required under Mitigation Measure BIO-17 were not sufficiently clear.

Response

- The FSEIR clarifies that Mitigation Measure BIO-17a would be an option to mitigating all of the impacts on avian species through power pole retrofits (BIO-17).
- Mitigation Measure BIO-17a was changed to eliminate two options that relied on the estimate of the cost of an individual raptor recovery (\$580), which was disavowed by the California Raptor Center as the actual cost (cost derived from 2014 Program EIR). Also deleted "Other Conservation Measures Identified in the Future."
- Number of power pole retrofits were noted as being 322 power poles, and not 29, based on a golden eagle fatality rate of .061 which is further clarified in the staff report.

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PUBLIC COMMENTS AND RESPONSES

Cumulative Impacts on Avian Populations

Comments

Asked why the DSEIR did not evaluate in broader terms the deaths of avian predators on local or regional breeding, wintering and migratory populations, or other cumulative impacts.

Response

- As a Supplement to the 2013 FEIR, it would be inappropriate to add a new or expanded scope of assessment or methodology to define new impacts.
- Mitigation Measures BIO-16, -17, and 17a are all intended to address cumulative impacts on all bird species. BIO-17a would require a Resource Equivalency Analysis (REA), which would address wider ecological issues, provide landscape-scale analysis and identify appropriate compensation and conservation strategies.
- Cumulative impacts of other wind and energy projects in the APWRA were considered in the 2013 FEIR. The impacts of the project are categorized as cumulatively significant and unavoidable.

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PUBLIC COMMENTS AND RESPONSES

Current Monitoring Data

Comments

Requested that the SEIR incorporate the latest Avian Monitoring Reports to estimate APWRA-wide avian mortality rates, to include bird years 2011 and 2012.

Response

- For consistency between the 2013 FEIR and the SEIR, the 2008-2010 mortality rates should be used. However, the DSEIR added data from bird year 2011, and the FSEIR shows fatality rates from bird years through 2012.
- Use of later bird year data did not substantially change the estimated range of projected fatalities. Golden eagle fatality rates remained within the previous range.
- Staff recognize that use of mortality rates from 2008 to 2010, or with addition of 2011 and 2012 data, is consistent with CEQA or County practice to consider the entire record before the decision-makers and the public.

PUBLIC COMMENTS AND RESPONSES

Avian Impacts

Estimated Fatality Total of Golden Eagle, Based on an Average Fatality Rate (Fatalities per MW per Year)

SCENARIO	TOTAL MW YEARS	2005 – 2010 (Golden Eagle Avg. Rate .083)	2008 – 2010 (Golden Eagle Avg. Rate .061)	2008 – 2012 (Golden Eagle Avg. Rate .075)
2013 FEIR Proposed Project	193.1	16.41	11.78	14.48
2013 No Project Alternative	116.5	9.90	7.11	8.73
2013 FEIR Alternative 1 (Current CIP Conditions)	128.7	10.94	7.85	9.65
2013 FEIR Alternative 3	311.0	26.44	18.98	23.32
Years 2016 - 2018	182.4	15.50	11.13	13.68

PUBLIC COMMENTS AND RESPONSES

Overriding Considerations

Comments

The SEIR lacks back-ground information necessary to support a Statement of Overriding Considerations

Response

- SEIR describes some of the intended benefits of the project (page 23, Section 2.3, Project Need and Objectives), which may contribute to the content of the Statement of Overriding Considerations.
- A Statement of Overriding Considerations does not normally rely solely on the analysis in an EIR. It may be based on information from the 2013 FEIR, the SEIR, or other information in the record.
- FSEIR is only intended to inform the County's decision makers and the public about the potential environmental effects of the CUP modification now proposed by the applicant.

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CLARIFICATIONS

Avian Impacts

Table 3-5-Updated: Comparison of Adjusted Species Fatality Totals of Four Focal Species, Based on an Average Fatality Rate (Fatalities per Megawatt per Year), 2008-2010 and 2005-2010

SPECIES	AVERAGE FATALITIES PER MW (2005-2010/2008-2010/2006-2011/2005-2012/2008-2012)	PROJECTED RANGE OF FATALITIES UNDER THE 2013 FEIR PROPOSED PROJECT (2013-2018 w/ WSSD)	PROJECTED RANGE OF FATALITIES UNDER 2013 FEIR BASELINE CONDITIONS (2005-2018 w/ WSSD & phased shutdowns)	PROJECTED RANGE OF FATALITIES UNDER 2013 FEIR ALTERNATIVE 3 (2013-2018 w/ WSSD)	PROJECTED RANGE OF FATALITIES UNDER 2013 FEIR ALTERNATIVE 1 (Current CUP Conditions)	PROJECTED RANGE OF FATALITIES FOR YEARS 2016-2018 (current proposed project)
American Kestrel	0.496/0.443/0.59/ 0.577/0.571	85.5-113.9	51.6-68.7	137.8-183.5	57-75.93	80.8-107.6
Burrowing Owl	0.721/0.425/0.78/ 0.70/0.52	82.1-150.6	49.5-90.9	132.2-242.6	54.7-100.39	77.5-142.3
Golden Eagle	0.085/0.061/0.08/ 0.081/0.075	11.7-16.4	7.1-9.9	19-26.4	7.85-10.93	11.1-15.5
Red-Tailed Hawk	0.449/0.286/0.44/ 0.411/0.35	55.2-86.7	33.3-52.3	88.9-139.6	36.81-57.79	52.2-81.9

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CLARIFICATIONS

Mitigation Measure 17 – Retrofitting Power Poles

- Defined originally to address impacts of the 2013 project proposal (combined with Mitigation Measure BIO-16), which was statistically one additional eagle fatality. Based on USFWS (2012) guidelines, 29 utility pole retrofits were required to mitigate each eagle.
- FSEIR used the golden eagle fatality rate from 2008-2010 (0.061 per MW per year) to project fatalities due to the current project proposal – 182.4 net additional MWs times 0.061 = 11.1, times 29 = 322 poles.
- Rate of 0.061 per MW per year, from years 2008-2010 is valid because it is based on three years of winter season shutdown.

CLARIFICATIONS

Mitigation Measure 17 – Retrofitting Power Poles

- DSEIR included data from bird years 2011, and based on comments received, data from bird year 2012 was also added, providing for updated avian fatality rates for all available years with a fully implemented winter season shutdown.
- FSEIR finds it reasonable to provide consistency between a prior EIR and its Supplement. However, the County considers use of the latest data and worst-case conditions to be equally sound and consistent with CEQA and County practice.
- FSEIR identified updated rate of 0.075 golden eagle fatalities per MW per year, from which 13.7 eagle fatalities would be projected, and require retrofitting of 397 power poles (*without* BIO-17a).

CLARIFICATIONS

Mitigation Measure 17

Table 3-8 Updated Annual Number of Eagle Fatalities to be Mitigated Through Power Pole Retrofits (Original 2008-2010 rate, compared to Alternative 2008-2012 rate)

OPERATING YEAR	POLES RETROFITTED		QUANTITY OF GOLDEN EAGLES MITIGATED PER YEAR		QUANTITY OF GOLDEN EAGLES MITIGATED PER PROJECT	
	Original	Alternative	Original	Alternative	Original	Alternative
2016	108	133	3.7	4.6	3.7	4.6
2017	107	132	3.7	4.55	7.4	9.15
2018	107	132	3.7	4.55	11.1	13.7
TOTAL	322	397	3.7	4.6	11.1	13.7

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CLARIFICATIONS

Mitigation Measure 17 – Options for implementation, with golden eagle fatality rates from different bird year sets

OPTIONS	Golden Eagle Fatality Rate	Results from 182.4 of net added MWs For 2014 project	Power pole retrofits required under MM BIO-17
RESULTS FROM 2005-2010	.061	11.1	322
RESULTS FROM 2008-2010	.085	15.5	450
RESULTS FROM 2008-2012	.075	13.7	397

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CLARIFICATIONS

Mitigation Measure 17a – Contributions to raptor conservation efforts

Optional, voluntary measures, may be accepted in lieu of some or all of BIO-17.

OPTION 1: Obtaining a programmatic eagle take permit (ETP) and carrying out measures outlined in an approved Eagle Conservation Plan (ECP) and Bird and Bat Conservation Strategy (BBCS).

ETP would require the applicant to receive USFWS approval of its ECP - not just applying for ETP.

OPTION 2: Contribute to regional conservation of raptor habitat.

The REA must be completed and approved, in consultation with the APWRA TAC, within six (6) months of the CUP approval and acquisition of conservation easements be completed within twelve (12) months of the CUP approval. The REA must be accepted by the USFWS and the County.

QUESTIONS AND DISCUSSION

Next steps:

- Board takes public comment on the Final SEIR
- Board may certify the Final SEIR
- Board proceeds to Item 2 on the Agenda:
 - Public comment on the project proposal
 - Deliberation and consideration of the project proposal

KEY ISSUES OF PROJECT PROPOSAL

- AWI (applicant) asserts extension is necessary for potential financial, tax policy, and other reasons outside of AWI's control or related to CEQA
- Federal and State Attorney General representatives oppose approval of any extension
- State and Regional Park District urge approval only with conditions involving a take permit application
- California Audubon and Save Mount Diablo oppose approval of any extension

ADDITIONAL ISSUES

Comments to be read into the record

- John Humphrey, representing Rooney property owner, recommends approval of the CUP extensions
- Marie Cooley, representing Ralph Properties II, a family partnership

Hazardous waste issue

- Resident Bob Cooper withdrew comment letter and concerns following site visit with applicant

ADDITIONAL ISSUES

- Late information received that County Waste Management Authority (ACWMA), which owns properties on which AWI operates 20 turbines or 2.6 MWs, does not favor project approval on ACWMA properties.
- County staff recommend the project Resolution be amended to withdraw extension of CUPs C-8216, C-8243 and C-8235.

PLANNING CONSIDERATIONS

- Board may deny the proposed project
 - Condition 5 of existing CUPs states the applicant has no express or implied right to operate existing turbines under these Permits after October 31, 2015
- If Board has certified the Final SEIR:
 - Board may consider project request
 - Project approval requires decision on rate of eagle mortality to be applied for implementation of Mitigation Measure 17
 - Board may consider staff recommendations modifying the project and conditions

PLANNING CONSIDERATIONS

Staff Recommendations:

Modification to Proposed Project

- Reduce project operations by 50% - 182.4 MW to 91.2 MW
 - Reduction can be phased over three years or terminated before 2018 (possible scenarios below)

2016	2017	2018	Total
30.4 MW	30.4 MW	30.4 MW	91.2 MW
60.8 MW	15.2 MW	15.2 MW	91.2 MW
60.8 MW	30.4 MW	0.0 MW	91.2 MW
46.6 MW	46.6 MW	0.0 MW	91.2 MW

- Phased approach is similar to 2005 CUP conditions for approach
- Comparable to Alternative 2 considered in 2013 FEIR (189.5 MW from 2013-2016), but provides for moderately more MWs (30.5).

PLANNING CONSIDERATIONS

Staff Recommendations:

Other Conditions to Proposed Project

- Removal of all hazardous rated turbines (HRTs) rated 8.5 or greater
- Semi-annual reporting to the Board describing AWI's progress towards repowering
- Deposit of adequate trust funds, per MM-BIO-17 and BIO-17a, prior to the start of each operational year (Feb. 15th of each year, starting in 2016)

QUESTIONS

- Questions for staff

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**ALAMEDA COUNTY CDA
PLANNING DEPARTMENT**

STAFF REPORT

TO: EAST COUNTY BOARD OF ZONING ADJUSTMENTS
HEARING DATE: FEBRUARY 2, 2015

GENERAL INFORMATION

**APPLICATION: MODIFICATIONS TO 16 EXISTING CONDITIONAL USE PERMITS
(APPROVED YEAR 2005, AS MODIFIED IN 2013), PLN2014-00028**

APPLICANT: ALTAMONT WINDS, INC.

REQUEST: To extend 16 conditional use permits (CUPs) for three (3) years, through October 31, 2018, under specified conditions, beyond their current expiration date of October 31, 2015, for operation of an estimated 828 existing utility-scale wind turbines with a combined existing (current) generation capacity of 85.8 megawatts (MW).

LOCATION, SPECIFIC PERMITS, OPERATORS, PROPERTY OWNERS AND PARCEL NUMBERS: The existing turbines are located throughout the approximately 14,436-acre Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), in the eastern portion of Alameda County, bisected by Interstate I-580, on up to 58 parcels bearing 58 separate Assessor's Parcel Numbers.

Conditional Use Permit Numbers, Facility Permittee/Land Owner family names and Assessor's Parcel Numbers (APNs) as follows:

C-8036, Altamont Infrastructure Company/Frick & Costa, APN: 099B-5680-015-00;
C-8037, Altamont Infrastructure Company/Pombo, APNs: 099B-6300-002-01, 099B-6300-002-02, 099B-6325-002-03, 099B-6325-002-04 and 099B-6425-001-06;
C-8134, Altamont Infrastructure Company/Rooney, APN: 099B-6125-002-00;
C-8137, Altamont Infrastructure Company/Mulqueeney, APNs: 099A-1800-002-03, 99A-1800-002-04, 99b 7890-002-04, 99B-7890-002-05, 99B-7900-001-05, 99B-7900-001-07, 99B-7910-001-01, 99B-7925-001-03, 99B-7925-001-04, 99B-7925-002-04, 99B-7925-002-05, 99B-7975-001-00, 99B-7980-001-00, 99B-7985-001-03, 99B-7985-001-04, 99B-7985-001-05, 99B-7985-001-06 and 99B-8050-001-00;
C-8191, WindWorks Inc./Mulqueeney, APN: 099B-7910-001-01;
C-8216, WindWorks Inc./Alameda County Waste Management Authority, APN: 099A-1810-001-00;
C-8232, Altamont Infrastructure Company/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/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 and 099B-7300-001-05;
C-8241, Altamont Infrastructure Company/Walker Family Trust, APNs: 099B-6100-002-10, 099B-6100-002-12, 099B-6100-002-12, 099B-6100-003-10, 099B-6100-003-11, and 099B-6100-003-13;
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;

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

ZONING: A-BE 160 and A-BE-320 (Agriculture, Minimum Building Site Area 160 and 320 acres, respectively) Districts, intended to promote implementation of general plan land use proposals (or designations) for agricultural and other non-urban uses, to conserve and protect existing agricultural uses, and to provide space for and encourage such uses in places where more intensive development is not desirable or necessary. (Section 17.06.010). Permitted uses include a variety of agricultural and agricultural support uses, including crop, vine and tree farms, animal husbandry, wineries, fish hatcheries, trails, and on qualified building sites, single family and secondary dwelling units. Conditionally permitted uses include privately-owned wind electric generators.

GENERAL PLAN DESIGNATION: The site is subject to the East County Area Plan (ECAP), adopted in 1994 and amended substantially in November 2000 by the voter-approved Ordinance/Initiative Measure D. The ECAP designates the site as Large Parcel Agriculture (LPA), and establishes minimum parcel sizes for specific areas of the East County (100 acres for the subject parcels) and maximum building intensity (floor area ratio or FAR). Subject to the provisions, policies and programs of the ECAP, the LPA designation permits one single family residence per parcel, agricultural uses, agricultural processing facilities, public and quasi-public uses, quarries, landfills and related facilities, "windfarms and related facilities, utility corridors and similar uses compatible with agriculture."

ENVIRONMENTAL REVIEW: A Final Supplemental Environmental Impact Report (FSEIR) has been prepared that evaluates the potential environmental impacts of the application to extend for three years the existing CUPs, and which is "tiered" from an EIR that was certified by the EBZA on July 18, 2013 for modifications approved on the same date, to allow full operation of the 828 existing turbines through October 31, 2015.

RECOMMENDATIONS:

The Board of Zoning Adjustments should receive a staff presentation, take public comment on the FSEIR and on the subject application, review the draft resolutions and exhibits, including the Mitigation Monitoring and Reporting Programs (MMRPs) for the project, certify the Final SEIR by adoption of a draft Resolution for the purpose of CEQA, and approve the proposed CUP modifications (PLN2014-00028) by adoption of the second Resolution and proposed conditions.

PERTINENT FACTS:

Physical Features: The subject CUPs are widely distributed across the Alameda County portion of the Altamont Pass Wind Resource Area (APWRA). The project location containing AWI's existing wind turbines falls within an approximately 14,196-acre portion of the 50,000-acre APWRA. The APWRA extends across the northeastern hills of Alameda County and a smaller proportion of Contra Costa County to the north. The region is generally characterized by rolling foothills of annual grassland. The area in which the CUPs are permitted is mostly treeless with relatively steep terrain on the west and gently rolling hills on the east toward the floor of the Central Valley. The underlying landscape generally consists of undeveloped grazing land. Major features of the area include the wind turbines, ancillary

facilities, an extensive grid of high voltage power transmission lines, substations, microwave towers, a landfill site, Interstate 580, railroad track lines, ranch houses, and clusters of rural residential homes on Dyer and Midway Roads.

History/Background: The 16 subject CUPs were initially approved by the EBZA in November 2003 and January 2004 with conditions, as the continued operation of existing wind farm facilities, including turbines and infrastructure. These permits, along with 13 other CUPs approved on those dates, and another two CUPs approved in 2006, were approved with a determination that they were categorically exempt from CEQA as the continued operation of existing facilities. A total of 31 CUPs were operating under a common set of conditions after the Alameda County Board of Supervisors approved a resolution in September of 2005 which provided for operation of the wind farms through 2018 but with phased decommissioning requirements, in the expectation that repowering of the APWRA – replacing the older generation turbines with newer and substantially fewer, larger and more efficient turbines – would be well under way after 2010. After litigation by a coalition of environmental advocacy organizations in 2006, a Settlement Agreement was approved in 2007 by three of the four wind energy companies that required greater commitments to repowering and cessation of most of their operations after 2015. As a result of the Settlement Agreement, the conditions of approval applicable to the turbines beneficially owned by the Settling Parties were substantially changed; however, AWI (the current applicant) was not one of the Settling Parties, and therefore remained subject to the original conditions adopted in 2005. More detailed history and background on the year 2005 CUPs is provided in the prior staff report on the public hearing on the Draft SEIR on December 18, 2014.

In 2013, AWI obtained approval of its application (PLN2011-00102) to modify these same CUPs, to eliminate the requirements of the year 2005 CUPs for phased decommissioning, which more specifically required removal of 10 percent of its original 920 turbines by September 30, 2009 (92 turbines), an additional 25 percent by September 30, 2013 (35 percent cumulative, or 322 turbines), an additional 50 percent by September 30, 2015 (another 460 turbines), and the remaining 15 percent of turbines (138) by September 30, 2018. The first phase of decommissioning took place in 2009, at which time AWI removed 10 percent of its 920 turbines. Together with the elimination of phased decommissioning, AWI also sought under that application to remove the requirements for winter seasonal shutdown, and proposed that 100 percent of AWI's turbines would be decommissioned by the end of 2015. The modifications approved in 2013 (July 19, 2013, by Resolution Z-13-36) were the subject of an EIR to address both the CUP modifications and decommissioning activities, as required by the year 2005 CUPs. On the basis of the 2013 EIR, the County denied the request to eliminate the winter seasonal shutdown and instead approved an alternative with continued seasonal shutdown, consistent with other wind farm operators, but with expiration on October 31, 2015.

The 2013 approval also instituted a Mitigation Monitoring and Reporting Program (MMRP) which primarily applied to ground-disturbing activities associated with repowering, but also required that the seasonal shutdown established in the prior years by the County be maintained through the life of the project (Mitigation Measure BIO-16), and retrofit off-site electrical facilities (i.e., power poles) proportional to the number of projected eagle fatalities (Mitigation Measure BIO-17). The County confirms that the seasonal shutdowns occurred on schedule since 2013, and that the power pole retrofits required by the MMRP were completed in October of 2014. In addition, removal of high-risk turbines (HRTs, aka hazardous-rated turbines), required by the 2013 conditions of approval (not by the MMRP), was completed by October of 2014.

PROJECT DESCRIPTION

The current project proposal is a request to modify 16 existing Conditional Use Permits (CUPs), approved in 2005 and modified in July 2013 (PLN2011-00102), for continued operation of the wind farm assets of

Altamont Winds, Inc. (AWI), now comprised of 828 wind turbines with a rated capacity of 85.8 MW. Specifically, AWI's request would provide for the wind farm turbines to continue operating through October 2018, as a change from the current expiration of the CUPs on October 31, 2015. While the CUPs as approved in 2005 provided for operations through September 2018, they also required phased shutdown and removal, with a combined 35 percent of all turbines removed by September 2013 and an additional 50 percent removed by September 2015, so that only 15 percent of the original number of turbines would be operating between 2015 and 2018. The modifications approved in 2013 in effect exchanged the phased shutdown requirement for a complete shutdown in October of 2015, in order to initiate repowering of its wind farm assets in 2016.

The Applicant, AWI, contends that its progress in developing a repowering program for its turbines is constrained by ongoing commercial and regulatory difficulties, and that the CUP modifications allowing it to operate through 2018 are necessary in the event that circumstances beyond AWI's control prevent it from initiating repowering in 2015 or in a financially feasible manner after the current CUPs expire in 2015. AWI proposes to operate through 2018 only on the condition that it has diligently pursued repowering of its wind farm assets, and can demonstrate that circumstances beyond AWI's control have delayed completion of the repowered project. Conditions of approval would require an bi-annual review to document AWI's efforts to repower its assets.

Asset Exchange. Concurrently with the request for an extension through 2018, AWI is in discussions with another wind farm operator, Green Ridge Power LLC (an operating entity of NextEra Energy Resources, aka NEER), for an exchange of wind turbine assets. Specifically, approximately 300 wind turbines currently owned by AWI south of I-580 would be acquired by Green Ridge and a roughly equal number of wind turbines would be acquired by AWI north of I-580. As proposed, and under assurances from both companies, such an exchange will not increase the capacity or quantity of AWI's operating turbines. Green Ridge will shut down and remove the turbines it will acquire, for the purpose of repowering.

The asset exchange is recognized in the FSEIR and certain aspects of it are discussed, such as that it would result in a decrease of roughly 1.7 MW in AWI's rated annual capacity, and that it would result in a moderate reduction in the number of operating high-risk turbines (HRT), specifically those rated 8.5 to 10.0 for their relative risk of striking birds. The asset exchange and the reduced number of HRTs to be operated was also the subject of some comments on the Draft SEIR, that asserted that such calculations of benefit were unreasonably describing it as a means of mitigating impacts on birds, or adjusting the assessment of avian mortality impacts. The response to these comments in the FSEIR indicates that the asset exchange is not directly part of the project, and neither of the possible decreases in MWs or HRTs described in the DSEIR were intended to suggest the impact of the project on avian mortality was mitigated or reduced in a substantive way. The DSEIR in fact described the effect as having no statistical importance.

RESPONSES TO COMMENTS ON THE DRAFT SUPPLEMENTAL EIR

The Draft SEIR (DSEIR) circulated for the purpose of public and agency comment between November 17, 2014, and January 12, 2015, having been extended for 10 additional days beyond the original 45-day comment period in recognition of the winter holiday period. The County held a public hearing to obtain verbal comments on the DSEIR on December 12, 2014. A Final SEIR (FSEIR) was prepared as a complete revision of the Draft SEIR with Appendices containing comments on the DSEIR, master responses to frequent or prominent comments, responses to individual comments, a version showing changes to the DSEIR (deletions and insertions), notification documents, and assorted other materials. The DSEIR and FSEIR were prepared by Power Engineers, Inc. under County supervision.

The 2014 SEIR is a supplement to the 2013 EIR, which was certified in July 2013 as a complete assessment of the environmental impacts of AWI's existing operations, and of proposed modifications to operate all of AWI's 828 turbines through the end of 2015 without a seasonal shutdown, as well as three alternatives or scenarios: 1) operations through October 31, 2015; 2) operations through October 31, 2016; and 3) operations through October 31, 2018. All alternatives assumed full operations (no additional decommissioning), and included 3-½-month seasonal shutdowns. The SEIR is not intended to re-evaluate the assessment of those impacts, but is meant to provide additional, detailed analysis of the impacts attributable to the third alternative (to operate through 2018), which are limited almost exclusively to biological resources and in particular, avian mortality. Some additional analysis of hazardous materials was completed due to concerns raised by an area resident, but did not identify any significant impacts. More broadly speaking, the SEIR provides useful information regarding the asset exchange, new comparisons between the current project and its alternatives, revised mortality rates for focal raptor species, additional mitigation options, and provides for further public review of the current proposal. As with the 2013 EIR, the analysis quantifies effects on the four focal raptor species that were the subject of the 2007 Settlement Agreement, including golden eagle, red-tailed hawk, burrowing owl and American kestrel, as well as all bird species known to inhabit the APWRA. The DSEIR used the same method as the 2013 EIR to quantify the relative, projected number of bird deaths in the years 2013 to 2018, which was the range of years used in the 2013 EIR to show avian mortality impacts and changes due to that proposal, between the baseline (no project) conditions (with phased shutdown and decommissioning between 2013 and 2018) and complete shutdown in 2015.

The Executive Summary (Table ES-4) briefly outlines the impacts that were identified, and topic areas that were excluded from the analysis as not relevant or applicable to the site location or nature of the project. The SEIR's analysis of the current proposal's impacts identified only one significant, overarching environmental impact (among the specific determinations required by CEQA), which were the significant and unavoidable adverse impacts on biological resources, and the same significant impact as defined in the 2013 FEIR: *Impact BIO-1* – the potential to cause a substantial adverse effect, either directly or through habitat modifications, on special-status avian species.

To address impact BIO-1, the 2014 SEIR identifies three distinct mitigation measures, two of which were previously included in the 2013 EIR, namely continuing the winter seasonal shutdown (Mitigation Measure 16), and retrofitting electrical power poles (Mitigation Measure 17). To further mitigate and compensate for the projected level of avian mortality resulting from the proposed CUPs extension, the DSEIR identified Mitigation Measure "BIO-17a" (i.e., a subdivision of BIO-17), as a suite of five optional measures to supplement Mitigation Measure 17 and provide a means of compensation for the loss of special-status avian species, including golden eagles, by enabling contributions to conservation efforts. This measure was adopted almost verbatim and directly from the *Program EIR* (PEIR) for the *Altamont Pass Wind Resource Area Repowering* that was certified in November, 2014, and as outlined in the DSEIR, could include measures "outlined" in a programmatic eagle take permit, contributing to raptor recovery activities, raptor conservation, and regional raptor habitat conservation efforts. Contributions to raptor recovery activities and raptor conservation efforts were to be based on the estimated average cost of each raptor recovery reported in the PEIR (\$580, based on an interview with staff of the California Raptor Center at the University of California, Davis), for use in a Resource Equivalency Analysis (REA) to calculate appropriate costs for land conservation.

However, after certification of the PEIR, that average recovery cost was refuted by the Raptor Center as having been taken out of context, and because no substitute dollar amount was identified, the FSEIR was changed to remove those two components of Mitigation Measure BIO-17a that were associated with that recovery cost estimate. Another component of the suite from the 2014 PEIR, described as "Other Conservation Measures Identified in the Future" was also eliminated in the FSEIR as it would only apply in the long term, beyond 2018. The remaining options under Mitigation Measure BIO-17a would now

require contributions to regional conservation of raptor habitat by funding conservation easements within the APWRA or its bordering eco-region if approved by the County, held by an organization dedicated to managing conservation lands, based on a well-reasoned REA approved by the USFWS and the County, and according to a specific timetable, would remain as a strategy acceptable by the County to mitigate impacts on raptors. The impacts would not be reduced to less than significant levels, however. These changes would maintain the intent of Mitigation Measure BIO-17a to provide options for the applicant to diversify its mitigation program as defined in the 2013 EIR, which was limited to retrofitting power poles.

Major Comments and Master Responses. The County received nine letters of comment and some verbal comments at the public hearing. The majority of the comments fell into a limited number of common themes, for which the County prepared Master Responses, as summarized below.

- *Fatality Calculation and Use of MW-Years.* Several commenters, including members of the APWRA Scientific Review Committee, stated that it appeared that fatalities were being calculated on the basis of only a portion (0.708) of a “MW-year” as defined in the annual APWRA-wide Monitoring Reports to reflect the winter season shutdown, and that no such “subtraction” should have been applied. The County responds in the FSEIR that no such subtraction occurred, and that all of the comparisons of the proposed project with the existing CUPs, or with the prior baseline of phased decommissioning, all account for the seasonal shutdown. Simply stated, each scenario is measured on the basis of the cumulative total MWs of installed capacity operating or permitted to operate between October 1, 2013 and October 31, 2018, and as such are “scored” by the same metric.

Although there was a bias in estimating impacts of the 2013 proposal for operations without a seasonal shutdown, due to the likelihood of substantially higher fatality rates during the peak winter migration season, this is a separate issue, and none of the scenarios under consideration at the present time involve operations during the winter season shutdown.

- *Baseline for Analysis.* Some commenters believed the impacts of the current project proposal should be measured on the basis of the current CUPs that disallow any operations after October 31, 2015, in order to show the project’s levels of avian mortality in sharp contrast to conditions with no AWI-turbine operational related impacts. The response indicated that the County retained the use of the same baseline as used in the 2013 FEIR, of continued operations with phased decommissioning through 2018, because of the need (as described above as well) for comparing each scenario on the same metric.
- *Asset Exchange and Reduction of HRTs.* Some commenters questioned if the description of the asset exchange and the resulting modest reduction in the number of operating HRTs (high-risk turbines) in the APWRA at large, and modestly lower MWs of operating capacity were intended as a mitigation measures or in other ways give ‘credit’ to the asset exchange and the project in general. The response in the FSEIR makes it clear that neither the asset exchange or reduction of HRTs are treated as mitigation measures, though it is recognized that it will help facilitate repowering of the APWRA on those parcels south of I-580 that AWI will exchange or trade ‘away’ for assets north of I-580, where repowering will occur somewhat later, after 2015.

It was clarified in the FSEIR that the asset exchange is *not* an actual component of the project but merely a likely means of ‘disentangling’ assets in the APWRA that have historically over-lapped.

- *Inadequacy of Mitigation Measures.* Numerous commenters expressed concerns that the mitigation measures identified lacked certainty of implementation, such as that Mitigation Measure BIO-17a was an option rather than a requirement. Additionally, the details and number of power pole retrofits to be required under Mitigation Measure BIO-17 were not sufficiently clear to some commenters. The FSEIR responses to these issues consists of clarifications that the Measures are required, and reassurances that the suite of optional and supplemental measures available under Mitigation Measure

BIO-17a can be implemented effectively. The FSEIR response cites Table 3-3 as the basis for estimating total golden eagle fatalities attributable to the operations between 2016 and 2018 and the determination that retrofitting 322 power poles would be sufficient mitigation. The basis on which the retrofit of 322 power poles was determined is discussed separately below (see *Power Pole Retrofits Under Mitigation Measure BIO-17*).

The FSEIR also provided for changes to Mitigation Measure BIO-17a to eliminate the reliance on a disavowed estimate of the cost of an individual raptor recovery (\$580). Two of the five options that were considered to be reliant on the 2014 Program EIR-based dollar amount of \$580 were deleted from Mitigation Measure 17a, as well as the general and long-term-oriented “Other Conservation Measures Identified in the Future.”

- *Cumulative Impacts on Avian Populations.* A few comments, including some from the SRC, asked why the DSEIR did not evaluate in broader terms the deaths of avian predators on local or regional breeding, wintering and migratory populations, or other cumulative impacts. The FSEIR response acknowledged the cumulative impact but noted that as a Supplement to the 2013 FEIR, it would be inappropriate for the SEIR to add a new or expanded scope of assessment or methodology to define new impacts. The response also states that Mitigation Measures BIO-16, -17, and 17a are all intended to address cumulative impacts on all bird species, and that BIO-17a enables the wider ecological issues to be addressed through an REA to provide landscape-scale analysis and subsequent compensation and conservation strategies. Lastly, the FSEIR indicates that the cumulative impacts of other wind and energy projects in the APWRA were considered in the 2013 FEIR, and that the impacts of the project were categorized as cumulatively significant and unavoidable.
- *Current Monitoring Data.* Some commenters requested that the SEIR incorporate the latest Avian Monitoring Reports to estimate APWRA-wide avian mortality rates, to include bird years 2011 and 2012. The FSEIR responded that for consistency between the 2013 FEIR and the SEIR, the 2008-2010 mortality rates should be used as the basis for consistent analysis of avian impacts between the 2013 project and the current proposal. However, mortality rates from the later Monitoring Reports were included in the FSEIR in Table 3-5, to provide the range of estimated fatalities from the different mortality rates. Most importantly, the mortality rates for golden eagles including the later years were within the range established by the earlier years (0.085 for the period 2005 to 2010, and 0.061 for the years 2008 to 2010). As such, the use of later Avian Monitoring Report data did not substantially change the estimated range of projected fatalities. Nevertheless, and in consideration of the entire record, staff recommends that the mortality rates from later periods be included and that the response should be deemed to be revised accordingly in the resolution to certify the SEIR and in the Findings of Significant Impacts.
- *Overriding Considerations.* Several commenters asserted that the SEIR does not contain the background information necessary to support a Statement of Overriding Considerations, needed for project approval. The FSEIR response notes the comments, but characterizes them as primarily directed at the merits of the project itself rather than the adequacy of the DSEIR analysis. In addition, while the SEIR describes some of the intended benefits of the project (page 23, Section 2.3, Project Need and Objectives), which may contribute to the content of the Statement of Overriding Considerations, the Statement does not normally rely solely on the analysis in an EIR, and the FSEIR response notes that it may be based on information from the 2013 FEIR, the SEIR, or other information in the record. The FSEIR response acknowledges that the current project, substantially the same as Alternative 3 as described in the 2013 FEIR, was deemed infeasible in 2013, but concludes that the FSEIR is only intended to inform the County’s decision makers and the public about the potential environmental effects of the CUP modification currently proposed by the applicant.

Power Pole Retrofits Under Mitigation Measure BIO-17. Mitigation Measure BIO-17 as defined in the FSEIR is intended to provide for 29 power pole retrofits per projected golden eagle fatality, consistent with the 2013 FEIR. The following discussion is intended to provide some clarification with respect to statements in the DSEIR regarding Mitigation Measure 17 as described in the FSEIR. Firstly, the DSEIR and FSEIR state, on pages 37-8:

The proposed project with implementation of mitigation measure BIO-16, (together identified as Alternative 1 in the analysis of project alternatives) is projected to result in the fatality of approximately one eagle (cumulatively, and statistically, 0.7–1.0) when compared to the existing avian baseline condition (the No Project Alternative) (2013 FEIR Table 3.2-5).

This statement was directly copied from the 2013 FEIR description of Mitigation Measure BIO-17, and thus only applies to the 2013 proposed project, not the current 2014 proposal. However, revisions to the text in the FSEIR clarify that “this mitigation addresses the impacts of the 2013 project proposal (with Mitigation Measure BIO-16), which is approximately one additional eagle fatality.” The FSEIR also adds text explaining the basis for calculating the one additional eagle fatality, and that the currently proposed project (2014) would have a notably greater number of projected eagle fatalities – 11.1 – requiring 322 power pole retrofits.

As reported in Table 3-3 (and duplicated as Table ES-1), on the basis of the *2008-2010 Bird Year Adjusted Fatality Rates*, the current project would result in 3.7 annual estimated fatalities, or 11.1 estimated fatalities over the three-year period 2016-2018. The total estimated fatalities for the period 2013 to 2018 was 19, all of which data is derived from Tables 3-1 and 3-2, using the average fatality rates from the 2008-2010 bird years (i.e., 0.061×60.8 MW of operating capacity per year = 3.7; or for the whole period, 2013 to 2018, 0.061×311.0 MW of cumulative operating capacity = 19). However, to clarify, the projected 19 fatalities represent a “gross” number, including the number of fatalities anticipated to occur in the same period under the existing CUPs – 7.9 (statistically), a difference of 11.1 fatalities – the same as the three-year total in Table 3-3. It should be emphasized again that these results are based on the 2008-2010 fatality rates, which had special merit in the 2013 FEIR, in that they represented the years in which the winter seasonal shutdown was fully in effect, whereas it was only partly implemented in the years 2005 to 2007.

The Executive Summary of the FSEIR, which was intended to summarize the content of the text body (Chapters 1.0 to 3.0) of the FSEIR, also contains a statement (page 5) clarified below the subject excerpt:

Use of power poles for the mitigation of all estimated golden eagle fatalities projected to result from the current proposal to operate through 2018 – a range of 19.0 to 26.4 such fatalities between 2013 and 2018 [2013 FEIR, Table 4-2, *Adjusted Species Fatality Rates for Each Alternative, Based on an Average Fatality Rate (Fatalities per Megawatt per Year)*] would require the retrofitting of between 551 and 722 power poles, including at least 322 poles during the proposed three-year CUP extension.”

Although the range of 19 to 26.4 fatalities is represented in Table 4-2 of the 2013 FEIR, it also represents the “gross” number of fatalities projected from 2013 to 2018 and includes fatalities that would occur otherwise under the prior existing CUPs as they had been approved in 2005, between October 1 of 2013 and October 31, 2018. As such, the last portion of this statement could be rephrased to say “*could* require the retrofitting of between 551 and 722 power poles *due to the “gross” number of projected avian fatalities, but based on the “net” increase in projected fatalities, compared to conditions without the 2013 permit modifications, only a minimum of 322 pole retrofits would be required* during the proposed three-year CUP extension.” However, the FSEIR Executive Summary correctly concludes that AWI will retrofit 322 utility poles as mitigation for the currently proposed (2014) project.

Table 3-1 in the DSEIR also included fatality rates based on Avian Monitoring Reports from the period 2005 to 2010, and 2005 to 2011, and in response to some comments received on the DSEIR, Table 3-1 was supplemented with the fatality rates from 2005 to 2012. Table 3-5 was also amended to show average fatality rates for the period 2008 to 2012, which the County recognizes as having the greatest number of years (i.e., more supporting data) during which time the winter season shutdown was in full effect. However, some minor formatting and typographic corrections to Table 3-5 as revised for the FSEIR are necessary, as shown below with changes underlined, and with some additional explanatory footnotes.

TABLE 3-5 COMPARISON OF ADJUSTED SPECIES FATALITY TOTALS OF FOUR FOCAL SPECIES, BASED ON AN AVERAGE FATALITY RATE (FATALITIES PER MEGAWATT PER YEAR)
(UPDATED)

SPECIES	AVERAGE FATALITIES PER MW (2005-2010/ 2008-2010/ 2005-2011/ 2005-2012/ 2008-2012)	PROJECTED NUMBER OF FATALITIES UNDER THE 2013 FEIR PROPOSED PROJECT ¹	PROJECTED NUMBER OF FATALITIES UNDER 2013 FEIR BASELINE CONDITIONS ²	PROJECTED NUMBER OF FATALITIES UNDER 2013 FEIR ALTERNATIVE 3 ³	PROJECTED NUMBER OF FATALITIES FOR YEARS 2016-2018 ⁴
American Kestrel	0.496/0.443/ <u>0.59</u> / <u>0.577</u> /0.571	85.5–113.9	51.6–68.7	137.8–183.5	80.8–107.6
Burrowing Owl	0.721/0.425/ <u>0.78</u> / <u>0.70</u> /0.52	82.1–150.6	49.5–90.9	132.2–242.6	77.5–142.3
Golden Eagle	0.085/0.061/ <u>0.08</u> / <u>0.081</u> / <u>0.075</u>	11.7–16.4	7.1–9.9	19–26.4	11.1–15.5
Red-Tailed Hawk	0.449/0.286/0.44/0.411/0.35	55.2–86.7	33.3–52.3	88.9–139.6	52.2–81.9

Notes:

¹ This column of data is a remnant of Table 3.2-5 in the 2013 FEIR which represents the 2013 proposal to eliminate seasonal shutdowns; the results were also determined to be biased low in the 2013 FEIR.

² These baseline conditions represent the 2005 CUPs with phased decommissioning through 2018.

³ Alternative 3 is identical to the current 2014 project proposal, for the purposes of this table.

⁴ These results represent the increment of additional focal species fatalities attributed to the 2014 project proposal, based on the lowest and highest fatality rates in the 2nd column and the increment in cumulative MWs for the period 2016-2018.

It should be noted that the updated mortality rates for golden eagle in the various periods (2005 to 2011, 2005 to 2012, and 2008 to 2012), all fell within the lowest and highest mortality rates previously used in the 2013 FEIR (0.061 to 0.085 eagle fatalities per MW per year). If the lowest and highest fatality rates are considered, the potential increment of additional eagle fatalities for the three-year period 2016 to 2018, as shown in the last column of Table 3-5, would range between 11.1 and 15.5 (respectively using the fatality rates from 2008 to 2010, and 2005 to 2010).

Although using different fatality rates would result in different total projected fatalities, the FSEIR used the rate of 0.061 eagle fatalities per MW per year, based on the 2008 to 2010 period as the “final” rate and interpreted it to be consistent with the 2013 FEIR. Most importantly, as discussed above, based on the three years of operating capacity between 2016 and 2018 (182.4 MWs) the current project would result in 11.1 golden eagle fatalities, and require 322 power pole retrofits to mitigate the project’s impacts under Mitigation Measure BIO-17. Master Response 6 of the FSEIR states that “For consistency between the 2013 FEIR and the DSEIR, the 2008-2010 fatality rates should be used as the basis for comparing avian impact analysis.” In this case, the DSEIR and FSEIR used the lowest result (11.1) and not the highest result (15.5). It is common practice in CEQA and the policy of the County to base its identification of required mitigation measures on the worst-case condition, which in this case is a potential result of 15.5 (statistical) eagle fatalities, for which, based on the rate of 29 power pole retrofits per potential fatality,

would require 450 power pole retrofits, not 322. However, the County considers the highest rate of eagle mortality, 0.085 per MW per year, based on the years 2005 to 2010, to be the *least* representative of current conditions, because half of the years on which it is based did not include the fully implemented winter season shutdown. Based on comments received on the DSEIR, it appears that the rate based on the years from 2008 to 2012, as noted above, represent the largest number of years (i.e., more supporting data) during which time the winter season shutdown was in effect. It should also be recognized that the 2013 FEIR used a worst-case result to determine that the net increase in fatalities from approval of the 2013 project was 1.0, rather than the least-case result of “0.7”, based on the 2008 to 2010 mortality rates.

Alternatively, using the updated average golden eagle mortality rate of 0.075 per MW per year from the years 2008 to 2012, the result of operating a net additional 182.4 MW of installed capacity through 2018 would be 13.7 additional golden eagle fatalities, for which – assuming the use of Mitigation Measure BIO-17 and power pole retrofits to exclusively mitigate for all raptor impacts, at the USFWS-sanctioned rate of 29 power pole retrofits per projected golden eagle fatality, the applicant would have to retrofit a minimum of 397 power poles. This number represents a smaller amount than the range indicated in the Executive Summary of 551 to 722, is based on a rate reported in the FSEIR (Table 3-5), falls within the range of projected fatalities for the project, is considered to be supported by the FSEIR and would be acceptable to the County as mitigation. More importantly, it is based on a total of five years of monitoring during the current regime of 3½ months of winter season shutdown, and may be a more reliable and authentic mortality rate available at this time.

Combining Mitigation Measures BIO-17 and BIO-17a. Because the SEIR provides for some or all of the impacts to be mitigated through Mitigation Measure BIO-17a, the applicant may choose to combine power pole retrofits with some of the options identified with BIO-17a. For example, the applicant may retrofit 200 power poles under BIO-17, and under BIO-17a, provide for mitigation of the full range of special status species through contributions to conservation strategies during the four-year remaining life of the CUPs as modified.

Other Concerns. In response to a specific comment in response to the Notice of Preparation from a resident on Dyer Road, regarding the appearance of oil or other lubricants being released from leaking turbine generators or other equipment, including along the turbine blades, the DSEIR and FSEIR provided information on the potential of a significant leak of hazardous materials into the environment. As discussed in the prior staff report for the Public Hearing, the DSEIR determined that the impacts were less than significant and did not warrant the requirement for any mitigation measures; no different findings were made for the FSEIR. After the close of the comment period, the Dyer Road resident, Bob Cooper, submitted an e-mail to County staff reporting on a site tour on January 20, 2015, in which he indicated he was satisfied that what he believed was leaking oil was in fact rust stains, and that maintenance of the turbines was adequate. The e-mail is included in the FSEIR (Appendix B), but as it was received late, was not responded to directly in the FSEIR, nor did it require a response or change any determination in the FSEIR.

GENERAL/NON-CEQA-RELATED COMMENTS ON THE PROJECT

Many comments received on the DSEIR expressed strongly negative opinions regarding the merits of the project, that were not appropriate to be addressed in the FSEIR. Comments from the U.S. Fish and Wildlife Service (USFWS), the California Department of Justice/Office of the Attorney General, the East Bay Regional Park District (EBRPD), Audubon California (Audubon), and Save Mount Diablo (SMD), may be summarized as follows.

- The USFWS noted that approximately 31 golden eagle fatalities were recorded at AWI facilities in the APWRA since late 2009, when eagle take permit regulations were first promulgated, but without

the benefit of any permit. Additionally, the Service stated that in spite of their encouragement of AWI to apply for such a permit, and indications by AWI of their intent to apply, the Service has not received a permit application from AWI or taken other steps to reduce its impacts on the species protected by the Migratory Bird Treaty Act (MBTA) or the Bald and Golden Eagle Protection Act (BGEPA). It was also noted that the golden eagle and other special-status species deaths attributable to AWI operations represent violations of the MBTA and BGEPA, and though enforcement has been withheld for those wind energy companies actively engaged in repowering, AWI is not doing so, and for this reason the Service recommended that the County deny the permit modifications.

AWI provided the County with a letter response to the DSEIR comment letter from USFWS, and it is attached to this staff report.

- The Attorney General opened its letter with opposition to the permit modifications on the grounds that it would “create serious inequities for other turbine operators and will undercut current efforts to repower” the APWRA, and that the DSEIR does not provide substantial evidence to support the required statement of overriding considerations and is otherwise legally inadequate. Primarily, the AG’s office considers repowering to be the more feasible alternative to lessen the significant environmental impacts of the project, and cited case law wherein a lead agency was found to have abused its discretion where the record did not support the finding that other less damaging alternatives were infeasible. It points out that the current record of evidence shows that Alameda County has already made a determination that repowering the APWRA with new turbines is a feasible alternative. The letter closes with a recommendation to the County to not certify the SEIR, and to deny the request.
- The EBRPD expressed its opinion that the finding made in 2013 that Alternative 3 (addressed in the prior 2013 FEIR and roughly the same as the current project proposal) would “very substantially increase the avian mortality impacts compared to the project and all other alternatives... [and] is considered infeasible” would be unchanged, and should continue to be found to be infeasible. The District does not explicitly state that it opposes the permit modifications, but more simply states that the permit extensions would delay repowering – and continue what it considers visual effects that would otherwise be removed.
- Audubon California’s letter begins with an observation that the County previously determined in 2013 that the extension of operations to 2018 were “infeasible” and that removal of the existing turbines after 2016 would be the best means of promoting repowering of the APWRA at large. Most of the comments address the DSEIR and CEQA issues, but others express the opinion that AWI would be given an unfair competitive advantage over other wind energy companies in the APWRA that are pursuing repowering, that the County would be complicit in the killing of golden eagles and other protected species by approving the extension, and as the project would delay repowering and result in higher levels of avian mortality, it should be denied.
- Save Mount Diablo expressed its opposition to the project due to the increases in avian mortality, but primarily addressed its remarks to the DSEIR.

PLANNING CONSIDERATIONS

Planning staff have carefully considered the current project proposal, the FSEIR analysis, the comments from the public, private organizations and government agencies, and support approval of the project in part, with limits on the scale of the permitted operations, additional conditions of approval and related requirements for implementation of the identified Mitigation Measures BIO-16, BIO-17 and BIO-17a. The Board of Zoning Adjustments may choose to approve the project application as proposed with no changes, or it may choose to deny the request. Under the existing CUPs approved in 2013 (Condition 5, Expiration), the applicant has no express or implied right to operate existing turbines under these Permits after October 31, 2015. The Board may consider the assertion by the applicant that in order for it to

develop its repowering program for its turbines and prevent closure of the company, it must continue operations in a financially feasible manner beyond 2015, and thereby approve the project as proposed. County staff recognize that there are certain overriding considerations, as described in Exhibit C to the draft Resolution, related to local jobs and renewable energy. Alternatively, the Board may consider Planning staff's following recommendations.

Firstly, with respect to the primary request to operate the full 828-turbine, 85.8 MW wind farm for the three years between February 15, 2016 and October 31, 2018, for a cumulative three-year installed capacity of 182.4 MWs, County staff recommend that the use permits be extended but to allow no more than one-half of the MWs to be operated within that period, which may be either operated fully until June 22, 2017 (i.e., a total of 12-¾ months out of the applicant's requested extension to allow 25-½ months of operation, with winter season shutdown as provided by Mitigation Measure 16), at 50% capacity for all three years through October 31, 2018, or in other stages such that the three-year installed or operating capacity of AWI's entire windfarm operations, with or without an asset exchange, may not be greater than 91.2 MWs, or one-half of 182.4 MWs. The result of such a reduction in MWs would proportionally reduce the number of golden eagle, other raptors and avian species fatalities. The East County Board of Zoning Adjustments may specify that the CUPs will expire on June 22, 2017, or another later date if the applicant requests to operate fewer turbines over a longer period of time.

Planning staff consider this reduced level of operations to be somewhat comparable to, but notably more liberal than reverting back to the original 2005 CUP conditions, in which only 15 percent of the turbines were allowed to be operating between 2016 and 2018. It would provide for a total operational output in MWs from October 2013 to October 2018 of 220.0 MW, when compared to the other alternatives considered in the 2013 FEIR and as represented in Table 3-2 of the FSEIR (page 33). It is moderately more MWs of allowed output than Alternative 2 considered in the 2013 FEIR (30.5 more MW, compared to 189.5 under Alternative 2, which provided for cessation of operations after October 31, 2016).

Secondly, staff believes the applicant should be required to shutdown all turbine sites it currently operates or could operate after the asset exchange, with an HRT rating of 8.5 or greater. The elimination of hazardous-rated turbines (HRTs) has been shown by the preponderance of evidence over many years to reduce the number of avian fatalities, and has been part of the conditions of approval in various forms for the CUPs since 2005.

Thirdly, in order to assure the applicant honors its statements that it is taking all possible steps to engage in repowering of its APWRA assets except under specific conditions that it contends are outside of its control, the applicant should be required to submit a report semi-annually (twice yearly) to the Board of Zoning Adjustments describing, relative to each of the potential obstacles to repowering outlined as "Circumstances Outside of AWI's Control" in the FSEIR (page 25).

Fourthly, the Board should agree on a fatality rate to be used for projecting the total number of golden eagle fatalities anticipated to result from the project, from among the three principal options: a) 0.061 based on the monitoring years 2008-2010; b) 0.071 based on monitoring years 2008-2012; or c) 0.085 using monitoring years 2005-2010. The fatality rate will then be used to determine the number of power pole retrofits to be required under Mitigation Measure BIO-17 (and as adjusted by half, assuming the first recommendation above is required).

Finally, unless the applicant chooses to apply for an eagle take permit as described in Mitigation Measure BIO-17a (and submits a complete draft Eagle Conservation Plan and meets other USFWS requirements for an ETP) within six months of approval of the CUP modifications, the applicant should make a deposit of adequate trust funds prior to the start of each operational year (February 15th of each year, starting in 2016) that are dedicated to implementing Mitigation Measure BIO-17 and/or BIO-17a. Such deposits for

the use of power pole retrofits, or contributions to regional conservation of raptor habitat could be adjusted at the end of each operational year (2016 to 2018) based on actual expenditures and power pole retrofits completed, subject to approval by a Technical Advisory Committee (TAC) as will be structured under the APWRA Repowering Program EIR.

The above recommendations have been incorporated into the draft Resolution to approve the proposed project (attached), as revisions to the Avian Wildlife Protection Program & Schedule (AWPPS) component of the existing CUPs. A separate draft Resolution is also attached for certification of the FSEIR. Together with the draft Resolution to approve the project, three Exhibits are also provided, including: Exhibit A, Findings of Significant Impacts; Exhibit B, Statement of Overriding Considerations; and Exhibit C, the Mitigation Monitoring and Reporting Program. Although the FSEIR indicates that the identified mitigation measures would reduce the impacts on avian species, they would not eliminate the effects or reduce the impact to a level that is less than significant, and the impacts would remain significant and unavoidable. The purpose of the Exhibits, which are referred to in the draft Resolution for the project, is to support the decision of the Board to approve the project and comply with CEQA requirements.

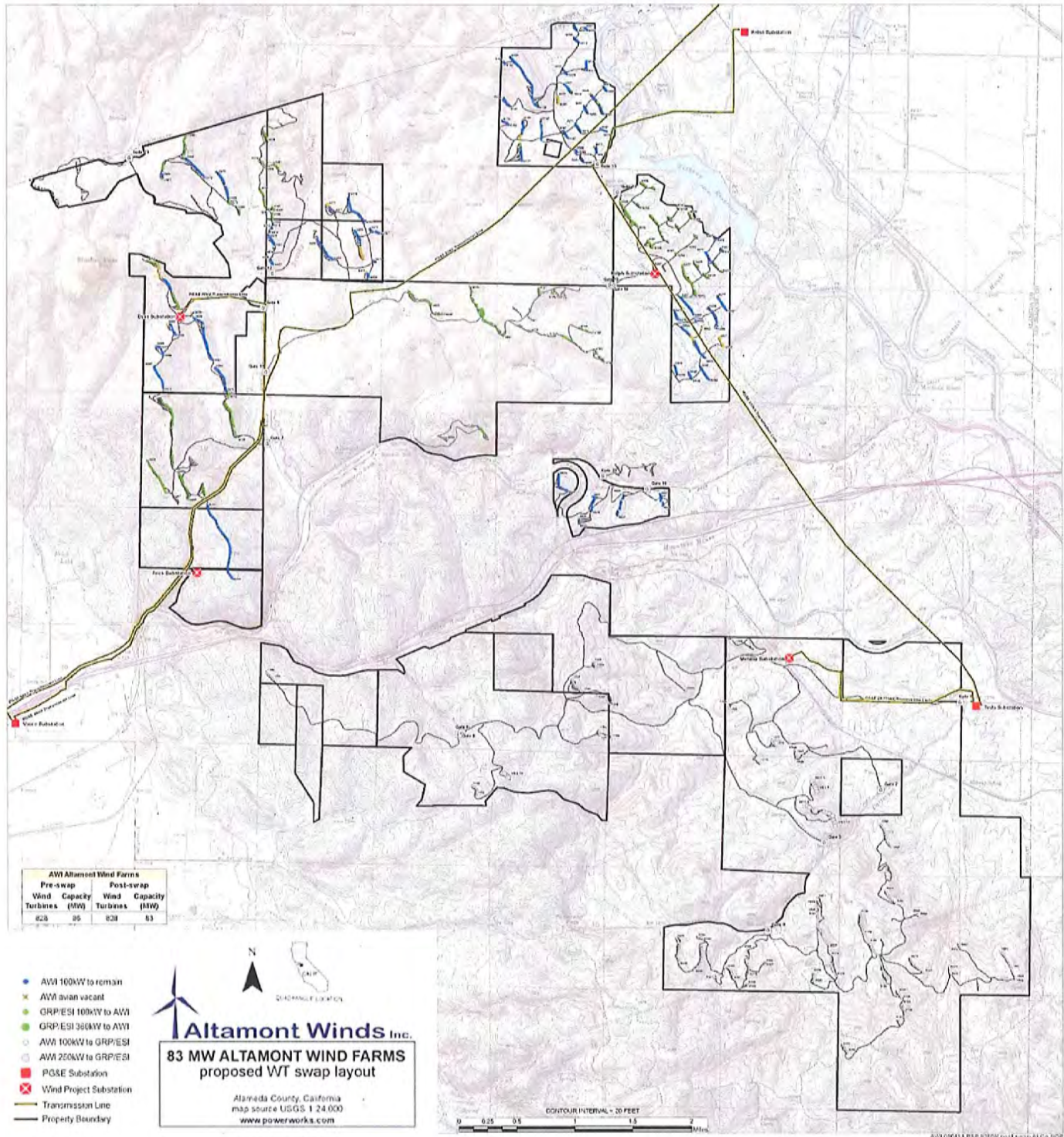
Recommendation: The Board of Zoning Adjustments should receive a staff presentation, take public comment on the FSEIR and on the subject application, review the draft resolutions and exhibits, including the Mitigation Monitoring and Reporting Program (MMRPs) for the project, certify the Final SEIR by adoption of a draft Resolution for the purpose of CEQA, and approve the proposed CUP modifications (PLN2014-00028) by adoption of the second Resolution and proposed conditions.

Staff Planner: Andrew Young, Planner III

Reviewed By: Sandra Rivera, Assistant Planning Director

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FIGURE 1
DISTRIBUTION OF ALTAMONT WINDS INC. WIND ENERGY PLANT
Including Representation of Proposed Asset Exchange



**RESOLUTION NO. Z-15-YY 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, said Conditional Use Permits identified as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, on September 22, 2005 the Alameda County Board of Supervisors approved Resolution Number R-2005-453 to conditionally approve a total of 29 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 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

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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 that AWI is required to sponsor the preparation of an EIR, and therefore required AWI to fund the preparation of an EIR to evaluate the proposed modifications, the ongoing operation of the turbines through the life of the CUPs (expiring on September 22, 2018), and decommissioning activities associated with the required removals of turbines and related infrastructure; and

WHEREAS, 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 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, did hold a public hearing 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 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**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, on September 22, 2005 the Alameda County Board of Supervisors approved Resolution Number R-2005-453, on appeal of the East County Board of Zoning Adjustments decisions on November 13, 2003 and January 29, 2004 to conditionally approve a total of 29 conditional use permits (CUPs) for the maintenance and continued operations of existing wind turbines, including one permit (C-8191) held by WindWorks, Inc. (as an operating partner of Altamont Winds, Inc.), thirteen (13) permits held by Altamont Infrastructure Company LLC (a management company which does not own individual turbines) on behalf of Altamont Winds, Inc. and three other companies (SeaWest Power Resources, LLC, Altamont Power, LLC {a subsidiary of FPL Group, Inc. and ESI Energy LLC} and enXco., Inc., collectively the Wind Power Companies) that own turbines (or "beneficially own"), thereby approving with findings included that the CUPs, including those CUPs listed above, were exempt from the California Environmental Quality Act (CEQA), and with conditions modified from the original Board of Zoning Adjustments decision, said Resolution and conditions are incorporated herein by reference (hereinafter the "Permit Extensions"); and

WHEREAS, on January 12, 2006 the East County Board of Zoning Adjustments adopted Resolutions Z-06-03 and Z-06-04, respectively approving two Conditional Use Permits, C-8216 and C-8243, allowing continued operation of existing turbines by WindWorks, Inc. (C-8216), and Altamont Infrastructure Company LLC (C-8243) on separate sites in the APWRA, said use permits having not been included in Resolution R-2005-453, but made subject to the same conditions therein by Resolutions Z-06-03 and Z-06-04; and

WHEREAS, Resolutions R-2005-453, Z-06-03 and Z-06-04, among other conditions, established an Avian Wildlife Protection Program and Schedule (AWPPS, Condition 7), with detailed requirements established in Exhibit G to reduce avian mortality by removing turbines identified as hazardous to avian wildlife, removing derelict turbines, shutting down turbines during winter months when bird use increases, and for the purpose of implementing the repowering program, permanently removing 10% of the existing turbines by September 30, 2009, an additional 25% by September 30, 2013, an additional 50% of the original turbines by September 30, 2015, and the remaining 15% of turbines by September 30, 2018; and

WHEREAS, Resolutions R-2005-453, Z-06-03 and Z-06-04 also required the Permittee to sponsor preparation of an Environmental Impact Report (EIR) to evaluate the environmental effects of the repowering program, the phased removal of turbines and existing operations (Condition 8); and

WHEREAS, in 2005 a coalition of five regional Audubon groups (Golden Gate Audubon Society, Ohlone Audubon Society, Mount Diablo Audubon Society, Santa Clara Valley Audubon Society and Marin Audubon Society, collectively Audubon) and CARE petitioned the Alameda County Superior Court to set aside Resolutions R-2005-453, and subsequently Z-06-03 and Z-06-04 on various grounds, including that such action violated the County's General Code and CEQA, whereupon Audubon, CARE, the County and the Wind Power Companies agreed to participate in mediation and negotiations which led to a Settlement Agreement among the petitioners, the County, and three companies (the "Settling Companies") that own turbines in the APWRA but not including Altamont Winds, Inc. (the "Non-Settling Company"), with the objective of achieving a 50 percent reduction in the mortality rates of four avian raptor species (American kestrel, burrowing owl, golden eagle and red-tailed hawk) by November 1, 2009, adding a conservation planning component to the approved CUPs in consultation with the California Department of Fish and Game (CDFG, recently renamed the Department of Fish and Wildlife or CDFW) regarding such a component and enabling other programs and contingency adaptive management measures; and

WHEREAS, on January 11, 2007 the Alameda County Board of Supervisors adopted Resolution R-2007-111, which authorized the County's participation in the Settlement Agreement and amended the CUPs, thereby replacing Exhibit G (Avian Wildlife Protection Program and Schedule) of the prior Resolution R-2005-453, with Exhibit G-2 for the turbines beneficially owned by the Settling Companies (the "Applicable Turbines"), and Exhibit G-2 for turbines beneficially owned by the Non-Settling Company (Altamont Winds, Inc.) which for all intents and purposes was identical to the original Exhibit G, and made other changes to the conditions of approval of the prior Resolutions for the Applicable Turbines of the Settling Companies, including eliminating the requirement for an EIR to be prepared on the specified schedule and certain requirements related to relocation of identified Tier 1 and Tier 2 hazardous turbines; and

WHEREAS, Altamont Winds, Inc. applied in 2011 to modify its sixteen (16) use permits by eliminating selected requirements of Exhibit G-2 of Resolution R-2007-111 for the remaining life of the permit (years six through eight and years nine through thirteen: October 2010 to September 2018) and require termination of the CUPs on December 31, 2015, or more specifically:

- a) Eliminate the requirement for the annual 3½-month winter season shutdown, from November 1 of each year to the following February 15;
- b) Eliminate the requirement for repowering or permanent shutdown of an additional twenty-five (25) percent of currently operating turbines (10 percent of its turbines having been permanently shut down by September of 2009);
- c) Replace the requirement for repowering or permanent shutdown of an additional fifty (50) percent of operating turbines by September 2015 with a requirement that 100

percent of all originally approved turbines be permanently shut down on December 31, 2015; and

- d) Add a requirement that the County consider the human health, wildlife and climate benefits of wind power generated in the APWRA when making regulatory and use permit decisions;

WHEREAS, the Planning Department determined that the proposed permit modifications of 2013 would result in potentially significant adverse environmental impacts and therefore be a project subject to the California Environmental Quality Act (CEQA), and that completion of an Environmental Impact Report (EIR) 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, Altamont Winds Inc. and Windworks Inc. filed the subject application in early 2014 requesting extension of its permits through the end of 2018, which was one of the alternatives considered in the 2013 FEIR (Alternative 3), but for which the Board made findings in July 2013 to reject as infeasible and as likely to result in the next highest level of avian mortality after the proposal to operate without the winter season shutdown, and in order to address continued operations only and not the effects of decommissioning addressed in the 2013 EIR, provide the basis for findings in support of operations through 2018, incorporate new mitigation options and provide for adequate public review, the County required the preparation of a Supplemental Environmental Impact Report (SEIR) ; and

WHEREAS, a Draft SEIR was completed on November 17, 2014, which made the same findings as the original 2013 EIR of significant adverse impacts, either directly or

through habitat modifications, on special-status avian species, and identified the same mitigation measures applicable to ongoing operations as the 2013 EIR but also identified a new Mitigation Measure 17a to provide optional strategies to mitigate impacts on special-status avian species; and

WHEREAS, the East County Board of Zoning Adjustments held a public hearing on said application at the hour of 1:30 p.m. on the 18th day of December, 2014 for the purpose of receiving comments on the Draft SEIR, and again at 1:30 p.m. on the 2nd day of February, 2015 for the purpose of receiving comments on the project proposal, in the City of Pleasanton Council Chambers, 200 Old Bernal Avenue, Pleasanton, California; and

WHEREAS, the Planning Department submitted a Staff Report to the Board 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-XX** on February 2, 2015 to certify that the Final SEIR has been completed in compliance with CEQA, that the Final SEIR was presented to the Board and reviewed and considered the information contained in the Final EIR, that the Final EIR reflects the independent judgment of the Board; and

WHEREAS, the Board has considered Exhibit A (Written Findings of Significant Effects), Exhibit B (Mitigation Monitoring and Reporting Program) and Exhibit C (Statement of Overriding Considerations) of this Resolution, each of which are required by State and Local CEQA Guidelines; and

WHEREAS, East County Board of Zoning Adjustments has determined that extension of the Conditional Use Permits as conditioned herein, including implementation of the Mitigation Monitoring and Reporting Program attached as Exhibit B, would provide for all of the significant effects on the environment to have been eliminated or substantially lessened where feasible, as indicated in the Written Findings of Significant Effects attached as Exhibit A, and that there are remaining significant effects on the environment found to be unavoidable which 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, Z-06-03, Z-06-04 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 East County Board of Zoning Adjustments did hear and consider all said reports, recommendations and testimony as hereinabove set forth;

NOW THEREFORE BE IT RESOLVED, that this East County Board of Zoning Adjustments does hereby find the following with respect to the requested Conditional Use Permit extensions:

1. That the recitals above are accurate and are hereby adopted as findings of this Board of Zoning Adjustments; and

<ol style="list-style-type: none">2. The Board shall require Mitigation Measure 17 to 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;
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<p>OR 2. The Board shall require Mitigation Measure 17 to be implemented on the basis of the average golden eagle fatality rate (0.075) obtained from the Avian Monitoring Reports results for the bird years 2008 to 2012, in recognition that such a rate represents the largest number of years (i.e., more supporting data) during which time the winter season shutdown was in effect;</p>

<p>OR 2. The Board shall require Mitigation Measure 17 to be implemented on the basis of the average golden eagle fatality rates (0.085) obtained from the Avian Monitoring Reports results for the bird years 2005 to 2010, in recognition that such a rate represents the worst-case rate and the worst-case rate available in 2013 used to calculate Mitigation Measure 17 under the 2013 EIR;</p>

BE IT FURTHER RESOLVED that the Board of Zoning Adjustments does hereby amend the subject Conditional Use Permits approved by Resolutions R-2005-453, Z-06-03, Z-06-04, R-2007-111, Z-13-35 and Z-13-36, held in separate files in the offices of the

Community Development Agency, Planning Department, 224 West Winton, Rm. 111, Hayward, CA, 94544), subject to the following amended 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 to 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. Beginning on February 15, 2016, the Permittee shall be limited to operate its wind energy turbine facilities to have an installed total operating capacity of 91.2 MW over three years, either by operating all facilities until June 22, 2017 (i.e., a total of 12-¾ months), or by shutting down 50% of its turbines through October 31, 2018, or in other stages such that the three-year installed or operating capacity may not be greater than 91.2 MWs. The Permittee shall submit its plans to the Planning Director to operate a set number of turbines for a set number of months prior to each February 15 of the years 2016 to 2018, and cease operating all turbines after the installed and operating capacity in these three years reaches 91.2 MWs based on the number and months of operations reported in said plans.
3. By October 31, ~~2015~~ 2013, 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 (~~44~~ 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 ~~44~~ HRT turbine sites shall be fully decommissioned (cleared of equipment and foundations) at the time other turbines owned by the Permittee are fully decommissioned.
4. Unless the Permittee chooses to apply for an eagle take permit as described in Mitigation Measure BIO-17a (and submits a complete draft Eagle Conservation Plan and meets other USFWS requirements for an ETP) within six months of approval of the CUP modifications, the Permittee shall make a deposit to a trust

account of adequate funds prior to the start of each operational year (February 15th of each year, starting in 2016), that are dedicated to implementing Mitigation Measure BIO-17 and/or BIO-17a. Such deposits for the use of power pole retrofits, or contributions to regional conservation of raptor habitat may be adjusted (supplemented with additional funds or refunded) at the end of each operational year (2016 to 2018) based on actual expenditures and power pole retrofits completed.

5. 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 Resolution Z-13-35 this Resolution.
6. Indemnity: The Permittee shall defend, indemnify and hold harmless Alameda County and its agents, officers and employees from any claim, action or proceeding against Alameda County, and/or its agents, 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. 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.
7. Repowering Progress Reporting. The Permittee shall submit a report semi-annually (twice yearly) to the Board of Zoning Adjustments describing, relative to each of the potential obstacles to repowering outlined as "Circumstances Outside of AWI's Control" in the FSEIR.
8. Expiration: This permit shall expire on October 31, 2018 one month after its 13th (thirteenth) anniversary. The Permittee(s) shall have no express or implied right to operate existing turbines under these Permits after October 31, 2018.

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.

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

Exhibit A

Written Findings of Significant Effects

In accordance with State Public Resources Code §21081 and CEQA Guidelines Section 15091, the following findings are made and supporting facts provided for each significant environmental effect that has been identified in the Final Supplemental Environmental Impact Report (final 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 final 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 EBZA bases its decision) and mitigation measures in support of the findings. For specific resource mitigation measures, the section and page number where the full text of the mitigation measure occurs is noted in the 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 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 EBZA relating to the SEIR, the approvals, and the project
- All information (including written evidence and testimony) presented to the EBZA by the environmental consultants who prepared the SEIR or incorporated into reports presented to the EBZA
- 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 EBZA certifies that the SEIR has been completed in compliance with CEQA. The EBZA has independently reviewed the record and the SEIR prior to certifying the SEIR and approving the project. By these findings, the EBZA 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 EBZA. The EBZA recognizes the SEIR may contain clerical errors. The EBZA reviewed the entirety of the SEIR and bases its determination on the substance of the information it contains. The EBZA 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 EBZA 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

The EBZA 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 EBZA 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 EBZA 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 permit approval.

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 Significant Irreversible Changes

CEQA Section 21100(b)(2)(B) requires that an EIR identify any significant effect on the environment that would be irreversible if the project were implemented. Section 15126.2(c) of the State CEQA Guidelines characterizes irreversible environmental changes as those involving a large commitment of nonrenewable resources or irreversible damage resulting from environmental accidents.

The project's significant and irreversible changes are discussed in the 2013 Final EIR beginning at page 5-10. The 2013 Final EIR explains that, although the timing of the proposed project operations and decommissioning would differ from the schedule set forth in the existing CUPs, no new construction or physical changes to the environment not previously contemplated in the CUPs are proposed as part of the CUP modifications; therefore no additional nonrenewable resources would be used in project implementation. Further, the 2013 Final EIR notes that wind turbine facilities are considered temporary uses, subject to eventual removal at the end of their useful lifespan or conclusion of use permits, whichever comes first. In addition to the wind farms, the project area is predominantly used for grazing, which could continue unimpeded. The existing wind turbines and associated facilities would therefore not be considered irreversible uses of the project area.

The project is not expected to result in environmental accidents that would cause irreversible damage. Compliance with required plans, such as the Altamont Pass Wind Farms Fire Requirements, would minimize the potential for accidents that could result in environmental damage.

Findings and Recommendations Regarding Growth-Inducing Impacts

Section 15126.2(d) of the State CEQA Guidelines states that an SEIR should discuss "...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. Production of electricity from the project facilities is ongoing and would not create additional availability of energy resources beyond those already permitted for the facilities.

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
Impact BIO-1: Potential to cause a substantial adverse effect, either directly or through habitat modifications, on a special-status species.	<p>BIO-16: Implement Seasonal Shutdowns to Reduce Avian Fatalities</p> <p>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 until February 15 of the following year. No operational modifications will occur during the February 16 to October 31 period. AWI will notify County CDA each year when turbines have been shut down, and again when they have resumed operating.</p>	November 1 to February 15 of each year	Project Applicant	<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 15</p>

	<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, (together identified as Alternative 1 in the analysis of project alternatives) is projected to result in the fatality of approximately one eagle (cumulatively, and statistically, 0.7-1.0) when compared to the existing avian baseline condition (the No Project Alternative) (2013 FEIR Table 3.2-5). Although the baseline fatality rate is higher, this mitigation measure addresses the impacts of the proposed project (with mitigation), which is approximately one additional eagle fatality. 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 29 utility poles as mitigation for the expected level of eagle fatality from the proposed project. AWI may contract directly with an electrical utility to fund this mitigation; however, a written agreement and evidence of the completion of the retrofits must be provided to the County CDA. USFWS has estimated the cost of retrofits at \$7,500 per pole, and therefore AWI may contribute \$217,500 (\$7,500 x 29 poles) to a third party mitigation account (approved by the County CDA) instead of contracting directly with a utility. The third party mitigation account holder would have the responsibility of completing the mitigation or contracting for the mitigation to be completed. Evidence of completion of mitigation must be provided to the County CDA within one year of approval of the proposed project.</p>	<p>Prior to decommissioning and reclamation activities; after decommissioning and reclamation activities</p>	<p>Project Applicant</p>	<p>Reviewing Party County of Alameda</p> <p>Criteria Check to ensure retrofitting of electrical poles has been conducted</p> <p>Monitoring Action Require measure as part of issuing grading/building permits. Verify compensation after decommissioning and reclamation activities.</p>
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<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 using a balanced mix of the options presented below, as well as considering new options suggested by the growing body of knowledge during the course of the project lifespan, 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>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, 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</p>	<p>Compensation measures as detailed in an approved Special-Status Species Mitigation Plan must be implemented within 60 days of the permit approval.</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.</p> <p>Monitoring Action Require measure as part of issuing grading/building permits. Verify compensation after decommissioning and reclamation activities.</p>
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	<p>Special-Status Species Mitigation Plan must be implemented within 60 days of the permit approval. Special-Status Species Mitigation Plans may be revised—and will be reviewed by the County.</p> <ul style="list-style-type: none"> <p>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.</p> <p>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.</p> 		
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Exhibit C

Statement of Overriding Considerations

Pursuant to the requirements of CEQA Sections 21002, 21002.1, and 21081 and Section 15093 of the State CEQA Guidelines, the EBZA finds that approval of Modifications to the Conditional Use Permits (2013) for Altamont Winds, Inc., the potential environmental impacts of which have been evaluated in the Final Supplemental EIR, and as indicated in the above findings, will result in the occurrence of significant effects which are not avoided or substantially lessened, as described in the Written Findings of Environmental Significance. 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

Further, as required by CEQA Section 21081(b) and State CEQA Guidelines Section 15093, the EBZA finds that the unavoidable significant effects listed above are outweighed by specific findings that the project, as mitigated by the measures identified in the EIR, would provide overriding economic and region-wide and statewide environmental benefits. There are no legal, social, technological or other benefits known to the County, nor are such benefits required to be provided (they are only examples of reasons that may be applicable). Specifically, the project will provide the following benefits:

Economic Benefits

The project will maintain the electrical production from the AWI windfarm as has been in place since the beginning of 2013, or a maximum of 85.8 MW, 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 represents 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 Altamont Winds, Inc. to continue operating at its full capacity through 2018 would also serve to maintain a greater number of jobs and higher tax revenue from the production of electricity.

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 under construction in Hayward) that would in part serve to replace electrical energy production capacity that would be eliminated if the project were not approved.

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 31, 2018 and required removal by 2020 will further assist in these repowering efforts.

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. 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 are limited.

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. 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, to the least acceptable level.



02 February 2015

To: The East County Board of Zoning Adjustment

cc: Sandra Rivera, Assistant Planning Director, Alameda Co.

From: Rick Koebbe, President

Subject: Comments to the Alameda Co. FSEIR staff report and related documents
FSEIR permit (3 yr extension) request
86 MW Altamont wind farms

Altamont Winds Inc. (**Applicant**) has the following comments to the Alameda Co. FSEIR staff report and related documents, dated February 2, 2015, as follows:

1. EXHIBIT A, WRITTEN FINDINGS OF SIGNIFICANT EFFECT, page 3. We propose changing the text, as follows (shown in blue-line ~~strikeout~~/underline):

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 permit ~~approval~~
effectiveness, February 15, 2016.

See attached Exhibit A, showing the entire document, with proposed changes. An explanation is provided below.

1.1 BIO-17a mitigation plan submittal timing is unreasonable. This mitigation plan will require a significant amount of time and effort to complete, probably at least 6 months. It's illogical to require that the applicant provide a plan in 60 days; instead, we propose any mitigation plan is provided 60 days from when the permit approval is implemented, on Feb. 15, 2016.

The remainder of this page left intentionally blank.

2. EXHIBIT B, MITIGATION MONITORING AND REPORTING PROGRAM, page 4. We propose changing the text, as follows (shown in blue-line underline):

The changes in the first section below simply clarifies/corrects typos, to be consistent with the related staff report documents.

FINAL SUPPLEMENTAL MITIGATION MONITORING AND REPORTING PROGRAM

ITAL MITIGATION MONITORING AND REPORTING PRORAM

Proposed Mitigation Measure	Timing
<p>BIO-16: Implement Seasonal Shutdowns to Reduce Avian Fatalities</p> <p>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 until February 15 of the following year. No operational modifications will occur during the February 16 <u>15</u> to October 31 period. 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 <u>until</u> February 15 of each year</p>
<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, (together identified as Alternative 1 in the analysis of project alternatives) is projected to result in the fatality of approximately one eagle (cumulatively, and statistically, 0.7–1.0) when compared to the existing avian baseline condition (the No Project Alternative) (2013 FEIR Table 3.2-5). Although the baseline fatality rate is higher, this mitigation measure addresses the impacts of the proposed project (with mitigation), which is approximately one additional eagle fatality. 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 29 utility poles as mitigation for the expected level of eagle fatality from the proposed project. AWI may contract directly with an electrical utility to fund this mitigation; however, a written agreement and evidence of the completion of the retrofits must be provided to the County CDA. USFWS has estimated the cost of retrofits at \$7,500 per pole, and therefore AWI may contribute \$217,500 (\$7,500 x 29 poles) to a third party mitigation account (approved by the County CDA) instead of contracting directly with a utility. <u>However, the cost of retrofits will be adjusted to the latest PG&E cost estimate or actual costs from October 2014, as provided by written documentation from PG&E, at \$1,069 per power pole retrofit.</u> The third party mitigation account holder would have the responsibility of completing the mitigation or contracting for the mitigation to be completed. Evidence of completion of mitigation must be provided to the County CDA within one year of approval of the proposed project.</p>	<p>Prior to decommissioning and reclamation activities; <u>after decommissioning and reclamation activities</u></p>

See attached Exhibit B, showing the entire document, with proposed changes. An explanation is provided below.

2.1 PG&E power pole retrofit (PPR) costs are lower, at \$1,069 each. Based upon the applicant's installation of five power pole retrofits in 2014, with the services provided by PG&E, the power pole retrofit cost is significantly less than an arbitrary value of \$7,500 shown in the USFWS document.

- > PPR deposit of \$7,500/pole is arbitrary and excessive.
- > USFWS estimates \$7,500/pole, but this value has no basis compared to PG&E's actual costs.
- > PG&E's actual costs in 2014 to retrofit five (5) power poles was an average of **\$1,069/pole**.
- > the County's proposed deposit amount is **7 times** PG&E's actual costs (\$7,500/\$1,069).
- > any mitigation deposits should be based on the best available information, which are the recent 2014 actual PG&E PPR costs.

> Actual PG&E 2014 PPR costs averaged \$1,069/pole

- > total cost to retrofit five (5) power poles: **\$5,343**
- > see attached PG&E PPR contract dated September 10, 2014, attached as Exhibit 2.1.
- > PG&E work performed October 15-16, 2014, 3.5 months ago.

> PG&E cost breakdown:

- engineering & administration:	\$74.00
- materials & field construction ("tie-in / meters"):	\$3,913.56
- federal & state income tax charge ("ITCC"):	<u>\$1,355.77</u>
- Total	\$5,343.33 ÷ 5 poles = \$1,068.67/pole

The applicant paid PG&E in full, in advance, following completion of cost estimate.

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3. STAFF REPORT, pages 12-13. We propose changing the text, as follows (shown in blue-line strikeout/underline):

PLANNING CONSIDERATIONS

Firstly, with respect to the primary request to operate the full 828-turbine, 85.8 MW wind farm for the three years between February 15, 2016 and October 31, 2018, for a cumulative three-year installed capacity of 182.4 MWs, County staff recommend that the use permits be extended ~~but to allow no more than one-half of the MWs to be operated within that period, which may be either operated fully until June 22, 2017 (i.e., a total of 12 ¾ months out of the applicant's requested extension to allow 25 ½ months of operation, with winter season shutdown as provided by Mitigation Measure 16), at 50% at 100% capacity for all three years through October 31, 2018, or in other stages such that the three-year installed or operating capacity of AWI's entire windfarm operations, with or without an asset exchange, may not be greater than 91.2 MWs, or one-half of 182.4 MWs. The result of such a reduction in MWs would proportionally reduce the number of golden eagle, other raptors and avian species fatalities. The East County Board of Zoning Adjustments may specify that the CUPs will expire on June 22, 2017, or another later date if the applicant requests to operate fewer turbines over a longer period of time.~~

~~Planning staff consider this reduced level of operations to be somewhat comparable to, but notably more liberal than reverting back to the original 2005 CUP conditions, in which only 15 percent of the turbines were allowed to be operating between 2016 and 2018. It would provide for a total operational output in MWs from October 2013 to October 2018 of 220.0 MW, when compared to the other alternatives considered in the 2013 FEIR and as represented in Table 3-2 of the FSEIR (page 33). It is moderately more MWs of allowed output than Alternative 2 considered in the 2013 FEIR (30.5 more MW, compared to 189.5 under Alternative 2, which provided for cessation of operations after October 31, 2016).~~

Fourthly, the Board should agree on a fatality rate to be used for projecting the total number of golden eagle fatalities anticipated to result from the project, from among the three principal options: a) 0.061 based on the monitoring years 2008-2010; ~~b) 0.071 based on monitoring years 2008-2012; or c) 0.085 using monitoring years 2005-2010.~~ The fatality rate will then be used to determine the number of power pole retrofits to be required under Mitigation Measure BIO-17 (and as adjusted by half, assuming the first recommendation above is required). Further, this fatality rate shall be adjusted for any clean wind power climate benefits and background mortality, with use of best available information, and implemented under adaptive management techniques.

~~Finally, unless the applicant chooses to apply for an eagle take permit as described in Mitigation Measure BIO-17a (and submits a complete draft Eagle Conservation Plan and meets other USFWS requirements for an ETP) within six months of approval of the CUP modifications, the applicant should make a deposit of adequate trust funds prior to the start of each operational year (February 15th of each year, starting in 2016) that are dedicated to implementing Mitigation Measure BIO-17 and/or BIO-17a. Such deposits~~

for the use of power pole retrofits, or contributions to regional conservation of raptor habitat could be adjusted at the end of each operational year (2016 to 2018) based on actual expenditures and power pole retrofits completed, subject to approval by a Technical Advisory Committee (TAC) as will be structured under the APWRA Repowering Program EIR. However, the TAC is not required to approve accounting refunds from expenditures from power pole retrofits, if any.

Finally, the applicant will provide progress reports, on a semi-annual (twice yearly) basis, regarding the installation of its power pole retrofits (as it did with its power pole retrofits in 2014).

See attached Staff Report, showing the entire document, with proposed changes. An explanation is provided below.

3.1 Extend permits for 3 years. Since we're substantially mitigating the avian issues, we should be able to operate the project for 3 years (100%), until Oct. 31, 2018, as long as we provide the mitigation, not 50% as proposed by the Planning Dept. In addition, such extension is consistent with the County's Staff Report, Statement of Overriding Considerations, Exhibit C.

3.2 Use the lower fatality rate 0.061. We propose using the lower fatality rate of 0.061, because:

- (a) the higher rates do not accurately include significant background mortality;
- (b) the higher rates do not include any climate benefits (from the displacement of 609 million lbs of greenhouse gases and toxic air pollution) of clean wind power, which saves 952 birds (derived via McCubbin-Sovacool report);
- (c) historically inconsistent and varied avian monitoring data sets prior to 2008; and
- (d) removing 21 Hazardous Ranked Turbines (HRTs) ranked greater than 8.5 is "double dipping" on the fatality rate, i.e., the fatality rate includes HRTs, so the fatality rate would be lower with less HRTs.

3.3 Applicant does not need to advance funds to the County for power pole retrofits. It's a huge financial burden on the applicant to submit power pole retrofit funds to the County in advance of the actual work, at roughly \$1 million per year. The funds should be efficiently managed and conducted/spent by the applicant, not controlled by the County. County-controlled funds will burden and delay implementation of this mitigation. Instead, we propose semi-annual reports to show progress with PG&E. The County cannot implement power pole retrofits any faster than the applicant, under any circumstance. Such funds must be paid from the applicant to PG&E in advance, once they provide an estimate for the work, with any adjustment accounting thereafter.

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4. DRAFT RESOLUTION NO. Z-15-XX, pages 6-8. We propose changing the text, as follows (shown in blue-line strikeout/underline):

2. Beginning on February 15, 2016, the Permittee shall **not** be limited to operate its wind energy turbine facilities to have an installed total operating capacity of 91.2 MW over three years, either by operating all facilities until June 22, 2017 (i.e., a total of 12 ¾ months), or by shutting down 50% of its turbines through October 31, 2018, or in other stages such that the three year installed or operating capacity may not be greater than 91.2 MWs. The Permittee shall submit its plans to the Planning Director to operate a set number of turbines for a set number of months prior to each February 15 of the years 2016 to 2018, and cease operating all turbines after the installed and operating capacity in these three years reaches 91.2 MWs based on the number and months of operations reported in said plans.
4. Unless the Permittee chooses to apply for an eagle take permit as described in Mitigation Measure BIO 17a (and submits a complete draft Eagle Conservation Plan and meets other USFWS requirements for an ETP) within six months of account of adequate funds prior to the start of each operational year (February 15th of each year, starting in 2016), that are dedicated to implementing Mitigation Measure BIO 17 and/or BIO 17a. Such deposits for the use of power pole retrofits, or contributions to regional conservation of raptor habitat may be adjusted (supplemented with additional funds or refunded) at the end of each operational year (2016 to 2018) based on actual expenditures and power pole retrofits completed.

See attached Draft Resolution No. Z-15-XX, showing the entire document, with proposed changes.

These changes are consistent with our comments above.

Exhibit A

Written Findings of Significant Effects

In accordance with State Public Resources Code §21081 and CEQA Guidelines Section 15091, the following findings are made and supporting facts provided for each significant environmental effect that has been identified in the Final Supplemental Environmental Impact Report (final 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 final 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 EBZA bases its decision) and mitigation measures in support of the findings. For specific resource mitigation measures, the section and page number where the full text of the mitigation measure occurs is noted in the 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 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 EBZA relating to the SEIR, the approvals, and the project
- All information (including written evidence and testimony) presented to the EBZA by the environmental consultants who prepared the SEIR or incorporated into reports presented to the EBZA
- 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 EBZA certifies that the SEIR has been completed in compliance with CEQA. The EBZA has independently reviewed the record and the SEIR prior to certifying the SEIR and approving the project. By these findings, the EBZA 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 EBZA. The EBZA recognizes the SEIR may contain clerical errors. The EBZA reviewed the entirety of the SEIR and bases its determination on the substance of the information it contains. The EBZA 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 EBZA 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

The EBZA 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 EBZA 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 EBZA 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 permit [approval effective date, February 15, 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 Significant Irreversible Changes

CEQA Section 21100(b)(2)(B) requires that an EIR identify any significant effect on the environment that would be irreversible if the project were implemented. Section 15126.2(c) of the State CEQA Guidelines characterizes irreversible environmental changes as those involving a large commitment of nonrenewable resources or irreversible damage resulting from environmental accidents.

The project's significant and irreversible changes are discussed in the 2013 Final EIR beginning at page 5-10. The 2013 Final EIR explains that, although the timing of the proposed project operations and decommissioning would differ from the schedule set forth in the existing CUPs, no new construction or physical changes to the environment not previously contemplated in the CUPs are proposed as part of the CUP modifications; therefore no additional nonrenewable resources would be used in project implementation. Further, the 2013 Final EIR notes that wind turbine facilities are considered temporary uses, subject to eventual removal at the end of their useful lifespan or conclusion of use permits, whichever comes first. In addition to the wind farms, the project area is predominantly used for grazing, which could continue unimpeded. The existing wind turbines and associated facilities would therefore not be considered irreversible uses of the project area.

The project is not expected to result in environmental accidents that would cause irreversible damage. Compliance with required plans, such as the Altamont Pass Wind Farms Fire Requirements, would minimize the potential for accidents that could result in environmental damage.

Findings and Recommendations Regarding Growth-Inducing Impacts

Section 15126.2(d) of the State CEQA Guidelines states that an SEIR should discuss "...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. Production of electricity from the project facilities is ongoing and would not create additional availability of energy resources beyond those already permitted for the facilities.

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 PROGRAM

Impact	Proposed Mitigation Measure	Timing	Implementation	Monitoring
Impact BIO-1: Potential to cause a substantial adverse effect, either directly or through habitat modifications, on a special-status species.	<p>BIO-16: Implement Seasonal Shutdowns to Reduce Avian Fatalities</p> <p>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 until February 15 of the following year. No operational modifications will occur during the February 15 to October 31 period. AWI will notify County CDA each year when turbines have been shut down, and again when they have resumed operating.</p>	November 1 to February 15 of each year	Project Applicant	<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 15</p>

	<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, (together identified as Alternative 1 in the analysis of project alternatives) is projected to result in the fatality of approximately one eagle (cumulatively, and statistically, 0.7-1.0) when compared to the existing avian baseline condition (the No Project Alternative) (2013 FEIR Table 3.2-5). Although the baseline fatality rate is higher, this mitigation measure addresses the impacts of the proposed project (with mitigation), which is approximately one additional eagle fatality. 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 29 utility poles as mitigation for the expected level of eagle fatality from the proposed project. AWI may contract directly with an electrical utility to fund this mitigation; however, a written agreement and evidence of the completion of the retrofits must be provided to the County CDA. USFWS has estimated the cost of retrofits at \$7,500 per pole, and therefore AWI may contribute \$217,500 (\$7,500 x 29 poles) to a third party mitigation account (approved by the County CDA) instead of contracting directly with a utility. However, the cost of retrofits will be adjusted to the latest PG&E cost estimate or actual costs from October 2014, as provided by written documentation from PG&E, at \$1,069 per power pole retrofit. The third party mitigation account holder would have the responsibility of completing the mitigation or contracting for the mitigation to be completed. Evidence of completion of mitigation must be provided to the County CDA within one year of approval of the proposed project.</p>	Prior to decommissioning and reclamation activities; after decommissioning and reclamation activities	Project Applicant	<p>Reviewing Party County of Alameda</p> <p>Criteria Check to ensure retrofitting of electrical poles has been conducted</p> <p>Monitoring Action Require measure as part of issuing grading/building permits. Verify compensation after decommissioning and reclamation activities.</p>
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	<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 using a balanced mix of the options presented below, as well as considering new options suggested by the growing body of knowledge during the course of the project lifespan, 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>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, 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</p>	<p>Compensation measures as detailed in an approved Special-Status Species Mitigation Plan must be implemented within 60 days of the permit approval.</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.</p> <p>Monitoring Action Require measure as part of issuing grading/building permits. Verify compensation after decommissioning and reclamation activities.</p>
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EXHIBIT 2.1

PG&E power pole retrofit (PPR) costs

- > **Actual PG&E 2014 PPR costs averaged \$1,069/pole**
- > total cost to retrofit five (5) power poles: **\$5,343**
- > PG&E work performed October 15-16, 2014, 3.5 months ago.
- > **PG&E cost breakdown:**
 - engineering & administration: \$74.00
 - materials & field construction ("tie-in / meters"): \$3,913.56
 - federal & state income tax charge ("ITCC"): \$1,355.77
 - Total** $\$5,343.33 \div 5 \text{ poles} = \textbf{\$1,068.67/pole}$

The PG&E PPR contract dated September 10, 2014, is shown on the following pages.



September 9, 2014

WILLIAM DAMON
WINDWORKS INC, A ID CORPORATION
15850P JESS RANCH RD
TRACY, CA 95377

RE: Contract ID: 1179257: ALONG PATTERSON PASS

Dear WILLIAM DAMON,

Enclosed are gas and/or electric agreements for your project located at:

PATTERSON PASS & MIDWAY, TRACY, 94550

This letter summarizes the agreements for this project.

	Non-Refundable Payment	Refundable Option*	50% Discount Option*
Relocation / Rearrangement Costs	\$5,343.33	\$0.00	\$0.00
Less Credit (Engineering Advance, etc.)	\$0.00	\$0.00	\$0.00
TOTAL **	\$5,343.33	\$0.00	\$0.00
TOTAL PAYMENT DUE	\$5,343.33	OR	\$5,343.33

* Only applies to Rule 15 Refundable Amounts. Amount shown is less credit for associated Applicant work.

** The Income Tax Component of Contribution (ITCC) is included in the above charges when applicable.

Please sign both copies of the agreement and return one copy of the agreement to the address below along with your payment and retain one copy for your records. If the agreement is not returned to PG&E within 90 days of the date of this letter, the proposed agreement is canceled and PG&E may need to re-estimate the job.

Changes to the agreement, either to any of the terms or to the amount owing, are not permitted, and any change or interlineations voids the agreement. The payment of any amount less than the full amount shown will be deposited by PG&E, but PG&E will not begin any work on this contract until the amount is paid in full. The contract shall be deemed effective the date a fully executed copy is received by PG&E. Please allow 30 days from PG&E's receipt of the Agreement for construction to commence.

PG&E is committed to providing timely and efficient service and we look forward to continuing to work with you on this and future projects.

Should you have any questions regarding these contracts, please contact your project manager Christopher Callas at 209-942-1618 or CRCC@pge.com.

Please send the executed Agreements and payment to:

PG&E CFM/PPC DEPARTMENT
PO BOX 997340
Sacramento, CA 95899-7340

Sincerely,

Candace Briskey

Candace Briskey
Service Planning Supervisor



108888785E

Ref: Contract ID: 1179257: PATTERSON PASS & MIDWAY, TRACY, 94550



**Pacific Gas and Electric Company
Agreement to Perform
Tariff Schedule Related Work**

DISTRIBUTION:

- ☐ APPLICANT (Original)
☐ DIVISION (Original)
☐ ACCTG. SVCS.

REFERENCES:

Notification # 108888785
Contract # 1179257
ERR-PM # 31099739
GRR-PM #

WINDWORKS INC, A ID Corporation (Applicant) has requested PACIFIC GAS AND ELECTRIC COMPANY, a California corporation (PG&E), to perform the tariff schedule related work as located and described in paragraph 3 herein. PG&E agrees to perform the requested work and furnish all necessary labor, equipment, materials and related facilities required therefor, subject to the following conditions:

1. Whenever part or all of the requested work is to be furnished or performed upon property other than that of Applicant, Applicant shall first procure from such owners all necessary rights-of-way and/or permits in a form satisfactory to PG&E and without cost to it.
2. Applicant shall indemnify and hold harmless PG&E, its officers, agents and employees, against all loss, damage, expense and liability resulting from injury to or death of any person, including but not limited to, employees of PG&E, Applicant or any third party, or for the loss, destruction or damage to property, including, but not limited to property of PG&E, Applicant or any third party, arising out of or in any way connected with the performance of this agreement, however caused, except to the extent caused by the active negligence or willful misconduct of PG&E, its officers, agents and employees. Applicant will, on PG&E's request, defend any suit asserting a claim covered by this indemnity. Applicant will pay all costs that may be incurred by PG&E in enforcing this indemnity, including reasonable attorneys' fees.
3. The location and requested work are described as follows: (Describe in detail the materials and facilities to be furnished and/or work to be performed by PG&E. If more space is required, use other side and attach any necessary drawings as Exhibits A, B, C, etc):

LOCATION: PATTERSON PASS & MIDWAY TRACY, 94550

DESCRIPTION OF WORK: Retrofit five (5) power poles to reduce electrocution risk to golden eagles

		Electric	Gas
Engineering & Administrative Cost		<u>\$74.00</u>	<u>\$0.00</u>
Value of Applicant Design Work	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Additional Applicant Design Plan Checks	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Facilities (Cable, Transformers / Gas Pipe)	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Trench, Conduits & Substructures	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Tie-In / Meters	(+)	<u>\$3,913.56</u>	<u>\$0.00</u>
Trench Permits & Land Rights	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Inspection Fees	(+)	<u>\$0.00</u>	<u>\$0.00</u>
Sub Total	(=)	<u>\$3,987.56</u>	<u>\$0.00</u>
plus ITCC @ 34.0% Electric 0.0% Gas	(+)	<u>\$1,355.77</u>	<u>\$0.00</u>
plus Non Taxable Work	(+)	<u>\$0.00</u>	<u>\$0.00</u>
D.0405055 Line Extension Costs - Residential	(+)	<u>\$0.00</u>	<u>\$0.00</u>
D.0405055 Line Extension Costs - Non-Residential	(+)	<u>\$0.00</u>	<u>\$0.00</u>
less Value of Relocation Applicant Design Work	(-)	<u>\$0.00</u>	<u>\$0.00</u>
less Work Provide by Applicant	(-)	<u>\$0.00</u>	<u>\$0.00</u>
less Salvage	(-)	<u>\$0.00</u>	<u>\$0.00</u>
Total Payment	(=)	<u>\$5,343.33</u>	<u>\$0.00</u>



108888785E

4. Applicant shall pay to PG&E, promptly upon demand by PG&E, as the complete contract price hereunder, the sum of Five Thousand Three Hundred Forty-Three Dollars And Thirty-Three Cents (\$5,343.33)

Upon completion of requested work, ownership shall vest in: ☒ PG&E ☐ Applicant

Executed this 10th day of September, 2014

WINDWORKS INC, A ID Corporation

Applicant

By:

William L. Damon

WILLIAM DAMON

Print/Type/Name

PACIFIC GAS & ELECTRIC COMPANY

By:

Candace Briskey

Candace Briskey

Title: Vice President

Title:

Service Planning Supervisor

Mailing Address: 15850P JESS RANCH RD
TRACY, CA 95377



108888785E

WINDWORKS INC.

PG&E Agreement to Perform Tariff Schedule Related Work
Contract No. 1179257, ERR-PM No. 31099739, dated September 10, 2014
Retrofit five (5) power poles, Patterson Pass Road and Midway Road, near Tracy, CA

WindWorks Inc.
15850P JESS RANCH ROAD
TRACY, CA 95377

PAY
TO THE
ORDER
OF

Five Thousand Three Hundred Forty Three and 33/100 dollars

DATE
10 September 2014

AMOUNT
\$5,343.33

Pacific Gas and Electric Company
CFM/PPC Department
PO Box 997340
Sacramento, California 95899-7340

William Z. Damof

Details on back
Security Features included.

WINDWORKS INC.

PG&E Agreement to Perform Tariff Schedule Related Work
Contract No. 1179257, ERR-PM No. 31099739, dated September 10, 2014
Retrofit five (5) power poles, Patterson Pass Road and Midway Road, near Tracy, CA



**ALAMEDA COUNTY CDA
PLANNING DEPARTMENT**

STAFF REPORT

TO: EAST COUNTY BOARD OF ZONING ADJUSTMENTS
HEARING DATE: FEBRUARY 2, 2015

GENERAL INFORMATION

**APPLICATION: MODIFICATIONS TO 16 EXISTING CONDITIONAL USE PERMITS
(APPROVED YEAR 2005, AS MODIFIED IN 2013), PLN2014-00028**

APPLICANT: ALTAMONT WINDS, INC.

REQUEST: To extend 16 conditional use permits (CUPs) for three (3) years, through October 31, 2018, under specified conditions, beyond their current expiration date of October 31, 2015, for operation of an estimated 828 existing utility-scale wind turbines with a combined existing (current) generation capacity of 85.8 megawatts (MW).

LOCATION, SPECIFIC PERMITS, OPERATORS, PROPERTY OWNERS AND PARCEL NUMBERS: The existing turbines are located throughout the approximately 14,436-acre Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), in the eastern portion of Alameda County, bisected by Interstate I-580, on up to 58 parcels bearing 58 separate Assessor's Parcel Numbers.

Conditional Use Permit Numbers, Facility Permittee/Land Owner family names and Assessor's Parcel Numbers (APNs) as follows:

C-8036, Altamont Infrastructure Company/Frick & Costa, APN: 099B-5680-015-00;
C-8037, Altamont Infrastructure Company/Pombo, APNs: 099B-6300-002-01, 099B-6300-002-02, 099B-6325-002-03, 099B-6325-002-04 and 099B-6425-001-06;
C-8134, Altamont Infrastructure Company/Rooney, APN: 099B-6125-002-00;
C-8137, Altamont Infrastructure Company/Mulqueeney, APNs: 099A-1800-002-03, 99A-1800-002-04, 99b 7890-002-04, 99B-7890-002-05, 99B-7900-001-05, 99B-7900-001-07, 99B-7910-001-01, 99B-7925-001-03, 99B-7925-001-04, 99B-7925-002-04, 99B-7925-002-05, 99B-7975-001-00, 99B-7980-001-00, 99B-7985-001-03, 99B-7985-001-04, 99B-7985-001-05, 99B-7985-001-06 and 99B-8050-001-00;
C-8191, WindWorks Inc./Mulqueeney, APN: 099B-7910-001-01;
C-8216, WindWorks Inc./Alameda County Waste Management Authority, APN: 099A-1810-001-00;
C-8232, Altamont Infrastructure Company/ 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/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 and 099B-7300-001-05;
C-8241, Altamont Infrastructure Company/Walker Family Trust, APNs: 099B-6100-002-10, 099B-6100-002-12, 099B-6100-002-12, 099B-6100-003-10, 099B-6100-003-11, and 099B-6100-003-13;
C-8242, Altamont Infrastructure Company/Marie Gomes Farms, APNs: 099B-6150-

Proposed changes to staff report

preliminary draft

see handout...

1. Provide more time for alternative BIO-17a (Exh. A)

- > the 60-day submittal milestone date, to provide a special-status species mitigation plan, should be changed to the permit implementation date (Feb. 15, 2016), not the permit approval date (today)
- > such a plan would take many months to prepare, so it's not reasonable to require a plan to be submitted within 60 days of permit approval

2. Correct the text in BIO-16 to be consistent (Exh. B)

- > the text should allow us to operate on Feb. 15, like we've done historically, and as shown in other places in the staff report docs

3. Include climate benefits of clean wind power to wildlife

- > require the County's IE to derive the wildlife benefits from the best available information
- > McCubbin-Sovacool report derives saving 952 birds (2016-2018), from the displacement of 609 million lbs of greenhouse gases and toxic air pollution
- > McCubbin-Sovacool report has been peer reviewed and published in 3 professional journals, including the Journal of Integrative Environmental Sciences
- > the SEIR over-estimates the project impacts and mitigation
- > use the results under adaptive management, which is required anyway
- > if not, make wind uneconomical, then build more fossil-fired plants

Proposed changes to staff report

preliminary draft

4. Remove the mitigation requirements for background mortality

- > various studies show background mortality anywhere from roughly 30% to 60%
- > our Altamont projects see a significant quantity of background mortality (off v. on-season) 47%
- > use the results of the SRC background mortality study, which should be done this month
- > the SEIR over-estimates the project impacts and mitigation
- > use the results under adaptive management, which is required anyway

5. Use the lower eagle fatality rate 0.061

- > the higher rates do not fully include background mortality
- > the higher rates do not include any climate benefits of clean wind power, which saves 952 birds
- > historically, the avian monitoring data sets, with higher rates, were inconsistent and varied prior to 2008
- > removing additional 21 HRTs > 8.5 is "double dipping" on the fatality rate, i.e., the fatality rate includes HRTs > 8.5, so the fatality rate would be lower with less HRTs

Proposed changes to staff report

preliminary draft

6. Allow AWI, not the County, to manage the power pole retrofits funds

- > huge financial burden to provide funds before they're needed
- > the funds should be efficiently managed by AWI
- > we propose administering this program with PG&E, like we successfully did in 2014
- > as a compromise, we propose semi-annual progress reports
- > the funds are provided to PG&E, in advance, after the cost estimate
- > there's no way that the County can implement power retrofits faster that we can

7. PPR cost at \$7,500/PP in inaccurate

- > there's no basis for the USFWS power pole retrofit (PPR) cost of \$7,500
- > PG&E installed 5 PPR in 2014 for us, at an ave. cost of \$1,069 each (PG&E docs attached)
- > $\$7,500 \times 322 \text{ PP} = \2.4 million v. $\$1,069 \times 322 \text{ PP} = \$344,000$ (OOM 7X)
- > we propose using the best available info, the most accurate, actual recent PG&E costs

8. Extend our permits 3 yrs, to Oct. 31, 2018

- > repowering requires more time than mid-2017
- > since we're providing substantial mitigation, why limit permits to 50% (1.5yrs), mid-2017?
- > extend our permits for the full 3 yrs, as requested, and consistent with the County's

Statement of Overriding Considerations

Estimated Golden Eagle Fatalities

source: *fatality rates are from the 2013 FEIR*

$$\text{fatalities} = \text{installed capacity} \times \text{fatality rate}$$

Units:

- > Fatalities = total eagles over 3-year life of project
- > Installed capacity = MW-years
- > Fatality rates = eagles per MW-years

3

Estimated Golden Eagle Fatalities

source: *fatality rates are from the 2013 FEIR, years 2008-2010*

Inputs:

- > installed capacity = 182 MW-years
- > fatality rate = 0.061 eagles per MW-years

Results:

$$11.1 \text{ eagles} = (182 \text{ MW} - \text{years}) \times (0.061 \text{ eagles per MW} - \text{years})$$

4

DWR Prey Poisoning along the Aqueducts in the Altamont

- > in 2014, avian fatalities were up – why?
- > not caused by WTs, less WTs were operating
- > so, we investigated...
- > we suspect DWR poison in the avian food chain via contaminated prey animals
- > contributes to avian background mortality
- > why doesn't the regulatory agencies and avian advocates do something? fairness?

5

DWR Prey Poisoning in the Altamont



Climate & Air Quality Benefits

from continued operations

source: *Health, Wildlife and Climate Benefits of the 580 MW Altamont Wind Farms Altamont Pass, California* (135 pages), December 2011, Don McCubbin, Ph.D. and Ben Sovacool, Ph.D.
preliminary draft

Over the 3 yr (2016-2018) extended term of the CUPs, AWI's Altamont wind farms will offset/avoid:

- ▶ NO_x 252,000 lbs
- ▶ SO₂ 2,500 lbs
- ▶ PM 25,000 lbs
- ▶ CO₂ 609,000,000 lbs



7

Human Health & Avian Benefits

from continued operations

preliminary draft

The offsetting of toxic air pollution provides benefits to humans and wildlife, including birds.

From 2016-2018, the 86 MW wind farm will save/avoid:

- > heart attacks, premature mortality, and asthma, among other illnesses (most significant impacts children & elderly)
- > **952 avian deaths AVOIDED/SAVED**

8

Avian Net Impact Analysis over 3 yrs (2016-2018)

preliminary draft

- > **climate benefits**
 - = 609 million lbs toxic air pollution avoided
 - = 952 birds, including eagles SAVED
- > **avian background mortality, incl. DWR poisoning**
 - = 47% = 5.2 eagles BLAMED
- > **eagle mitigation**
 - = 322 power pole retrofits = 11.1 eagles SAVED
- > **NET EAGLE IMPACTS**
 - = -11.1 proj impact + 5.2 + 11.1 ≥ **5.2 eagles SAVED**

operations in a financially feasible manner beyond 2015, and thereby approve the project as proposed. County staff recognize that there are certain overriding considerations, as described in Exhibit C to the draft Resolution, related to local jobs and renewable energy. Alternatively, the Board may consider Planning staff's following recommendations:

Firstly, with respect to the primary request to operate the full 828-turbine, 85.8 MW wind farm for the three years between February 15, 2016 and October 31, 2018, for a cumulative three-year installed capacity of 182.4 MWs, County staff recommend that the use permits be extended ~~but to allow no more than one half of the MWs to be operated within that period, which may be either operated fully until June 22, 2017 (i.e., a total of 12 3/4 months out of the applicant's requested extension to allow 25 1/2 months of operation, with winter season shutdown as provided by Mitigation Measure 16), at 50% at 100% capacity for all three years through October 31, 2018, or in other stages such that the three-year installed or operating capacity of AWI's entire windfarm operations, with or without an asset exchange, may not be greater than 91.2 MWs, or one half of 182.4 MWs. The result of such a reduction in MWs would proportionally reduce the number of golden eagle, other raptors and avian species fatalities. The East County Board of Zoning Adjustments may specify that the CUPs will expire on June 22, 2017, or another later date if the applicant requests to operate fewer turbines over a longer period of time.~~

~~Planning staff consider this reduced level of operations to be somewhat comparable to, but notably more liberal than reverting back to the original 2005 CUP conditions, in which only 15 percent of the turbines were allowed to be operating between 2016 and 2018. It would provide for a total operational output in MWs from October 2013 to October 2018 of 220.0 MW, when compared to the other alternatives considered in the 2013 FEIR and as represented in Table 3-2 of the FSEIR (page 33). It is moderately more MWs of allowed output than Alternative 2 considered in the 2013 FEIR (30.5 more MW, compared to 189.5 under Alternative 2, which provided for cessation of operations after October 31, 2016).~~

Secondly, staff believes the applicant should be required to shutdown all turbine sites it currently operates or could operate after the asset exchange, with an HRT rating of 8.5 or greater. The elimination of hazardous-rated turbines (HRTs) has been shown by the preponderance of evidence over many years to reduce the number of avian fatalities, and has been part of the conditions of approval in various forms for the CUPs since 2005.

Thirdly, in order to assure the applicant honors its statements that it is taking all possible steps to engage in repowering of its APWRA assets except under specific conditions that it contends are outside of its control, the applicant should be required to submit a report semi-annually (twice yearly) to the Board of Zoning Adjustments describing, relative to each of the potential obstacles to repowering outlined as "Circumstances Outside of AWI's Control" in the FSEIR (page 25).

Fourthly, the Board should agree on a fatality rate to be used for projecting the total number of golden eagle fatalities anticipated to result from the project, from among the three principal options: a) 0.061 based on the monitoring years 2008-2010; ~~b) 0.071 based on monitoring years 2008-2012; or c) 0.085 using monitoring years 2005-2010.~~ The fatality rate will then be used to determine the number of power pole retrofits to be required under Mitigation Measure BIO-17 (and as adjusted by half, assuming the first recommendation above is required). Further, this fatality rate shall be adjusted for any clean wind power climate benefits and background mortality, with use of best available information, and implemented under adaptive management techniques.

~~Finally, unless the applicant chooses to apply for an eagle take permit as described in Mitigation Measure BIO-17a (and submits a complete draft Eagle Conservation Plan and meets other USFWS requirements for an ETP) within six months of approval of the CUP modifications, the applicant should make a deposit of adequate trust funds prior to the start of each operational year (February 15th of each year, starting in 2016)~~

~~that are dedicated to implementing Mitigation Measure BIO-17 and/or BIO-17a. Such deposits for the use of power pole retrofits, or contributions to regional conservation of raptor habitat could be adjusted at the end of each operational year (2016 to 2018) based on actual expenditures and power pole retrofits completed, subject to approval by a Technical Advisory Committee (TAC) as will be structured under the APWRA Repowering Program EIR. However, the TAC is not required to approve accounting refunds from expenditures from power pole retrofits, if any.~~

Finally, the applicant will provide progress reports, on a semi-annual (twice yearly) basis, regarding the installation of its power pole retrofits (as it did with its power pole retrofits in 2014).

DRAFT RESOLUTION NO. 15-XX
AWI PERMIT MODIFICATIONS, PLN2014-00028
FEBRUARY 2, 2015
PAGE 6

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, Z-06-03, Z-06-04 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 East County Board of Zoning Adjustments did hear and consider all said reports, recommendations and testimony as hereinabove set forth;

NOW THEREFORE BE IT RESOLVED, that this East County Board of Zoning Adjustments does hereby find the following with respect to the requested Conditional Use Permit extensions:

1. That the recitals above are accurate and are hereby adopted as findings of this Board of Zoning Adjustments; and

2. The Board shall require Mitigation Measure 17 to 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;

~~OR 2. The Board shall require Mitigation Measure 17 to be implemented on the basis of the average golden eagle fatality rate (0.075) obtained from the Avian Monitoring Reports results for the bird years 2008 to 2012, in recognition that such a rate represents the largest number of years (i.e., more supporting data) during which time the winter season shutdown was in effect;~~

~~OR 2. The Board shall require Mitigation Measure 17 to be implemented on the basis of the average golden eagle fatality rates (0.085) obtained from the Avian Monitoring Reports results for the bird years 2005 to 2010, in recognition that such a rate represents the worst case rate and the worst case rate available in 2013 used to calculate Mitigation Measure 17 under the 2013 EIR;~~

BE IT FURTHER RESOLVED that the Board of Zoning Adjustments does hereby amend the subject Conditional Use Permits approved by Resolutions R-2005-453, Z-06-03, Z-06-04, R-2007-111, Z-13-35 and Z-13-36, held in separate files in the offices of the

DRAFT RESOLUTION NO. 15-XX
AWI PERMIT MODIFICATIONS, PLN2014-00028
FEBRUARY 2, 2015
PAGE 7

Community Development Agency, Planning Department, 224 West Winton, Rm. 111, Hayward, CA, 94544), subject to the following amended 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 to 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. Beginning on February 15, 2016, the Permittee shall not be limited to operate its wind energy turbine facilities to have an installed total operating capacity of 91.2 MW over three years, either by operating all facilities until June 22, 2017 (i.e., a total of 12 ½ months), or by shutting down 50% of its turbines through October 31, 2018, or in other stages such that the three-year installed or operating capacity may not be greater than 91.2 MWs. The Permittee shall submit its plans to the Planning Director to operate a set number of turbines for a set number of months prior to each February 15 of the years 2016 to 2018, and cease operating all turbines after the installed and operating capacity in these three years reaches 91.2 MWs based on the number and months of operations reported in said plans.
3. By October 31, 2015 ~~2013~~, 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 (44 ~~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 ~~44~~ HRT turbine sites shall be fully decommissioned (cleared of equipment and foundations) at the time other turbines owned by the Permittee are fully decommissioned.
4. Unless the Permittee chooses to apply for an eagle take permit as described in Mitigation Measure BIO-17a (and submits a complete draft Eagle Conservation Plan and meets other USFWS requirements for an ETP) within six months of account of adequate funds prior to the start of each operational year (February 15th of each year, starting in 2016), that are dedicated to implementing Mitigation Measure BIO-17 and/or BIO-17a.

DRAFT RESOLUTION NO. 15-XX
AWI PERMIT MODIFICATIONS, PLN2014-00028
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PAGE 8

~~Such deposits for the use of power pole retrofits, or contributions to regional conservation of raptor habitat may be adjusted (supplemented with additional funds or refunded) at the end of each operational year (2016 to 2018) based on actual expenditures and power pole retrofits completed.~~

5. 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 Resolution ~~Z-13-35~~ this Resolution.
6. Indemnity: The Permittee shall defend, indemnify and hold harmless Alameda County and its agents, officers and employees from any claim, action or proceeding against Alameda County, and/or its agents, 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. 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.
7. Repowering Progress Reporting. The Permittee shall submit a report semi-annually (twice yearly) to the Board of Zoning Adjustments describing, relative to each of the potential obstacles to repowering outlined as "Circumstances Outside of AWI's Control" in the FSEIR.
8. Expiration: This permit shall expire on October 31, 2018 one month after its 13th (thirteenth) anniversary. The Permittee(s) shall have no express or implied right to operate existing turbines under these Permits after October 31, 2018.

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.

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

To: Sandra Rivera, Planning Department, Hayward, CA
From: Bob Cooper, resident of Dyer Rd. (bobcooperhorse@gmail.com)
Subject: Windmills on Dyer Rd.
Date: October 5, 2014

I'm writing this to call attention to the decrepit condition of the windmills on the ridge west of Dyer Rd. From my property (4000 Dyer Rd.), I can clearly see about 20 windmills. In the past year and a half, most of them have started to leak large amounts of oil from their central hubs. Below is a recent picture that shows obvious streaks of oil running from the central hub, along the blade, and then into the air. Both sides of the blade are similarly streaked. These windmills are owned and maintained by Altamont Winds Inc. (AWI)

Obviously, these windmills are polluting the environment. Their operation should cease immediately and not be put back into service until repaired. Fines seem appropriate.

Leaking oil is only a recent symptom of the age of these windmills. A safety issue is the condition of the large electric cables. They were initially installed in the late 1980's and have endured the harsh Altamont sun for over 27 years. Their insulation has developed substantial cracks. The cables' condition has also been hurt because they are severely twisted by the operation of the windmills. These cables carry 480 volts of electricity.

Additionally, windmill towers have failed; one transformers is leaking; most transformers are rusting; and blades brake.

AWI has requested that Alameda County modify AWI's Conditional Use Permit (CUP) to allow AWI to run 800 windmills an additional three years beyond the current end of operation in 2015. Considering the age of these windmills, their current decrepit condition, and evidence of insufficient/neglectful maintenance, County of Alameda should deny AWI's request for their CUP's extension.



To: Sandra Rivera, Planning Department, Hayward, CA
From: Bob Cooper, resident of Dyer Rd. (bobcooperhorse@gmail.com)
Subject: Draft Supplemental EIR for Altamont Winds Inc.
Date: December 21, 2014 - updated January 20, 2015

I'm Bob Cooper and I live at 4000 Dyer Dr., Livermore, CA. From the back of my five-acre property looking to the west, I can clearly see about 30 of AWI's windmills.

Altamont Windmills, Inc. (AWI) is requesting a modification of their CUP to run about 850 windmills for an additional three years, 2016 to 2018. The three year extension will mean that AWI's windmills will kill many more raptors and other birds than their current CUP would allow. For this reason I oppose the CUP modification.

I attach a photo of a Golden Eagle that was caught off Dyer Rd. It's left wing was broken most like by a windmill blade. It is in a large dog kennel. It was taken to Lindsey Wildlife Museum. Sadly, it could not be save and was euthanized.

Bob Cooper
bobcooperhorse@gmail.com



Young, Andrew, CDA

From: Robert Cooper [bobcooperhorse@gmail.com]
Sent: Tuesday, January 20, 2015 12:49 PM
To: William Damon
Cc: Rivera, Sandra, CDA; Young, Andrew; CDA; Mike Langeloh; Rick Koebbe; Morgan McGovert
Subject: Re: Cooper 111915 site visit invitation
Attachments: WindmillInput141222up.doc; DSC02502.jpg

Hi Sandra, et al-

I request that my input to the DSEIR for Altamont Winds Inc. dated January 11, 2015 be removed from the DSEIR document for the reasons stated below. I also request if possible that my input dated December 21, 2014 be replaced with the attached document and picture. If this replacement is not possible, I request it be removed from the DSEIR. I finally request that this email be included in the DSEIR.

Bill Damon and Mike Langeloh gave me a tour of the windmills today. They provided me with much information about AWI's turbine generators, maintenance and general operation. They answered my many questions in full. The information they gave me persuaded me that the dark stains on the windmills that I saw from my house were indeed rust stains, that maintenance of the turbines is being performed adequately, and that there is no evidence of the environmental pollution about which I was concerned.

I thank AWI for the personal tour. In the future I will direct my concerns to AWI staff first. I apologize for the trouble I have caused and I am grateful for the information that addressed my concerns.

Sincerely
-Bob Cooper

On Mon, Jan 19, 2015 at 4:17 PM, William Damon <wd@powerworks.com> wrote:

Mr. Bob Cooper,

You have recently submitted comments to Alameda County raising concerns about possible oil leakage from, and the general condition of, our wind turbines in connection with the Draft Supplemental EIR for our wind farm permit extension application. We would like to invite you to join us for a tour of our wind turbines on the ridgeline directly west of your residence on Dyer Road, where we will be pleased to show you that no oil from our wind turbines is polluting the environment, and that we maintain our equipment in good operating condition.

Our Windplant Manager, Mr. Mike Langeloh, would lead you on this tour and answer whatever questions you may have. Mr. Langeloh just phoned and left you a message this afternoon, inviting you to visit our site yet this afternoon or tomorrow. Please contact Mr. Langeloh xxxxxxxxxxxxxxxx (cell), if you accept our invitation, to confirm your availability to schedule the visit.

We look forward to hearing from you and for the opportunity to show you our wind turbines.

Alameda Co. EBZA hearing Permit C-8236

I am Jay Dunton - my wife and I own the property covered by conditional use permit C-8236 and request the Board approve the 3-year permit extension request by Altamont Winds.

My wife's Great Grand Father, Hans Nissen, came to Livermore (then known as Ladsville) in 1868. In the late 1880's he bought the property covered by this permit extension request and it has stayed in the family ever since. Life in Alameda County was good to the family and so far to me and my wife. Some of you may know of the Mae Nissen Park in Livermore, she was Hans Nissen daughter and my wife's Great Aunt. This bit of history establishes our ties to the history and growth of Alameda County.

The income provided to us by the Wind Farm on our property has given us the opportunity to continue the family tradition of giving back to Alameda County. The family gave to found the hospital in Livermore and when it expanded to Valley Care Hospital in Pleasanton, my wife and I were able to fund two rooms, one for us and the other for my wife's parents.

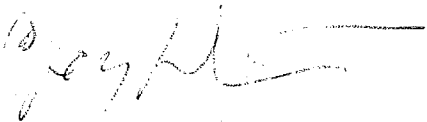
With the founding in 2004 of George Mark Children's House in San Leandro we became a major donor to that facility. GMCH is the first independent pediatric palliative care center in the United States. GMCH provides state- of- the-art medical and support services for children facing life-limiting illness. Without the Wind Power income this level of giving would not be possible

Your decision To approve or disapprove Altamont Winds permit extension will not and should not be made on my ability to continue be a major donor to two important Alameda County health organizations but to let you know wind power income does some good.

I am offended by people and organizations that do not live or are headquartered in Alameda County, pay no Alameda County taxes nor support Alameda charities but want to tell us what we should and should not do.

As an Alameda County resident and tax payer I request you vote to extend Altamont Winds permit request.

C. Jay Dunton



Subject:

E-mail for the 2 Feb 2015 EBZA Meeting.

To the East County Board of Zoning Adjustments (EBZA),

My name is John Humphrey and I urge the Alameda County East County Board of Zoning Adjustments (EBZA) to recommend the approval of the Conditional Use Permits (CUP) submitted by Altamont Winds Inc. (AWI). I am a member of a trust which has full ownership of the Rooney property (CUP # C-8134, Assessor's Parcel # 99B-6125-2) and a fractional ownership in the Egan property (CUP # C-8232, Assessor's Parcel # 99B-6125-3). My family has owned the parcels identified above for well over 120 years and have always made it a priority to engage in ecologically intelligent sustainable land management practices. Through the generations we have sought out partners from livestock owners to renewable energy partners that share in this vision. AWI has demonstrated to be worthy partners who continually engage in mitigation efforts to reduce avian fatalities. Wind generation facilities, like those operated by AWI, complement and guarantee our ability to maintain agricultural operations. This partnership has allowed my siblings and me to continue efforts to maintain environmentally conscious ranching and wind generation practices and ensure continued open space and ownership by our family for generations to come.

After reading through the January 2015 Final Supplemental Environmental Impact Report (FSEIR) pertaining to this project I would urge you to certify this analysis and move this report forward. I also read the correspondence Alameda County received from federal agencies, state agencies, and private citizens. As a life-long environmental steward and now property owner of the properties detailed above, I respectfully disagree with their bleak assertions of the project. It is my belief that the avian population has improved since the early 1990s, due to the increasing number of sightings of Golden Eagles and Red Tail Hawks on areas of the property distanced from the turbines. Again, I attribute this, in large part, to the mitigation efforts by AWI.

AWI continues to show diligent actions of compliance with mitigation efforts laid out in the 2013 FEIR and now the 2015 FSEIR. They work with the county to comply with the seasonal shutdowns as recommended in the 2013 FEIR CEQA Alternatives. The extension of the CUPs are merely a stop-gap measure until AWI is able to fully execute re-powering efforts in the area in question.

It is imperative that AWI's application for extending the CUPs is approved. It is a critical time in California to continue to expand the availability of renewable energy in the supply market. Alameda County continues to be a leader in offering the renewable wind generated energy to the people of California. Additionally, supporting the approval of these CUPs is responsive to Governor Brown's environmental goals to achieve 50% of California's energy from renewable sources.

Very Respectfully,

John Humphrey



Edmund G. Brown Jr.
Governor

STATE OF CALIFORNIA
Governor's Office of Planning and Research
State Clearinghouse and Planning Unit



Ken Alex
Director

Memorandum

Date: December 30, 2014
To: All Reviewing Agencies
From: Scott Morgan, Director
Re: SCH # 2014092057
Modifications to Existing Conditional Use Permits – Altamont Winds Inc.

Pursuant to the attached letter, the Lead Agency has *extended* the review period for the above referenced project to **January 12, 2015** to accommodate the review process. All other project information remains the same.

cc: Sandra Rivera
County of Alameda Comm. Dev. Agency
244 West Winton Avenue, Room 11
Hayward CA 94544

Notice of Completion & Environmental Document Transmittal

Mail to: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044 (916) 445-0613
For Hand Delivery/Street Address: 1400 Tenth Street, Sacramento, CA 95814

SCH #2014092057

Project Title: Modifications to Existing Conditional Use Permits - Allamont Winds Inc.

Lead Agency: County of Alameda Community Development Agency Contact Person: Sandra Rivera
Mailing Address: 224 West Winton Ave., Rm. 111 Phone: 510-670-5400
City: Hayward Zip: 94544 County: Alameda

Project Location: County: Alameda City/Nearest Community: Livermore
Cross Streets: Project is bisected by Interstate I-580, Zip Code:
Longitude/Latitude (degrees, minutes and seconds): " N / " W Total Acres: 14,196
Assessor's Parcel No.: 96-5080-15 915-600-21 Section: Twp.: Range: Base:
Within 2 Miles: State Hwy #: Interstate I-580 bisects site Waterways:
Airports: Railways: Schools:

Document Type:

CEQA: ☐ NOP ☐ Draft EIR ☐ Other: ☐ Joint Document
☐ Early Cons ☒ Supplement/Subsequent EIR ☐ Final Document
☐ Neg Dec (Prior SCH No.) ☐ Draft EIS ☐ Other:
☐ Mit Neg Dec Other: NOV 17 2014

Local Action Type:

☐ General Plan Update ☐ Specific Plan ☐ Annexation
☐ General Plan Amendment ☐ Master Plan ☐ Redevelopment
☐ General Plan Element ☐ Planned Unit Development ☒ Use Permit ☐ Coastal Permit
☐ Community Plan ☐ Site Plan ☐ Land Division (Subdivision, etc.) ☐ Other:

Development Type:

☐ Residential: Units _____ Acres _____ ☐ Transportation: Type _____
☐ Office: Sq.ft. _____ Acres _____ Employees _____ ☐ Mining: Mineral _____
☐ Commercial: Sq.ft. _____ Acres _____ Employees _____ ☒ Power: Type Wind MW 85.8
☐ Industrial: Sq.ft. _____ Acres _____ Employees _____ ☐ Waste Treatment: Type MGD
☐ Educational: _____ ☐ Hazardous Waste: Type _____
☐ Recreational: _____ ☐ Other: _____
☐ Water Facilities: Type MGD

Project Issues Discussed in Document:

☐ Aesthetic/Visual ☐ Fiscal ☐ Recreation/Parks ☐ Vegetation
☐ Agricultural Land ☐ Flood Plain/Flooding ☐ Schools/Universities ☐ Water Quality
☐ Air Quality ☐ Forest Land/Fire Hazard ☐ Septic Systems ☐ Water Supply/Groundwater
☐ Archeological/Historical ☐ Geologic/Seismic ☐ Sewer Capacity ☐ Wetland/Riparian
☒ Biological Resources ☐ Minerals ☐ Soil Erosion/Compaction/Grading ☐ Growth Inducement
☐ Coastal Zone ☒ Noise ☐ Solid Waste ☐ Land Use
☐ Drainage/Absorption ☐ Population/Housing Balance ☒ Toxic/Hazardous ☒ Cumulative Effects
☐ Economic/Jobs ☐ Public Services/Facilities ☐ Traffic/Circulation ☐ Other:

Present Land Use/Zoning/General Plan Designation:

Large Parcel Agriculture

Project Description: (please use a separate page if necessary)

The proposed project consists of modifications to AWI's existing CUPs, as amended in July 2013, for continued wind power operation and maintenance activities within the Alameda County portion of the APWRA through October 31, 2018. As amended in 2013, the wind power operations were scheduled to terminate on October 31, 2015, subject to new and revised conditions. A Notice of Preparation was previously circulated with details and background information on the proposed changes. Comments on the Draft Supplemental EIR will be accepted between November 17, 2014 and January 2, 2015. Copies of the Draft Supplemental EIR will be available for review at the Permit Center of the County Planning Department, 399 Elmhurst Avenue, Hayward, CA 94544 and the Livermore Public Library, 1188 S. Livermore Ave, Livermore, CA 94550.

State Clearinghouse Contact:

(916) 445-0613

State Review Began: 11-17-2014

SCH COMPLIANCE 1-12-15
12-31-2014

Please note State Clearinghouse Number (SCH#) on all Comments

2014092057

SCH#: Please forward late comments directly to the Lead Agency

AQMD/APCD 2

(Resources: 11/22)

Project Sent to the following State Agencies

☒ Resources ☐ State/Consumer Svcs
☐ Boating & Waterways ☐ General Services
☐ Coastal Comm ☐ Cal EPA
☐ Colorado Rvr Bd ☒ ARB: ALL Other Projects
☒ Conservation ☐ ARB: Transportation Projects
☒ CDFW # 3 ☐ ARB: Major Industrial/Energy
☐ Delta Protection Comm. ☐ SWRCB: Div. of Drinking Water
☐ Cal Fire ☐ SWRCB: Div. Financial Assist.
☐ Historic Preservation ☐ SWRCB: Wtr Quality
☒ Parks & Rec ☐ SWRCB: Wtr Rights
☐ Central Valley Flood Prot. ☒ Reg. WQCB # 3
☐ Bay Cons & Dev Comm. ☐ Toxic Sub Ctrl-CTC
☐ DWR ☐ Yth/Adlt Corrections
☐ OES ☐ Corrections
☐ Resources, Recycling and Recovery
☐ CalSTA ☐ Independent Comm
☐ Aeronautics ☒ Energy Commission
☒ CHP ☒ NAHC
☒ Caltrans # 4 ☒ Public Utilities Comm
☐ Trans Planning ☐ State Lands Comm
☐ Other ☐ Tahoe Rgl Plan Agency
☐ HCD ☐ Conservancy
☐ Food & Agriculture ☐ Other:



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

Chris Bazar
Agency Director

Albert Lopez
Planning Director

224
West Union Ave
Room 111

Hayward
California
94544

phone
510.670.5400
fax
510.765.6793

www.acgov.org/cda

PROJECT REFERRAL

Date: February 17, 2015

RE: Case No. PLN2014-00028

Conditional Use Permit

Due Date: March 10, 2015

ACPWA BUILDING DEPARTMENT
ACPWA JOHN ROGERS

ALAMEDA CO. FIRE DEPT.
ACPWA LAND DEVELOPMENT

The following application is referred to you for your information and recommendation
Modifications to existing wind farm CUPs to extend the permanent cease of
operation of existing wind turbines from October 31, 2015 to October 31, 2018,
located at Goecken Rd (Unincorporated), various parcels (16 owners total); also
allowing for a potential transfer of assets involving other property owners, yet to be
specified.

See attachments for APNs, owners, etc.

Supplemental EIR required. Certified on Feb. 2, 2015 by East Co. BZA

Receipt of your comments by the indicated due date will enable the inclusion of
relevant information in the preparation of a written staff report; otherwise, please
initial and date below that your organization, department or agency has no comment
and return this notice by the indicated due date.

**The certification of the Supplemental EIR, and the denial of the Project is scheduled to
be heard on appeal on March 10, 2015 by the Board of Supervisors.**

If you have any questions, please contact me at the above number.

Sincerely,

Andrew Young
Development Planning Division
andrew.young@acgov.org

_____ No Comment - Date _____

Attachments



Altamont Winds Inc.

29 December 2014

Alameda County Community Development Agency
Planning Department
224 West Winton Avenue, Room 111
Hayward, California 94544
e-mail: sandra.rivera@acgov.org

Attention: Ms. Sandra Rivera, Assistant Planning Director

Subject: Response to the USFWS comments on AWI's DSEIR Conditional Use Permit Extension, 86 MW Altamont wind farms

Dear Ms. Rivera,

Altamont Winds Inc. ("AWI") would like to address inaccurate assertions made in the December 10, 2014 comment letter submitted by Ms. Jill Birchell of the U.S. Fish and Wildlife Service ("USFWS"), provided in response to Alameda County's notice of availability of AWI's DSEIR. We believe the USFWS letter mischaracterizes AWI's commitment to conservation and mitigation, as well as, ignores the ongoing correspondence between AWI and USFWS regarding this issue.

This letter will address the specific issues and arguments raised in the USFWS letter, regarding AWI's requested extension of its Alameda County Conditional Use Permits ("CUPs") for up to three years. As a counterpoint to USFWS' assertions, the specific steps taken and policies implemented by AWI over the past few years to mitigate the effect of its wind farm operations on the surrounding environment, while maximizing the production of clean, renewable energy and its attendant benefits, will also be addressed.

1. AWI is in the process of creating an Eagle Conservation Plan, and has committed to filing for an Eagle Take Permit. It's incorrect for the USFWS to state they have not been advised that AWI is working on an Eagle Conservation Plan ("ECP"), which is a first step towards attaining an Eagle Take Permit ("ETP"). First, representatives of AWI and its environmental consultant, Power Engineers, Inc., met on October 27, 2014 concerning the ECP/ETP process with the following USFWS representatives: Ms. Amedee Brickey, Ms. Heather Beeler, Mr. Dan Crum, and Mr. Greg Burgess. For reference, see the meeting confirmation e-mail attached as Exhibit A. One point of discussion at this meeting was that preparing an ECP, collecting data for mortality estimates, and risk assessment are necessary initial steps to apply for an ETP; and that AWI would gather and summarize the fatality data

already collected by the Alameda County-led monitoring efforts to begin a dialogue with the USFWS on the sufficiency of this data in the preparation of the ECP. This was confirmed by AWI in an e-mail dated November 4, 2014 summarizing the key points of the meeting, which is attached hereto as Exhibit B. Within this e-mail, AWI noted that compiling, assembling and evaluating the data was a process that could take several weeks to complete due to the coordination required between multiple entities. While AWI has not yet applied for an ETP, pending dissemination and initial discussions on the first-step data collection and ECP, AWI has committed to filing for an ETP, as also stated in its November 4 e-mail. Contrary to Ms. Birchell's comment letter, AWI is committed to working on an ECP and attaining an ETP.

2. AWI has taken, and continues to take, substantive action of avian mitigation, and to repower. A principal argument made by the USFWS in opposition to AWI's application to extend its Alameda County CUPs is that AWI continues to demonstrate reluctance to take substantive action to avoid, minimize or mitigate unavoidable impacts to protected avian species, and that AWI is not taking actions to repower (or replace old generation) wind turbines, as are other wind farm operators. This couldn't be farther from the truth.

Since 2007, AWI has incurred over \$14 million in mitigation expenses. The result of AWI's avoidance and mitigation efforts has been that, according to the raw field data collected by Alameda County's monitoring team, golden eagle fatalities found near AWI's turbines have decreased by 60% average between 2007 and June 30, 2014. AWI's considerable mitigation efforts are summarized in its "Avian Conservation & Mitigation Program" document dated October 16, 2014, which was sent to the USFWS on the same date, and discussed directly with USFWS personnel at the October 27 meeting, in a form substantially similar to the attached Exhibit C. As stated in this document, AWI has taken significant actions to reduce avian fatalities, including:

- > permanent shut down and removal of 10% of AWI's wind turbine fleet, totaling 92 turbines, including those turbines deemed to pose the highest risk to birds;
- > installation of visual deterrents (blade painting) on 55 turbines to date;
- > annual winter seasonal shutdown (from Nov. 1 to Feb. 15) since 2005; and
- > previously retrofitted 94 power poles to reduce the risk to raptors of electrocution, with five more power poles recently retrofitted in October 2014.

Furthermore, as part of the CUP extension proposal, AWI has committed to retrofitting one hundred and seven (107) power poles per year, which is the sole mitigation measure that USFWS recognizes to offset golden eagle fatalities.

In addition, AWI is committed to repowering its Altamont Pass wind farms as soon as possible. As further detailed in AWI's Avian Conservation & Mitigation Program, Exhibit C, AWI has made significant progress in a number of repowering development activities, including:

- > executed repower land owner land leases;
- > completed repower project layout and design;
- > filed CAISO transmission-interconnection application, with studies ongoing;
- > executed contract with Suzlon to buy new 2.1 MW wind turbines;
- > performed environmental field surveys (by independent consultant, Power Engineers), including wetlands, botanical and wildlife habitat;
- > making significant progress on project-specific EIR preparation; and
- > initiated some consultations with various stakeholders and agencies.

The facts provided above demonstrate that AWI has taken, and continues to take, significant actions to avoid, minimize and mitigate unavoidable impacts to avian species, and to repower its wind farms, contrary to the statements made by the USFWS.

3. AWI has researched the use and possible adverse effects of rodenticide on raptors in the Altamont Pass, which has been ignored by the agencies. Notably, above and beyond the requirements of mitigation, AWI researched and presented to USFWS findings regarding the use of rodenticide by the California Dept. of Water Resources (“DWR”) in the Altamont Pass, which has been completely ignored by the regulatory agencies to date, including the USFWS. Rodenticide is likely a contributing factor to eagle fatalities in the Altamont Pass, currently attributed to the wind farms without substantiation. AWI provided USFWS a copy of its report, “Prey Poisoning by the California DWR Contributes to Golden Eagle Fatalities in the Altamont Pass Wind Resource Area,” dated September 5, 2014, attached hereto as Exhibit D, in hopes that action would be taken to discontinue the use of such rodenticide in favor of more environmentally conscious alternatives.

4. There are significant benefits to continued operation of AWI’s wind farms. Absent from the USFWS comment letter is any recognition of the significant environmental benefits of wind energy facilities. It’s a fact that AWI’s wind farms reduce massive amounts of toxic air pollution and climate change-causing greenhouse gases by offsetting the use of fossil fuels to generate electrical power. All means of generating electricity have environmental effects, yet wind energy satisfies the societal need for electrical power at one of the lowest overall impact levels to human and animal health and to the overall environment. Specifically, wind power produces no air or water pollution and delivers a net reduction in such externalities by offsetting toxic pollutants that would otherwise be generated by extracting, transporting, and burning fossil fuels. Compared to other forms of power generation, wind energy has the lowest lifecycle greenhouse gas emissions of any electricity source.¹

In a real and quantifiable way, AWI’s wind farms mitigate the negative environmental impacts of electricity generation generally, and, in doing so, AWI’s operations help prevent respiratory and cardiovascular disease, cancer, and premature death in humans and animals, including birds. While certain poorly-sited wind turbines can pose an unacceptable risk to individual birds in certain areas of the Altamont Pass, studies have shown that the wind farms prevent a large number of birds that are at risk from other harmful anthropogenic impacts.

A study conducted by McCubbin and Sovacool in 2011 on the air quality benefits of Altamont Pass Wind Resource Area (“APWRA”) wind farms estimates that the replacement of regional natural gas-fired power generation has offset enough air pollution to prevent over 45,000 premature bird deaths from 1986 to 2006.² Extrapolating from these results, AWI’s portion of environmental benefits equate to the **prevention of 31 premature bird deaths every month over the 20-year period from 1986-2006.**³ More broadly, AWI’s wind farms, over the past 20 years, considering both human and avian, have ***avoided or saved***:

¹ Mark. Z. Jacobson, “Review of Solutions to Global Warming, Air Pollution, and Energy Security,” *Energy & Environmental Science* 2 (2009): 148-173.

² McCubbin and Sovacool *Health, Wildlife and Climate Benefits of the 580 MW Altamont Pass Wind Farms, Altamont Pass, California*, December 2011, at 56.

³ According to McCubbin (Dec. 2011), note 25, the 580 MW APWRA wind farms avoided more than 45,000 avian deaths over 20 years (240 months), which equals 187 avian deaths avoided per month. AWI’s portion alone is estimated to avoid approx. 31 bird deaths per month.

- > 10 premature deaths
- > 7 heart attacks
- > 102 asthma attacks
- > 721 lost work/sick days
- > 4,259 restricted activity days
- > \$78 million in health costs
- > **over 7,000 bird deaths**

The results of this study have been cited in numerous peer-reviewed journals, including the Journal of Integrative Environmental Sciences.⁴

Finally, we submit this letter for the record, in response to comments under Alameda County's notice of availability of AWI's DSEIR, dated November 17, 2014.

Please contact us if you have any questions.

Sincerely,

Altamont Winds Inc.



Ashley Brown
Legal Counsel

⁴ Sovacool, BK. "The Avian and Wildlife Costs of Fossil Fuels and Nuclear Power," *Journal of Integrative Environmental Sciences* 9(4) (December, 2012), pp. 255-278; McCubbin, D and BK Sovacool. "The Hidden Factors That Make Wind Energy Cheaper than Natural Gas in the United States," *Electricity Journal* 24(9) (November, 2011), pp. 84-95; Sovacool, BK. "The Avian Benefits of Wind Energy: A 2009 Update," *Renewable Energy* 49 (January, 2013), pp. 19-24; McCubbin, D and BK Sovacool. "Quantifying the Health and Environmental Benefits of Wind Power to Natural Gas," *Energy Policy* 53 (February, 2013), pp. 429-441.

EXHIBIT A
USFWS Meeting Confirmation 10/27/14

Rick Koebbe

Subject: USFWS 082014 meeting setup
Location: 2800 Cottage Way W 2606, Sacramento, CA 95825

Start: Mon 10/27/2014 2:30 PM
End: Mon 10/27/2014 5:30 PM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Andrew Roth

We look forward to meeting with everyone in October.

From: Heather Beeler [mailto:heather_beeler@fws.gov]
Sent: Wednesday, August 20, 2014 1:40 PM
To: Rick Koebbe; Amedee Brickey; Daniel Crum
Cc: Joe Platt; Dave Dean; Andrew Roth; wd@powerworks.com; McGovert Morgan
Subject: RE: USFWS 082014 meeting setup

Hi Rick,

I checked with my team and we can make Oct 27th at 1:30 work. I'll reserve a room for three hours although I assume we should only need about 2. Do you want to send out a calendar invitation to everyone?

Let me know.

Thanks,

Heather

Heather Beeler
Eagle Permit Coordinator
USFWS Pacific Southwest Region
2800 Cottage Way W-2606
Sacramento, CA 95825
(916) 414-6651
(916) 414-6486 (fax)

EXHIBIT B
E-mail 11/04/14 to USFWS regarding ECP and ETP

From: Andrew Roth <ajr@powerworks.com>
Sent: Tuesday, November 04, 2014 4:40 PM
To: heather_beeler@fws.gov; amedee_brickey@fws.gov; Daniel Crum
Cc: Rick Koebbe; 'McGovert Morgan'; wd@powerworks.com
Subject: USFWS 110414 next steps, ECP & ETP

We appreciate your time spent meeting with us on Oct. 27 at your offices in Sacramento. As stated during our meeting, AWI is committed to filing for an Eagle Take Permit for existing operations and repowering, likely as a joint undertaking.

To begin, we propose to summarize the avian fatality and use data already collected by the various County-led monitoring efforts. We'll then present this summary to the USFWS to begin a discussion regarding the sufficiency of such existing data for use in preparing an Eagle Conservation Plan. Because this effort requires coordination with Alameda County and its monitoring consultant, ICF, we expect that it could take weeks to gather, assemble, and preliminarily evaluate this data.

Please let us know if you have any further suggestions or comments regarding our plans discussed above for this Eagle Take Permit application process.

As we briefly discussed in our meeting, Alameda County's cost of avian mitigation has cost us over \$14 million since 2007. Due to the high cost of avian mitigation, our operating Altamont wind farms are economically marginal, which means we cannot afford to implement two separate costly avian mitigation plans—one for the County and one for the USFWS—that continues to increase avian mitigation costs beyond our means. Therefore, we need to consolidate and work closely with both entities, if possible, to see if there's common ground to allow us to keep operating. If not, we will need to shut down our wind farms.

Please contact us if you have any questions.

Andrew J. Roth, General Counsel
Altamont Winds Inc.
Tracy, California
Office: 925-455-7251
Cell: 516-770-7009

EXHIBIT C
Avian Conservation & Mitigation Program



Altamont Winds Inc.



**Avian Conservation & Mitigation Program
86 MW Altamont Wind Farms
Altamont Pass, California**

16 October 2014

15850P Jess Ranch Road • Tracy, California 95377
phone 925.455.7251 • e-mail ajr@powerworks.com • www.powerworks.com

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1. INTRODUCTION

Since the 1980's, wind farms in California's Altamont Pass have powered more than 150,000 California homes and businesses with clean, renewable energy. While some poorly sited wind turbines may have disproportionately impacted native wildlife, an objective, holistic view of the scientific evidence regarding the impacts and benefits of wind energy shows that the operation of wind farms in Altamont Pass results in a net positive benefit to human health, wildlife and climate, including a net reduction in avian deaths.

This report, Avian Conservation and Mitigation Measures, describes the considerable achievements and investments by Altamont Winds Inc. ("AWI") already made in reducing the avian impact of its wind power facilities, while maximizing the production of clean, renewable energy and its attendant benefits. Also detailed are the specific steps taken and policies implemented by AWI over the past several years to mitigate the effect of its wind farm operations on local avian populations. Issues related to repowering existing wind facilities are also discussed.



2. DOCUMENTED AVIAN FATALITY REDUCTION

Avian conservation and mitigation measures undertaken in the Altamont Pass primarily serve the purpose of reducing the number of avian fatalities, particularly fatalities of the so-called "**focal species**", namely, the red-tailed hawk, the golden eagle, the burrowing owl, and the American kestrel.

By a number of measures, avian fatalities documented in the Altamont Pass have declined significantly since intensive study of the impact of the wind facilities began. The Alameda County Conditional Use Permits ("**CUPs**"), issued in 2005, set forth the goal of "progressive and substantial reductions in avian mortality and injuries."¹ As discussed below, that goal has been achieved.

2.1 AWI has Reduced Golden Eagle Fatalities by 60%. The raw field data collected by Alameda County's ("**County**") independent monitoring team shows that the number of golden eagle fatalities found near AWI's wind turbines decreased by 60% between 2007 (the first year of consistent data collection) and June 30, 2014, as illustrated in [Exhibit 1](#).

2.2 50% APWRA-Wide Avian Fatality Reduction. According to data collected by the County's avian monitoring consultant, ICF International, Altamont Pass wind operators achieved a greater than 50% reduction in focal species fatalities compared to benchmark figures set by the Scientific Review Committee ("**SR**C"). (See [Exhibit 2](#).) Golden eagle and burrowing owl

¹ CUP, *Avian Wildlife Protection Program & Schedule*, Exhibit G-2, page 1.

fatalities in particular have seen significant reductions. A formal report analyzing this reduction was released in November 2012.²

3. WIND TURBINE SHUTDOWN AND REMOVAL

The Altamont Pass Wind Resource Area (“**APWRA**”) has been producing wind-generated electricity since the early 1980s. At its peak, the Altamont Pass contained over 5,000 wind turbines with an operating capacity of approximately 580 MW. Of that number, AWI originally operated 920 wind turbines consisting of 900 x 100 kW KCS56 turbines and 20 x 250 kW WEG turbines, operating at a total capacity of 95 MW.

Since 2005, AWI has permanently shut down and removed 92 turbines, or 10% of its total fleet in the Altamont Pass, representing 9.2 MW of generation potential, resulting in its current operating capacity of 85.8 MW. Further, 100% of AWI’s WTs are shut down for 3.5 months each winter. The details of these wind turbine (“**WT**”) removals and shutdowns are discussed below.

3.1 Winter Seasonal Shutdown. AWI participates in the County-mandated annual Winter Seasonal Shutdown (“**WSSD**”), a period during which WTs are shut down based on the theory that non-operating WTs are less harmful to birds. The WSSD was first implemented in the winter of 2005/2006, requiring 50% of non-repowered APWRA WTs in a defined region be shut down from November 1 through December 31. The remaining 50% of non-repowered WTs were shut down from January 1 through February 28, 2006. The order of the shutdown reversed the following winter. A two-month APWRA-wide shutdown was implemented in the winter of 2007/2008, beginning November 1, and the shutdown period was extended to three months in 2008/2009, and then finally extended to three and one half months beginning in 2009/2010, which is the duration currently in effect.

AWI continues to participate in the annual WSSD, despite the fact that the magnitude of the effect of the seasonal shutdown on fatality rates in the APWRA cannot be clearly quantified or isolated from other mitigation measures. For example, an analysis of all reported golden eagle finds at AWI turbines shows that only slightly more carcasses are discovered in the summer than in the winter (see [Exhibit 4](#)). And despite six years of progressively increased winter shutdown intensity, there has been no evidence of a commensurate fatality reduction (see [Exhibit 5](#)).

What is known with certainty, however, is that the economic consequences of the WSSD to AWI alone totals more than \$5 million in lost revenues (see [Exhibit 3](#)).

3.2 “Hazardous” Wind Turbine Removals. Over the years, the SRC and various wildlife consultants have examined the APWRA and attempted to identify those WTs that pose a disproportionate risk to avian species. Several different models have been proposed for identification of high-risk WTs.

AWI’s CUPs require that it remove and/or relocate all “Tier 1 hazardous turbines” by October 31, 2005, followed by removals of one quarter of “Tier 2” WTs each year over a subsequent

² ICF International. 2012. *Altamont Pass Wind Resource Area Bird Fatality Study, Bird Years 2005-2010*. November. M87. Sacramento, CA. Prepared for Alameda County Community Development Agency, Hayward, CA.

four-year period, ending September 30, 2010.³ The CUPs define BioResource Consultants Inc.'s research for the California Energy Commission ("CEC") as the source of those wind turbine classifications,⁴ but the SRC subsequently directed that "BioResource Consultants, Inc." be replaced with "Smallwood and Spiegel, June 2005,"⁵ referencing an unpublished CEC staff report, *Combining biology-based and policy-based tiers of priority for determining wind turbine relocation/shutdown to reduce bird fatalities in the APWRA*. The June 2005 report is one in a series of 2005 reports in which Smallwood and Spiegel discussed a system by which they believed the hazardousness of a WT could be assessed.⁶ Turbines were classified in "Tiers", numbered 1 through 6, with 1 considered the most hazardous. The scheme relied on what the authors believed were a number of characteristics that made an individual WT dangerous to raptors, but the reports did not clearly identify those specific WTs considered to be hazardous, nor was a list of ranked WTs initially provided to AWI. In response, AWI and the other wind companies operating in the APWRA consulted with Western EcoSystems Technology Inc. ("WEST") to help identify those turbines which would be of a Tier 1 or Tier 2 hazard ranking utilizing the Smallwood and Spiegel scheme, or otherwise deemed hazardous based on historical fatality data. In accordance with the information prepared by WEST, AWI promptly shut down 18 WTs identified as hazardous. AWI presented this information to the SRC at their August 20-22, 2007 meeting.⁷

In 2007, AWI received a second list prepared by WEST, purportedly based upon the Smallwood and Spiegel assessment identifying AWI's Tier 1 and Tier 2 WTs. At that time, AWI learned that, by following the 2005 WEST classifications, it had shut down seven out of nine Tier 1 WTs and five of 19 Tier 2 WTs. AWI subsequently shut down the two remaining Tier 1 WTs⁸ on October 15 and 19, 2007, respectively. All of AWI's Tier 1-ranked WTs remain permanently shut down.

Unlike Tier 1 WTs, the CUPs required those WTs ranked Tier 2 to be shut down in quarter phases over the four-year period from September 2007 to September 2010.⁹ As above, AWI had already shut down and removed five Tier 2 WTs, more than 25% of AWI's total number of Tier 2 WTs, before September 30, 2007 as part of the 2005 shutdown it initiated in consultation with WEST. The second quarter of Tier 2 WTs slated to be shut down were timely removed on September 30, 2008.¹⁰

The Tier Classification system was abandoned in 2007 after the author of the scheme informed the SRC that the "removal of dangerous turbines would also create new configurations of wind turbines that could conceivably pose more risk than was eliminated."¹¹ The Tier Classification system was thus replaced with the SRC's High Risk Turbine classification system ("HRT"),

³ CUP, Exhibit G-2, Year One, Condition 1; Years Two & Three, Condition 5; Years Four & Five, Condition 1.

⁴ *Id.*

⁵ SRC Document P21, p. 1.

⁶ S. Smallwood & L. Spiegel, *Assessment To Support An Adaptive Management Plan for the APWRA* (January 2005); *Partial Re-Assessment of an Adaptive Management Plan for the APWRA: Accounting for Turbine Size* (March 2005); *Combining biology-based and policy-based tiers of priority for determining wind turbine relocation/shutdown to reduce bird fatalities in the APWRA* (June 2005), Unpublished CEC staff reports, available at http://www.altamontsrc.org/alt_tc.php.

⁷ SRC Document P53, p. 12; SRC Document P51, Status and Tier Classifications of AWI Wind Turbines.

⁸ Wind Turbines 1396 and 0089.

⁹ CUP, Exhibit G-2, page 3, sections 5 & 1.

¹⁰ Tower numbers 1380, 1400, 1538, 1539, 1540

¹¹ SRC Document P67, at 2.

which ranked WTs on a scale of 1 to 10, with 10 presumed to be the most hazardous.¹² In a September 2009 phone conversation with the Alameda County Planning Department, later confirmed in writing, AWI shut down six HRT-10 WTs in lieu of the five Tier 2 WTs required to be shut down under Exhibit G-2 by September 30, 2009.¹³ AWI notified the County of the shutdown of the final four Tier 2 WTs on September 16, 2010.¹⁴ Again, HRT-10 WTs were shut down in lieu of Tier 2 WTs.

In compliance with its CUPs, AWI has permanently shut down and removed all required Tier 1 and Tier 2 WTs (or HRT 10 WTs in lieu of Tier 2 WTs).

Most recently, as a condition of modifying the project shutdown timeline contained in the CUPs, AWI removed an additional 14 wind turbines from those locations deemed under the HRT system to be the most hazardous in AWI's remaining fleet.¹⁵ AWI reported/confirmed removal of these turbines on October 31, 2013.¹⁶

3.3 Removal of Unproductive Turbines and Towers. Exhibit G-2 of AWI's CUPs requires the removal of "derelict and non-operating turbines."¹⁷ At the issuance of the CUPs on September 22, 2005, however, the term "derelict and non-operating" had not yet been defined, nor could the SRC provide a definition because it had not yet been empaneled. Notwithstanding, upon the issuance of the CUPs on September 22, 2005, AWI reported to the County that it had removed 12 of what it considered "derelict" wind turbines.¹⁸ AWI reported to and discussed these removals with the SRC at the December 4, 2006 SRC meeting.¹⁹ AWI made a further good-faith effort to remove additional WTs it believed were "derelict" during 2007, 2008 and 2009.

In a September 30, 2009 letter, the County recommended that "derelict and non-operating turbines" be defined as (a) turbines that have remained non-operational for 12 consecutive months and (b) turbine sites with towers only. (Prior to this, the County had provided AWI with a draft definition in the proposed revision of Exhibit G-2 from April 23, 2009.) The County also recommended that all of AWI's "derelict and non-operating" WTs which have been inoperative for 12 months or more as of September 30, 2009 be removed by February 28, 2010. In its February 2, 2010 letter to the County, AWI confirmed removal of all its "derelict and non-operating" WTs as on January 26, 2010.

3.4 Additional Wind Turbine Removals. In addition to those WTs identified as "hazardous" or derelict, AWI has also removed and relocated additional WTs it has considered high risk.

Internal efforts to identify hazardous WTs. For years, AWI has proactively compiled and analyzed avian fatality data for its WT fleet in an effort to identify WTs that appear to pose an

¹² Note that of the 124 AWI WTs the SRC rated as hazardous under the new system (ratings 7 to 10), 81 (or 65%) were originally ranked as low risk (Tiers 4-6).

¹³ AWI letter to County, October 2, 2009, indicating shut down of tower nos. 6527-6532.

¹⁴ Tower numbers 1596, 6512, 6513, and 6514

¹⁵ Tower number 6-12, 43, and 4463-4468

¹⁶ AWI letter to County, October 31, 2013.

¹⁷ Exhibit G-2, page 1, section 2 b.

¹⁸ AWI removed wind turbine towers 1390-1391, 5151-5154, and 6035-6040 before March 22, 2006.

¹⁹ See SRC Compliance Reporting Table dated November 30, 2006, later assigned SRC Document No. P5 and updated/re-dated February 19, 2007.

unacceptable risk to birds. In 2009, AWI identified 19 sites it deemed high risk based on fatality data and relocated those WTs to other existing tower locations posing minimal avian risks.

10% WT removal. Exhibit G-2 of the CUPs also required shutdown of 10% of existing WTs by September 30, 2009.²⁰ AWI reported its compliance with this provision of the CUPs to the County on October 2, 2009, and it remains in compliance to date.

In total, AWI's lost revenues due to avian-related permanent wind turbine removals total approximately \$6.4 million for the period of 2007-2013. (See Exhibit 3).

4. SELF-MITIGATING ENVIRONMENTAL BENEFITS OF WIND POWER

All means of generating electricity have environmental effects, and wind energy satisfies the societal need for electrical power at one of the lowest overall impact levels to human and animal health and to the environment.²¹ Specifically, wind power produces no air or water pollution and delivers a net *reduction* in such externalities by offsetting toxic pollutants that would otherwise be generated by extracting, transporting, and burning fossil fuels. In a real and quantifiable way, AWI's Altamont Pass wind power facilities mitigate the negative environmental impacts of electricity generation generally, and in doing so, AWI's operations help prevent respiratory and cardiovascular disease, cancer, and premature death in both humans and animals, including birds.

This section aims to broadly identify the climate, wildlife, and human health benefits of AWI's operations, as well as, wind energy facilities in general.

4.1 Avoided Emissions and Climate Benefits. The fundamental benefit of AWI's Altamont Pass wind farms is the massive reduction of toxic air pollution and climate change-causing greenhouse gases, achieved by offsetting (or avoiding) the use of fossil fuels to generate electrical power. In the absence of AWI's Altamont Pass wind farms, enormous amounts of fossil fuels, mostly natural gas, would be extracted, transported and burned to generate electricity. Each stage in this process produces significant toxic emissions into area air and water. Comparatively, wind energy has the lowest lifecycle greenhouse gas emissions of any electricity source.²²

According to a study conducted on the combined 580 MW APWRA wind farms, it would take more than 3.3 billion cubic feet of natural gas per year to produce the same amount of electrical power that the combined 580 MW APWRA wind farms produce each year.²³ A 2011 study published in *The Electricity Journal* found that over 40 years, based on the natural gas figure



²⁰ Exhibit G-2, page 4, section 6.

²¹ Benjamin K. Sovacool (2012): The avian and wildlife costs of fossil fuels and nuclear power, *Journal of Integrative Environmental Sciences*, 9:4, 255-278.

²² Mark. Z. Jacobson, "Review of Solutions to Global Warming, Air Pollution, and Energy Security," *Energy & Environmental Science* 2 (2009): 148-173, 154.

²³ Based on the APWRA's 20-year historical total production of 19,900,000,000 kWh, as cited in Donald McCubbin and Benjamin Sovacool, *Health, Wildlife and Climate Benefits of the 580 MW Altamont Pass Wind Farms, Altamont Pass, California*, December 2011, at 18.

above, APWRA wind power operations have offset and will continue to avoid/save a total estimated:

- > 78.8 billion lbs of greenhouse gas emissions, such as CO₂,
- > 328,000 lbs of SO₂,
- > 20.7 million lbs of NO_x, and
- > 3.15 million lbs of fine particulate matter (PM_{2.5}).²⁴

These toxic emissions, and the resulting climate change effects, pose population-level threats to numerous species, including birds and bats, and the human health costs are staggering, as discussed in greater detail in subsequent sections. Resulting climate change damages also have hidden economic costs, and those damages offset by the APWRA wind farms (measured in 2010 dollars) are estimated to be \$2.21 billion over 40 years.²⁵

4.2 Benefits to Avian and Other Wildlife. While certain poorly-sited WT's can pose an unacceptable risk to individual birds in the area of the Altamont Pass, studies have shown that the APWRA wind farms save avian lives.

Avian fatalities related to wind turbines have received far more attention and scrutiny than avian and other wildlife fatalities resulting from other forms of electricity generation, most likely because the fossil-fuel plant impacts on avian life are often remote and difficult to quantify and visualize. Avian deaths at traditional fossil-fired power plants result from a number of factors, including acid rain, smokestack collisions, mercury poisoning and contamination, and habitat destruction related to fuel extraction. For example, mountain top removal in just four states in the eastern U.S., for the purpose of coal extraction, destroyed more than 387,000 acres of mature, forested avian habitat, causing the death of nearly 200,000 Cerulean Warblers.²⁶



Most significantly, climate change effects caused by the toxic byproducts of fossil-fired forms of electricity generation pose population-level threats to numerous wildlife species, including birds and bats, both locally and worldwide. One study estimates, based on midrange predictions of climate warming, 15%-37% of species will be "committed to extinction" by 2050 due to rising

²⁴ Donald McCubbin and Benjamin K. Sovacool, *The Hidden Factors That Make Wind Energy Cheaper than Natural Gas in the United States*, *The Electricity Journal*, Volume 24, Issue 9, November 2011, at 87.

²⁵ *Id.*, at 93. Erratum in *The Electricity Journal*, Volume 25, Issue 1, January/February 2012, at 8.

²⁶ Gerald Winegrad, "Wind Turbines and Birds." In Susan Schwartz (Ed.), *Proceedings of the Wind Energy and Birds/Bats Workshop: Understanding and Resolving Bird and Bat Impacts* (Washington, DC: Resolve, September, 2004), pp. 22-28.

sea levels and habitat destruction.²⁷ For avian species, climate change and resulting habitat loss could devastate between 950 and 1800 bird species by the end of the century.²⁸

As discussed above, APWRA wind farms displace over 3.3 billion cubic feet of natural gas every year, which offsets and avoids tens of billions of pounds of toxic air pollutants throughout their life cycle. The only study conducted on the benefits of APWRA wind farms to avian populations estimates that this reduction in natural gas usage has prevented over 45,000 premature bird deaths over the past 20 years from reduced exposure to air pollutants and through reduction of climate change effects.²⁹ Extrapolated over the next 20 years, that figure rises to nearly 129,000 avoided avian deaths. Assuming AWI's climate benefits are proportional to the capacity of its projects, **AWI's WT's alone are estimated to have prevented 31 premature bird deaths every month over the 20-year period from 1986-2006.**³⁰

4.3 Human Health Benefits. Numerous studies have also found an acute link between the inhalation of air pollutants, particularly fine particulate matter (PM_{2.5}), and a number of human illnesses, including cardiovascular disease and stroke.³¹ In 2010, the American Heart Association published a Scientific Statement providing a consensus opinion that, among other conclusions, short- and long-term PM_{2.5} exposure reduces life expectancy.³²



One recent study analyzing the human health benefits of Altamont Pass wind power found that, by offsetting the harmful pollutants discussed above, APWRA wind farms prevent thousands of cases of disease, death, and unproductivity due to ill health, as shown in Table 4.3.

Average Health Impact Savings, 40 yr period, 1987-2006 & 2012-2031	40 yr period	per year	cost (40 yr period)
deaths	168	4.2	\$1,393,000,000
heart attacks	108	2.7	\$14,600,000
hospital admis., cardiovascular	29	0.7	\$940,000

²⁷ Chris D. Thomas et al., *Extinction Risk from Climate Change*, 427 Nature 145, 147 (2004).

²⁸ Walter Jetz et al., *Projected Impacts of Climate Change and Land-Use Changes on the Global Diversity of Birds*, 5 PLoS Biology 1211, 1213 (2007).

²⁹ McCubbin and Sovacool (Dec. 2011), *supra* note 19, at 56.

³⁰ According to McCubbin (Dec. 2011), note 25, the 580 MW APWRA wind farms avoid 45,610 avian deaths over the 20-year from 1985 through 2006 (240 months), which equals 190 avian deaths avoided per month. Pro-rated for AWI's 95 MW, AWI's operations alone are estimated to have avoided 31 bird deaths per month over the 20-year period analyzed.

³¹ See e.g., Jaana Kettunen, MSc, et al., *Associations of Fine and Ultrafine Particulate Air Pollution With Stroke Mortality in an Area of Low Air Pollution Levels*, *Stroke*; 38: 918-922 (2007); Robert D. Brook, MD et al., *Inhalation of Fine Particulate Air Pollution and Ozone Causes Acute Arterial Vasoconstriction in Healthy Adults*, *Circulation*; 105: 1534-1536 (2002); Jonathan M. Samet, M.D., Francesca Dominici, Ph.D., Frank C. Currier, Ph.D., Ivan Coursac, M.S., and Scott L. Zeger, Ph.D., *Fine Particulate Air Pollution and Mortality in 20 U.S. Cities, 1987-1994*, *N Engl J Med* 2000; 343:1742-1749 (2000).

³² Robert D. Brook, M.D. et al., *AHA Scientific Statement: Particulate Matter Air Pollution and Cardiovascular Disease, an Update to the Scientific Statement from the American Heart Association*, *Circulation*, 121: 2331-2378 (2010).

hospital admis., respiratory	14	0.3	\$216,000
asthma ER visits	30	0.8	\$11,500
acute bronchitis	142	3.6	\$65,000
lower respiratory	1,650	41.3	\$33,500
upper respiratory	1,245	31.1	\$40,000
asthma	1,625	40.6	\$93,500
lost work days	11,250	281.3	\$1,045,000
minor restricted activity days	68,000	1700.0	\$4,630,000
TOTAL			\$1,414,674,500

Table 4.3. Summary of Health & Climate Benefits of Altamont Pass^{33 34}

Also shown in Table 4.3, air pollution's impact on human health places an enormous, yet obscured, economic burden on society. Air pollution created by fossil fuel-fired power generation has been shown to lead to increased hospital admissions and lost work days resulting from heart attacks, lung cancer, asthma attacks, and other respiratory illnesses that may result in premature death. All told, the avoidance of fossil fuel-related pollutants by APWRA wind farms saves \$1.4 billion in human health care costs over 40 years.³⁵

5. ADDITIONAL WILDLIFE PROTECTION MEASURES

AWI is pursuing a number of additional measures, most still ongoing, to reduce avian fatalities in the APWRA, including the following:

5.1 Repowering. Repowering, the process of replacing existing WTs with newer, larger ones, is regarded by many APWRA stakeholders as the most effective long-term means of reducing avian collision fatalities in the Altamont Pass. AWI is committed to completely repowering its APWRA projects as soon as possible, perhaps as early as 2016. In pursuit of this goal, we have made significant progress in a number of development activities, including:

- > executed repower land owner land leases;
- > completed repower project layout and design;
- > filed CAISO transmission-interconnection application;
- > executed contract with Suzlon to buy 2.1 MW wind turbines;
- > retained Mr. Shawn Smallwood to prepare initial avian micrositeing study;
- > performed repower environmental field studies (performed by Power Engineers), including wetlands, botanical and wildlife habitat surveys;
- > made significant progress on project-specific EIR preparation;
- > some consultation has begun with various stakeholders and agencies.

Also significant, AWI has made substantial progress towards reaching a final agreement with NextEra Energy Resources/Green Ridge Power LLC who, through its affiliates, operates a

³³ McCubbin (Dec. 2011), Tables 18 and 19, pg. 28-29

³⁴ Nationwide information about the health burdens caused by fossil fuel power plant emissions was recently published by Scientific American, available at:

<http://www.scientificamerican.com/article.cfm?id=graphic-science-health-care-burden-of-fossil-fuels>

³⁵ McCubbin and Sovacool (Dec. 2011), *supra* note 20, at 56.

number of wind projects in the APWRA. This agreement will allow AWI to extricate itself from a shared common infrastructure arrangement between AWI and NextEra, involving power contracts, master land easements, substations, etc.

Despite our repowering progress, many challenges remain that could delay repowering beyond 2016 mentioned above. For example, the federal Production Tax Credit (“PTC”), which currently provides an income tax credit of 2.3 cents per kilowatt-hour for the production of electricity from wind farms, expired on December 31, 2013. Despite extensive lobbying, the wind industry has been unable to secure extension of the PTC in the current political environment; however, the wind industry is hopeful that the PTC could be extended during the upcoming lame-duck session of Congress, at the end of 2014 or early 2015.

Compounding the potential unavailability of the PTC, PG&E and other California utilities are offering dramatically lower wholesale power prices for electricity from new generation sources, such as, a repowered APWRA wind farm. Repowering cannot occur if the utility does not accept an economically viable purchase price for the electricity produced by wind farms. Even more critical, PG&E has decided not to extend or enter into any bilaterally negotiated renewable power purchase contracts, so AWI is required to compete in the open market against all other new renewable developments/projects. Considering the extensive mitigation and permitting costs in the APWRA, AWI’s power price bid to PG&E is necessarily higher than many other locations, thereby reducing AWI’s chances of success in competitive bid processes.

Another obstacle to repowering is the limited cash flow available from existing APWRA wind farm operations, which is needed to help fund repowering permitting and development costs. AWI’s wind farms are already operating on a restricted cash flow basis due to extensive County-imposed avian mitigation measures (as discussed herein), and any increased regulatory costs would only impede repowering. Average County-imposed mitigation expenses for all wind operators in the APWRA total a staggering \$104,265 per megawatt of installed capacity, including direct expenses and lost revenues through 2013 for all affected wind companies (\$60,473,822 / 580 megawatts = \$104,265 per megawatt; see Exhibit 3 for reference). AWI’s own mitigation costs average \$147,000 per megawatt of original installed capacity since 2007.

AWI relies on current operating revenues to cover repowering permitting and development costs. The more than \$14 million AWI has already spent on avian mitigation, monitoring, and avian protection measures since 2007, including lost revenues, has significantly depleted available cash flow. If forced to continue to shut down existing turbines prior to repowering, the further loss of operating revenue could severely stifle AWI’s ability to repower. Further, AWI is unique among operators in the APWRA in terms of its small company size and focus in California, and AWI cannot draw upon out-of-state cash reserves to maintain operations in the event of a premature shutdown of WTs.

5.2 Power Pole Retrofitting. The CUPs require that electrical power poles and lines be retrofitted, according to the Avian Power Line Interaction Committee (“APLIC”) practices, within 180 days of permit approval (March 21, 2006) to prevent avian electrocutions.³⁶ AWI has complied with this CUP requirement.

Beginning in 1998, AWI and its affiliates and its predecessors have taken numerous steps to prevent electrocution by contact with high voltage transmission and collection infrastructure,

³⁶ CUP, Exhibit G-2, pg. 1, ¶2.a.

including installation of wildlife boots and upgraded insulation, replacement of non-insulated jumper cables, replacement of aluminum cross arms with fiberglass, and the removal or relocation of thousands of feet of overhead power lines. Numerous precautions have also been taken to prevent perching on horizontal surfaces of riser poles.

AWI owns a minority interest in Altamont Infrastructure Company LLC (“AIC”), a company that manages common infrastructure for several of the wind companies throughout APWRA. AIC performs all APLIC retrofitting work on behalf of AWI. AIC began APLIC retrofitting in 1999 and it continues to this day, as new standards and policies are published. APLIC continually revises its standards and publishes periodic updates of its suggested practices, the most recent being in 2006, meaning the retrofitting work will never be truly “completed,” but rather up-to-date or “current.” In February 2006, AIC purchased materials to upgrade the insulation on corner poles. By November 15, 2006, 94 poles (79 corner poles and 15 other types of poles) were retrofitted with the new insulation materials, the work having been delayed due to weather conditions and contractor availability. AIC continues to perform maintenance on the APLIC-related equipment, take corrective action when avian electrocutions occur, and monitor APLIC suggested practices and the infrastructure to determine if further system modifications are needed.³⁷ As new information and products become available, AIC modifies equipment with a strong view towards eliminating bird electrocutions.

In 2013, as a condition of AWI’s recently-modified CUPs, AWI was required by Alameda County to retrofit five electrical power poles near the project area that posed an electrocution risk to eagles. These retrofits were completed on October 16, 2014.

In the event repowering does not occur prior to the end of 2015, and if AWI continues to operate its Altamont wind farms, the avian impacts of those extended operations will be fully mitigated through the retrofitting of power poles that pose a risk of electrocution to golden eagles, which will be included in the Alameda Co. permits. At present, this is the only means of compensatory mitigation accepted by the USFWS.

5.3 Visual Deterrents – Black Blade Technology.

In April 2005, an affiliate of AWI entered into a research and license agreement with the University of Maryland to allow field testing of patented blade painting patterns as a visual deterrent to raptors. WT blade painting and installation commenced in 2005 for the purpose of testing the effectiveness of the 1-black blade and 2-white blades pattern in reducing avian collisions with WTs, known as Black Blade Technology. As of the end of September 2014, AWI has installed painted blade sets on 55 WTs (see photo below).

Black Blade Technology originated from research conducted by the National Renewable Energy Laboratory and the University of Maryland, with the intent to develop blade patterns to minimize avian interactions with WTs. Laboratory simulations



³⁷ AIC e-mailed the County on March 22, 2007 a report with exhibits describing AIC’s APLIC-related actions for avian electrocution prevention. This was shared with the SRC at its April 9-11, 2007 meeting (SRC Document P28, p. 10).

suggested that a single, solid-black blade, paired with two white blades, increases the visibility of the WT's blades to birds.

This black blade configuration is believed to reduce avian collision rates by decreasing "motion smear," the phenomenon whereby an object in motion appears blurred, even deceptively transparent. Similar to a human, a raptor's perception of spinning turbine blades degrades as the rotational velocity of the blades increases, with the image transmitted to the brain losing resolution until it becomes a transparent blur. Motion smear increases not only at higher spinning velocities but also as the observer approaches the blades. If a bird is unable to see wind turbine blades clearly due to motion smear, it may interpret the blade-swept area as a safe place to fly, putting it at risk of collision.

Encouraged by reports of promising laboratory testing, AWI proposed a formal study plan to Alameda County and the SRC on August 21, 2007 to formally field test a wider study sample and prove the theory that avian collisions with WTs can be reduced by painting one blade solid black. AWI's study proposal involved 305 of its WTs. After receiving comments from the SRC, AWI revised and resubmitted its Black Blade Study Plan on October 19, 2007, incorporating changes in sample size and the random selection of treated and control WTs as recommended by the SRC. Permission to implement the study, however, was never granted by the County nor the SRC.

However, AWI continues to install black blade sets on its WTs operating in the Altamont Pass, particularly on WTs where golden eagle collisions are thought to have occurred, as an adaptive management technique, to help prevent avian collisions.

5.4 Raptor Prey Reduction/Ground Squirrel Live Trapping Test. In May - June 2008, AWI implemented a pilot ground squirrel live-trapping field test to determine the effectiveness of prey reduction on avian fatalities in the APWRA.

After a field evaluation of rodent activity, AWI identified an area around two WTs exhibiting significant levels of ground squirrel activity to serve as a test site to measure the effectiveness of ground squirrel live trapping. An outside trapping company – Eagles Wildlife Services ("EWS") of Newman, California – set up eight traps in two different areas (four traps per area) around ground squirrel burrows near the test site. EWS set up industry standard, non-lethal rectangular cage traps along the paths on which squirrels were believed to travel between burrows. A plastic covering was placed on the top of each trap to reduce the risk of overhead raptors seeing the trapped ground squirrels, as well as, to shield any trapped animals from direct exposure to the sun. An AWI field employee conducted daily trap inspections, typically completed early in the morning. If a squirrel was found caught in a trap, the trap location was communicated to EWS, who would then visit the trap, collect the animal, and reset the trap. If a non-target animal (e.g., cottontail rabbit) was caught in a trap, it would be released by the field employee.

Over the three-week study period, three squirrels and three cottontail rabbits were caught. Based on these results, AWI concluded that employing a live-trapping prey management strategy would not remove sufficiently large numbers of prey from the APWRA to have an effect on avian fatalities. The project was abandoned following the field trial period.

5.5 Wildlife Response and Reporting System. AWI also continues to participate in and fund the Wildlife Response and Reporting System (“**WRRS**”), managed by AIC. Implemented in the 1980s, the WRRS is an additional program through which avian injuries and fatalities in the APWRA are monitored and analyzed, and through which injured birds are collected and provided veterinary care. WRRS personnel also provide injury and fatality reports to the U.S. Fish and Wildlife Service (“**USFWS**”), preserve and store/deliver certain carcasses, under USFWS’ direction, and train wind operator staff on the protocols for reporting carcasses or injured birds found in the course of wind turbine maintenance.

5.6 Continued Funding for Monitoring and Scientific Review Committee. AWI has contributed substantial financial resources to monitoring the avian impacts of its operations. AWI participates in and contributes to the APWRA-wide monitoring effort conducted by the County consultant, an exercise that typically costs about \$1 million each year, of which AWI pays a pro-rata share along with other APWRA wind operators. AWI also funds the wages, meetings, studies, and related expenses of the SRC, as well as, additional permitting and avian program review expenses. (See Exhibit 3.)

Considering the above costs, taken together with the costs of WT shutdowns and removals, including revenue lost from permanently removed WTs and seasonal shutdowns, AWI has incurred over \$14 million in mitigation expenses since 2007, or \$147,000 per megawatt of original installed capacity.³⁸ The aggregate cost through 2013 for all APWRA wind operators exceeds \$60 million. (See Exhibit 3.) No other wind farm in the world has invested so extensively in avian conservation and mitigation.

5.7 Wind Turbine Sales Reduce Fleet Size. AWI markets/sells 100 kW wind turbines both domestically and internationally. To supply these sales, AWI remanufactures turbines, from its existing Altamont Pass fleet, to a like-new condition. Generally, each 100 kW wind turbine sale will result in the removal of a wind turbine from AWI’s Altamont Pass fleet, which, in turn, reduces avian impacts. Currently, AWI is marketing to over 50 countries across the globe. To date, AWI has sold and installed about 30 wind turbines outside of California. In addition, AWI is currently pursuing international sales, potentially consisting of hundreds of turbines from the Altamont Pass. Further, proceeds from the sale of wind turbines helps fund AWI’s repowering efforts in the Altamont Pass.

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³⁸ Monitoring costs and SRC expenses are borne entirely by the wind companies. These costs are paid after other beneficiaries of the wind farms, including landowners and federal, state and local governments, receive payments (rents, taxes, or fees) based on gross revenues, calculated before mitigation costs.

6. CONTRIBUTING CAUSES OF RAPTOR MORTALITY

6.1 DWR Prey Poisoning. AWI recently learned that the California Department of Water Resources (“DWR”) has implemented a widespread program of rodent poisoning along its aqueducts and reservoirs located in the APWRA. Every year, a large number of avian carcasses are found within the APWRA wind farms for which the avian monitoring team cannot discern a cause of death or the carcass is found in a whole and intact condition. AWI suspects that poison dispersed by DWR is entering the raptor food chain through the ingestion of contaminated prey animals and directly causes the death for many of these birds. Other raptors ingesting sub-lethal doses of poison may become sick and weakened from contaminated prey, increasing the risk that such birds will accidentally collide with nearby wind turbines. The wind turbines have historically been blamed for the vast majority of bird deaths found within the APWRA.

The DWR has placed bait stations filled with anticoagulant rodenticide along the South Bay Aqueduct near Dyer Reservoir and the California Aqueduct near Bethany Reservoir within the APWRA (see [Figure 6.1](#)), located in the proximity of wind turbines. A closer view showing individual bait stations (locations approximate, based upon AWI field inspections) south of the Dyer Reservoir, as indicated by the circular black and red points, is shown in [Figure 6.2](#). A high level of eagle presence has been observed in the areas around these reservoirs and aqueducts, and eagle fatalities have been found near wind turbines not far from these DWR poison bait stations.



Figure 6.1 General locations of DWR Baiting Areas in the APWRA, located near wind turbines

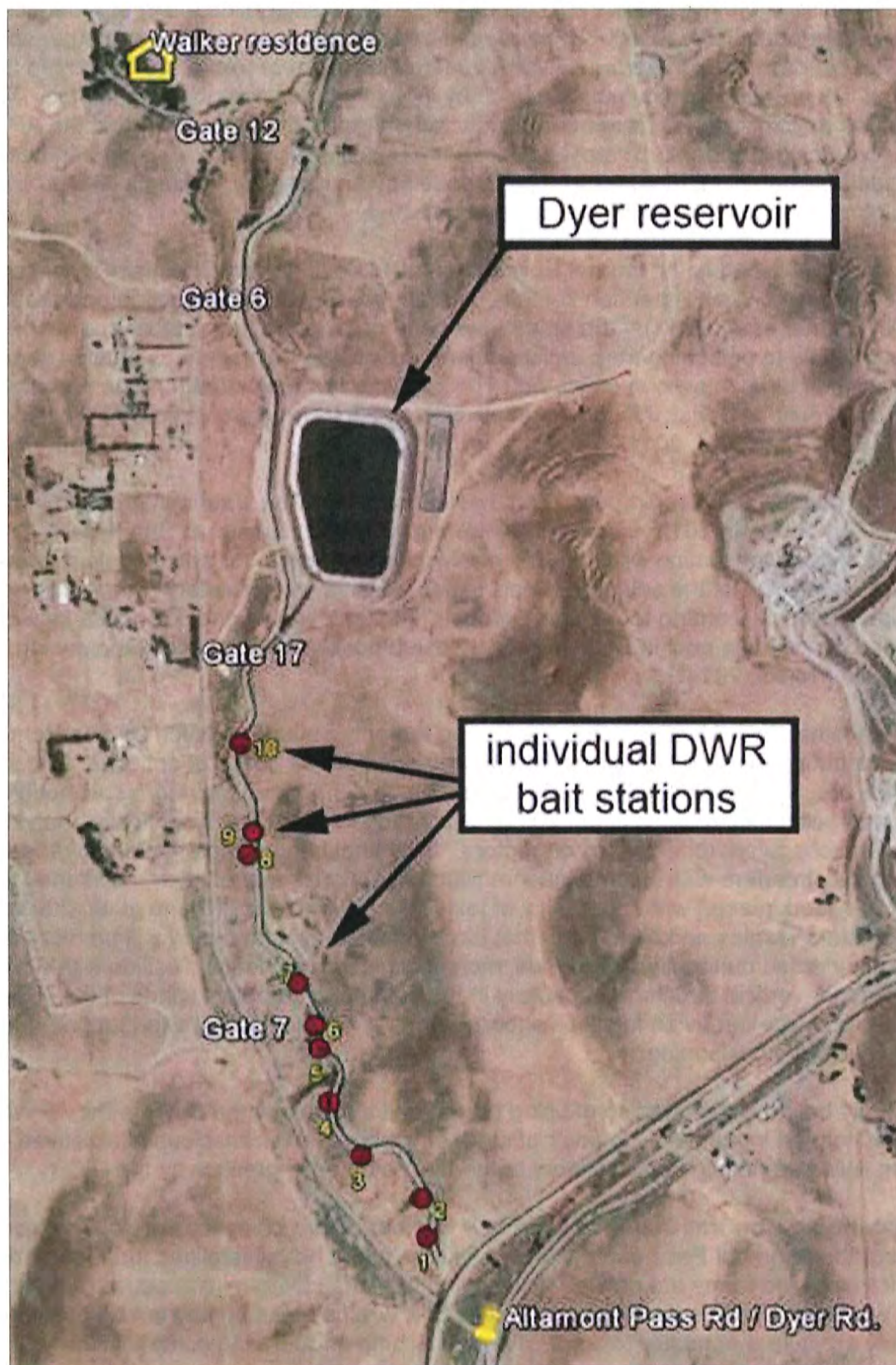


Figure 6.2 DWR Bait Stations (approximate) along Dyer Reservoir Canal, located near wind turbines

Secondary poisoning of non-target animals is a well-documented side effect of rodenticide use, and raptors are particularly at risk. Raptors hunt and scavenge on rodents and other small mammals abundant throughout the APWRA and ingest whatever toxins are present in the food chain, and it is possible to accumulate poison by ingesting multiple poisoned animals. While it appears that no toxicity tests have been conducted on raptor carcasses found in the APWRA specifically (most likely because stakeholders were unaware of DWR's wide-spread use of rodenticide until recently), the risks to raptors posed by anticoagulant rodenticides poison, such as the diphacinone used by DWR, are widely published.

A 2011 study published in the journal *Environmental Toxicology and Chemistry* researched the toxicity of diphacinone on American kestrels, a raptor present in abundance in and around the APWRA. (Rattner et al., 2011). The study's lead author reported that raptors are over 20 times more susceptible to poisoning from anticoagulant rodenticide than previous studies done on other species of birds may have indicated. The study further estimated that "an endangered hawk or owl would be at risk if it consumed as little as 3 to 4 grams of liver from a poisoned rodent." (Wiley-Blackwell, 2011).

Secondary rodenticide poisoning of raptors has been found to be a serious problem in the San Francisco Bay Area. In 2012, a non-profit wildlife rehabilitation center in San Rafael, California tested 138 rodent-consuming wildlife, 43% of which were raptors, for anticoagulant rodenticide poisoning. Over 75% of the subject animals tested positive for secondary rodenticide poisoning. (WildCare, 2014). According to the same group, "[i]n 2007, two juvenile Cooper's Hawks were found dead in a wading pool in Berkeley. Both tested positive for rodenticide poisoning." (Hungry Owl Project, 2014).

Ingesting a lethal dose of poison may also not be the only means by which DWR rodenticide use is contributing to avian mortality in the APWRA. Sublethal doses of anticoagulant rodenticide cause internal bleeding and dehydration, making an animal more susceptible to disease and accidents. (Lemus et al., 2011). According to one study specifically analyzing the effects of anticoagulant rodenticides on raptors, "Sublethal hemorrhage [caused by rodenticide ingestion] may interfere with locomotion, predisposing animals to predation, accidental trauma, and reduced food intake," with "possibility of toxic injury to the liver." (Stone et al., 2003). In this weakened state, eagles and other birds that have ingested poisoned prey will be more likely to become disoriented during flight, and thus, more inclined to accidentally collide with a wind turbine or other vertical structure, especially in the commonly turbulent winds of the Altamont Pass. In this way, even avian fatalities showing signs of collision with a wind turbine may be indirectly caused by poisoning.

AWI strongly believes the practice of using poison bait stations by the DWR in the APWRA should be stopped immediately in favor of more environmentally conscious alternatives. However, AWI has no legal or regulatory authority to stop such practice by the DWR.

6.2 Inability to Confirm Cause of Death. A number of bird carcasses are discovered throughout the Altamont Pass each year, but it is likely that not all fatalities found at or near the Altamont Pass wind farms are caused by the wind turbines. Determining cause of death can be difficult, and even where a carcass shows signs of a turbine strike, it may not be possible to definitively attribute that fatality to a specific wind turbine or operating company.

Every year a number of avian fatalities reported near wind turbines in the Altamont Pass are found as complete, intact carcasses. In the APWRA, the blade tip speed of the 100 kW wind

turbine is approximately 150 mph. Common sense would dictate that an intact carcass, showing little or no outward physical damage, died from something other than a collision with a turbine blade. Further, each year the monitoring team finds a significant quantity of bird remains (including approximately 14% of all eagle fatalities recovered) during the winter off-season when wind turbines are not operating (Nov. 1 through Feb. 15). Yet historically, the vast majority of bird fatalities known or estimated to occur within the APWRA have been attributed to the wind farms.

Birds die from natural causes, of course, and a number of direct and indirect environmental factors unrelated to the wind farms may also cause or contribute to avian fatalities in the APWRA. Ingestion of rodenticide poison, lead ammunition or other environmental toxins, as described earlier in this report, could directly cause mortality, and even sub-lethal doses of ingestion of toxins can cause weakness, debilitation or disorientation that increases the likelihood a bird will collide with a wind turbine. Predation by other animals, including other birds, is another direct cause of mortality. The most recent report released by the independent avian monitoring team found that "predation is likely a significant driver of fatality rates for small birds in general and in particular for burrowing owl and (to a lesser extent) American kestrel."³⁹

Where bird carcasses are found near turbines that do show signs of trauma, it cannot always be said with certainty which turbine caused the accidental death of that bird. Wind turbines owned and operated by different companies are intermingled throughout the APWRA. Turbines are generally ordered in strings that run along ridgelines, and several strings contain adjacent turbines owned by different operators. In some instances, strings run parallel to one another with limited distance between. A bird could easily strike one turbine but found close to another.

Figures 6.3 and 6.4 illustrate this uncertainty for two golden eagle carcasses recovered in the field near AWI wind turbines. In both instances, the fatality was attributed to the nearest wind turbine, but factors such as wind speed and direction, relocation by scavenger animals, and projectile force by turbine blades are not taken into account.

³⁹ ICF International. 2014. *Altamont Pass Wind Resource Area Bird Fatality Study, Bird Years 2005-2012*. Page 4-2. June. Final. M101. Sacramento, CA. Prepared for the Alameda County Community Development Agency, Hayward, CA.

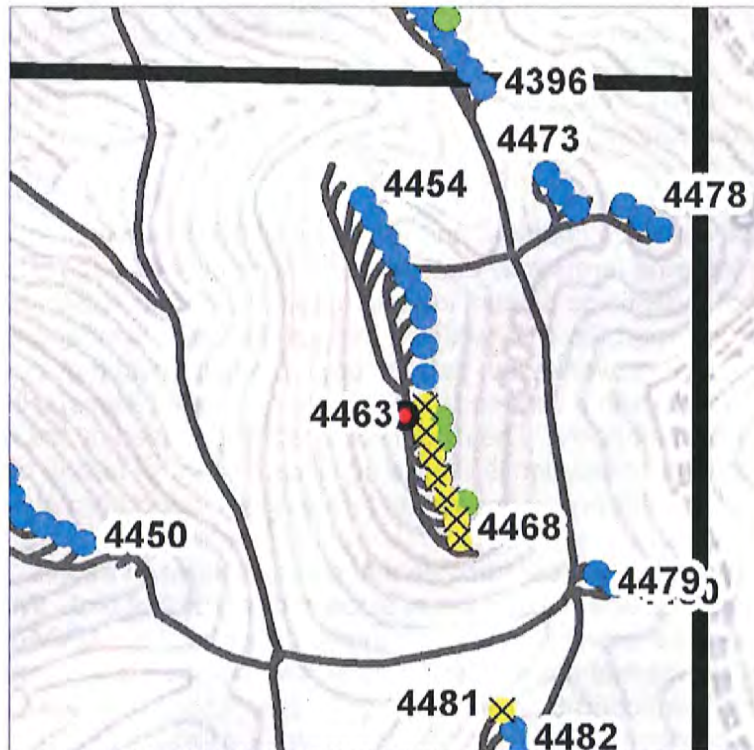


Figure 6.3 Location of Golden Eagle Carcass Found Between Turbines Owned by Different Operators

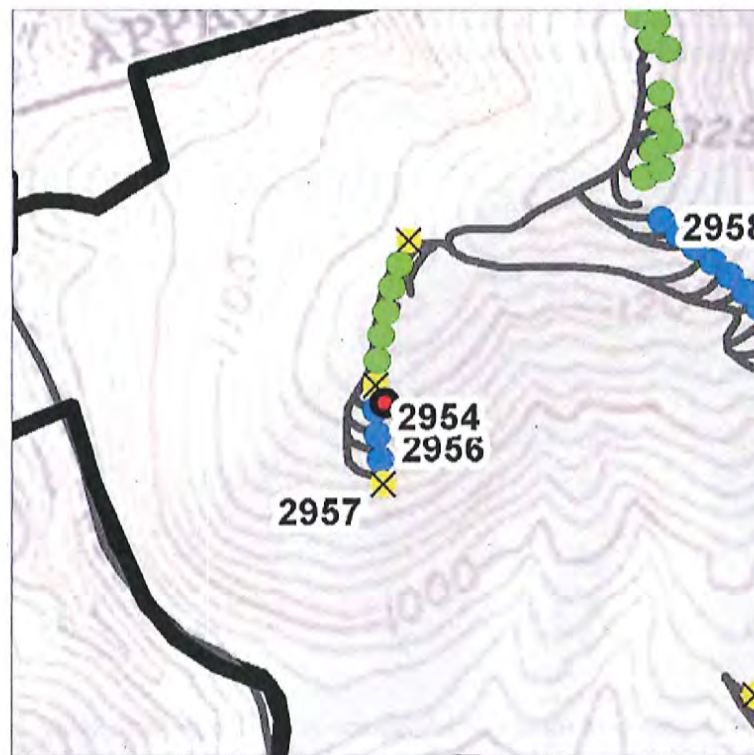


Figure 6.4 Location of Golden Eagle Carcass Found

Between Turbines Owned by Different Operators

7. CONCLUSION

In summary, AWI has taken significant and costly actions to reduce avian fatalities, including:

1. permanent shut down and removal of 10% of AWI's wind turbine fleet, totaling 92 turbines, including those turbines deemed to pose the highest risk to birds;
2. visual deterrents (blade painting) installed on 55 turbines;
3. annual winter seasonal shutdowns since 2005;
4. 94 power poles retrofitted, including five retrofitted in October 2014;
5. operations beyond 2015 will mitigate impacts to eagles by retrofitting approx. 107 power poles per year;
6. SRC funding and monitoring program participation;
7. wind turbine sales to expedite additional turbine removals.

This totality of this mitigation has come at considerable cost to AWI — over **\$14 million in mitigation expenses since 2007, or \$147,000 per megawatt** — and considering the other APWRA wind operators, the total combined cost is over \$60 million through 2013.⁴⁰

The mitigation measures discussed in this report also demonstrate the significant achievements AWI has made to reduce the impact of its wind farm operations on the surrounding environment. The result of these efforts is an unequivocal and substantial reduction in focal species fatalities in the APWRA.

Further, the less visible health, wildlife and climate benefits of AWI's wind farms demonstrate that the result of operating wind farms in Altamont Pass is a net positive benefit to human health, wildlife and climate, including a net reduction in avian deaths. Additional environmental mitigation requirements ignore the mitigation strategies already implemented and the self-mitigating impacts of wind power operations. A comprehensive consideration of all environmental impacts of APWRA wind facilities, as well as, continued investigation into additional contributing causes of raptor mortality, will help ensure that clean, renewable wind energy remains a part of the Bay Area energy solution.

⁴⁰ Monitoring costs and SRC expenses are borne entirely by the wind companies. These costs are paid after other beneficiaries of the wind farms, including landowners and federal, state and local governments, receive payments (rents, taxes, or fees) based on gross revenues, calculated before mitigation costs.

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Change in Golden Eagle Fatalities

Altamont Pass, California

30 Jun 2014

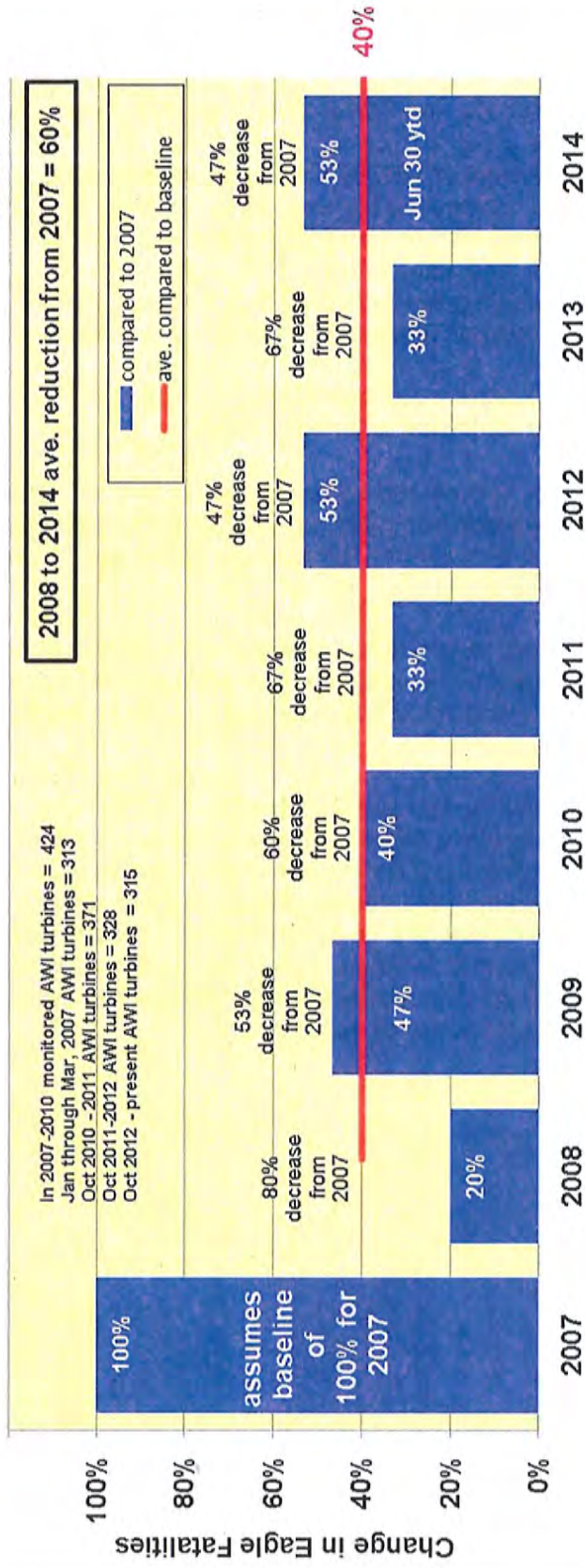


EXHIBIT 2**APWRA-wide 50% Reduction of Focal Species Fatalities**

Source: Altamont Pass Wind Resource Area Bird Fatality Study, Bird Years 2005-2010 (presented at the February 2012 Scientific Review Committee Meeting, Feb. 16, 2012)

Preliminary Measures of Progress Toward Reduction of Focal Species Fatalities in the APWRA

Species	Settlement Agreement	Three-Year Rolling Average Baseline	2010 Estimated Total Fatalities	Percent Reduction from 3-Year Rolling Average to 3-Year Rolling Average	Percent Reduction from 3-Year rolling Average to 2010 Bird Year Estimate	Percent Reduction from Settlement Agreement to 3-Year Rolling Average	Percent Reduction from Settlement Agreement to 2010 Bird Year Estimate
American kestrel	NA	402	251	38%	48%	NA	NA
Burrowing owl	NA	647	209	68%	78%	NA	NA
Golden eagle	NA	74	21	72%	77%	NA	NA
Red-tailed hawk	NA	224	77	66%	60%	NA	NA
Total focal species	1,130	1347	559	59%	66%	51%	59%

EXHIBIT 3 **Avian Mitigation Costs, 2007 – June 2014**

AVIAN CONSERVATION & MITIGATION PROGRAM BUDGET, Altamont Pass wind farms **AVIAN EXPENSES & LOST REVENUES, AWM + GRP & others**

	HISTORIC								
	1	2	3	4	5	6	7	8	Total
	2007	2008	2009	2010	2011	2012	2013	2014	
AVIAN PERMIT OPERATING COSTS									
scientific review committee wages	240,303	283,303	132,193	219,739	166,906	105,926	78,699	80,000	1,310,069
SRF facilitator	88,174	90,008	61,902	82,827	81,071	56,276	71,889	70,000	600,528
avian monitoring program (ICF)	386,475	1,724,152	1,538,610	1,104,040	1,125,575	1,027,032	720,691	589,000	8,215,667
operating EIR	0	0	0	0	0	95,838	139,300	0	285,136
Total Expenses	712,952	2,098,263	1,732,705	1,406,406	1,373,552	1,288,061	1,060,360	739,000	10,411,299
PERMIT REPOWERING COSTS									
NCCP/HCP	0	0	454,626	294,379	167,693	75,055	0	0	991,754
programmatic EIR	0	0	0	0	0	0	234,220	200,000	494,220
permitting consulting fees	0	0	0	0	0	0	0	0	0
Total Expenses	0	0	454,626	294,379	167,693	75,055	234,220	200,000	1,485,974
Total Avian Permit Costs	712,952	2,098,263	2,187,331	1,700,785	1,541,245	1,363,116	1,354,580	939,000	11,897,273
Altamont Lost Revenues (all wind companies)									
total kWh for year	882,124,371	750,098,281	790,277,746	641,838,180	851,850,507	713,583,628	732,618,322	714,045,580	5,866,436,616
percentage kWh lost to perm shutdowns (after seasonal)	2.13%	2.63%	3.13%	10%	10%	10%	10%	10%	
percentage kWh lost to seasonal shutdowns	3.67%	4.37%	5.18%	6.12%	6.12%	6.12%	6.12%	6.12%	
kWh lost to permanent shutdowns	18,717,598	20,220,878	25,492,631	71,315,353	72,427,824	79,287,070	81,402,036	79,338,398	448,202,298
kWh lost to seasonal shutdowns	32,848,584	34,278,209	43,129,275	41,828,116	42,480,612	46,503,714	47,744,191	46,533,819	336,346,820
PG&E FPA price	0.0807	0.0816	0.0822	0.0825	0.0799	0.0702	0.0713	0.0723	
lost revenues to permanent shutdowns	1,510,235	1,649,031	2,095,511	5,860,985	5,790,459	5,593,303	5,800,854	5,734,491	34,030,669
lost revenues to seasonal shutdowns	2,650,380	2,795,419	3,545,226	3,449,334	3,396,239	3,263,007	3,405,738	3,363,413	25,068,757
Total Lost Revenues	4,160,616	4,444,451	5,640,737	9,330,319	9,186,698	8,826,310	9,212,392	9,097,904	69,899,426
total expenses	712,952	2,098,263	1,732,705	1,406,406	1,373,552	1,288,061	1,060,360	739,000	10,411,299
total lost revenues	4,160,616	4,444,451	5,640,737	9,330,319	9,186,698	8,826,310	9,212,392	9,097,904	69,899,426
TOTAL Expenses & Lost Revenues	4,873,568	6,542,713	7,373,442	10,736,725	10,560,250	10,114,371	10,272,752	9,836,904	70,310,725
cumulative expenses & lost revenues	4,873,568	11,416,281	18,789,724	29,526,449	40,086,699	50,201,070	60,473,822	70,310,725	

AVIAN EXPENSES & LOST REVENUES, AWM 86 MW Altamont wind farms

	ICF Costs	AI Co Costs
AWM turbines	22.74%	20.15%
other Altamont pass wind turbines	77.26%	79.85%
Total Turbines	100%	100%

	HISTORIC								
	1	2	3	4	5	6	7	8	Total
	2007	2008	2009	2010	2011	2012	2013	2014	
AWM Expenses									
AVIAN PERMIT OPERATING COSTS									
scientific review committee wages	48,421	57,086	26,637	44,277	33,632	21,949	15,858	16,120	263,979
SRF facilitator	17,364	18,298	12,473	16,649	16,338	11,340	14,441	14,105	121,006
avian monitoring program (ICF)	77,875	347,417	310,030	222,464	226,803	206,945	145,219	118,684	1,655,437
operating EIR	0	0	0	0	0	95,838	139,300	0	285,136
Total Expenses	143,660	422,800	349,140	283,391	276,771	336,069	364,619	148,909	2,325,558
PERMIT REPOWERING COSTS									
NCCP/HCP	0	0	103,382	66,942	38,133	17,068	0	0	225,525
programmatic EIR	0	0	0	0	0	0	66,906	45,480	112,386
Summit project EIR	0	0	0	0	0	0	0	195,993	195,993
permitting consulting fees	0	0	0	0	0	0	0	66,600	66,600
power pole retrofits	0	0	0	0	0	0	0	5,000	5,000
Total Expenses	0	0	103,382	66,942	38,133	17,068	66,906	313,073	605,503
Total Avian Permit Costs	143,660	422,800	452,522	350,333	314,904	353,137	431,724	461,981	2,931,061
AWM Lost Revenues									
total kWh for year	196,047,082	170,572,349	179,709,180	145,954,002	148,230,805	182,286,917	188,597,407	182,373,985	1,331,753,686
percentage kWh lost to perm shutdowns (after seasonal)	2.13%	2.63%	3.13%	10%	10%	10%	10%	10%	
percentage kWh lost to seasonal shutdowns	3.67%	4.37%	5.18%	6.12%	6.12%	6.12%	6.12%	6.12%	
kWh lost to permanent shutdowns	4,256,450	4,598,228	5,797,070	16,217,111	16,470,089	18,029,880	18,510,823	18,041,552	101,921,202
kWh lost to seasonal shutdowns	7,469,836	7,794,865	9,807,597	9,511,714	9,660,991	10,574,945	10,857,029	10,581,790	76,257,867
PG&E FPA price	0.0807	0.0816	0.0822	0.0825	0.0799	0.0702	0.0713	0.0723	
lost revenues to permanent shutdowns	343,428	374,990	476,519	1,337,336	1,316,750	1,265,095	1,320,433	1,304,032	7,738,574
lost revenues to seasonal shutdowns	602,696	635,678	806,194	784,379	772,305	742,008	774,465	764,040	5,892,555
Total Lost Revenues	946,124	1,010,668	1,282,704	2,121,715	2,089,055	2,007,103	2,094,898	2,068,063	13,621,129
total expenses	143,660	422,800	452,522	350,333	314,904	353,137	431,724	461,981	2,931,061
total lost revenues	946,124	1,010,668	1,282,704	2,121,715	2,089,055	2,007,103	2,094,898	2,068,063	13,621,129
TOTAL Expenses & Lost Revenues	1,089,784	1,433,468	1,735,226	2,472,047	2,403,959	2,360,240	2,526,622	2,530,044	16,552,190
cumulative expenses & lost revenues	1,089,784	2,523,252	4,258,478	6,730,525	9,134,484	11,494,724	14,021,346	16,552,190	

EXHIBIT 5

Ineffective Winter Seasonal Shutdown;

Excerpt from ICF International, *Altamont Pass Wind Resource Area Bird Fatality Study*, pages 4-2 – 4-3, December 2010.

Assessment of the Effectiveness of the Seasonal Shutdown

Because the winter shutdown occurred only during the current study, the consistent decrease in the average annual percentage of mortality occurring during the winter period for the four focal species using the common strings dataset indicates a possible beneficial effect of the seasonal shutdown. However, the size of the treatment effect generally increased each year of the current study, and yet

Altamont Pass Wind Resource Area Bird Fatality Study

4-2

December 2010
ICF 00904.08

Alameda County Community Development Agency

Discussion

there was no consistent decrease in the percentage of mortality occurring during the winter for any of the four focal species. In fact, the percentage of annual mortality occurring during the winter for American kestrel and burrowing owl generally increased over the course of the current study, indicating a potential adverse effect of the winter shutdown. However, the positive relationship between the estimates of total adjusted annual fatalities and the percentage of fatalities that occur during the winter period also indicate a beneficial effect of the winter shutdown on American kestrel. The increasing percentage of total annual mortality occurring during the winter period may therefore be an anomaly.

EXHIBIT D
Prey Poisoning by the California DWR



Prey Poisoning by the California DWR Contributes to Golden Eagle Fatalities in the Altamont Pass Wind Resource Area

05 September 2014 **DRAFT**

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EXHIBIT A - DWR Rodent Poison Use in the APWRA

1. INTRODUCTION

The California Department of Water Resources (“DWR”) is using poison to kill rodents and other animals in a practice that is widespread along its aqueducts running through the Altamont Pass Wind Resource Area (“APWRA”), located between the cities of Livermore and Tracy, California. (See [Figure 1](#), location of the APWRA.) Golden eagles and other raptors are plentiful in the APWRA, and these birds prey upon the abundant small animal populations in the area, particularly ground squirrels.

This report discusses the issue of poison being dispersed by the DWR and entering the raptor food chain through the ingestion of contaminated prey animals, which directly causes sickness and death in golden eagles and other raptors. Further, when raptors become sick and weakened from contaminated prey, there is an increased risk that such birds will accidentally collide with nearby wind turbines. Such deaths, while historically blamed on the wind turbines, may instead be the result of DWR poisoning.



Figure 1. Location of the APWRA

2. AVIAN FATALITY MONITORING IN THE APWRA

The Altamont Pass wind farms began operation in the late 1980s and contained more than 5,000 wind turbines installed at peak capacity (with the majority consisting of 100 kW wind turbines), operating in a vast area of over 75 square miles. However, due largely to measures taken to reduce avian mortality, roughly only 3,000 of these turbines still operate today.

Since 1989, various entities have tracked and recorded avian fatalities, and nearly all fatalities found are presumed to be related to the wind turbines. Historically, the wind companies used the Wildlife Reporting and Response System (“WRRS”), which relied on wind farm staff to find and report bird deaths. Beginning around 2005, County and State authorities set aggressive mortality reduction targets, and the need arose for implementation of a systematic fatality monitoring program to collect data to be used to assess the wind farm operators' progress toward reducing the number of avian fatalities. In response, Alameda County empaneled a Scientific Review Committee (“SRC”) to design and lead an avian fatality monitoring program, funded by the wind companies. Under this program, several full-time field biologists (the “Monitoring Team”) conduct year-round carcass search surveys of a large sample of all wind turbines in the APWRA, at times exceeding 50% of all operating turbines.

With each carcass found, the Monitoring Team will attempt to identify a cause of death based on the location and condition of the carcass. According to the Monitoring Team's “valid fatalities” spreadsheet (see SRC website: <http://www.altamontsrc.org/index.html>), looking at all avian fatalities from January 1989 through June 2014, the cause of death is listed as “unknown” in nearly 80% of cases. Despite no discernible cause of death, these fatalities are taken into account when assessing the wind farms mortality reduction milestones. As such, the wind farms are required to reduce and mitigate for these “unknown cause” fatalities.

Moreover, a number of eagle fatalities reported near wind turbines were found as complete, intact carcasses. In the APWRA, the blade tip speed of the 100 kW wind turbine is approximately 150 mph. Common sense would dictate that an intact carcass, showing little or no outward physical damage, died from something other than a collision with a turbine blade. Further, a significant quantity of raptor fatalities (including eagles) are found each year by the Monitoring Team during the winter off-season when wind turbines are NOT operating (i.e., each year from Nov. 1 thru Feb. 15). Such fatalities could be caused by rodent poisoning.

3. DWR POISON BAIT STATIONS ARE IN AREAS OF HIGH EAGLE USE

The DWR manages both the South Bay Aqueduct near Dyer Reservoir and the California Aqueduct near Bethany Reservoir (see [Figure 3.1](#)), within the APWRA. Presumably in an effort to protect the canals and reservoirs from damage due to burrowing rodents, bait stations filled with anticoagulant rodenticide poison (see [Exhibit A](#) for more details) have been placed in these areas, as shown in [Figure 3.2](#). A closer view showing individual bait stations (locations approximate, based upon AWI field inspections) south of the Dyer Reservoir, as indicated by the circular black and red points, is shown in [Figure 3.3](#).

A high level of eagle presence has been observed in the areas around these reservoirs and aqueducts, and eagle fatalities have been found near wind turbines not far from these DWR poison bait stations. What appears to be a raptor's nest can be seen adjacent to one such bait station in [Figure 3.4](#), with easy access by raptors to poisoned rodents, which is a significant concern. Further, bait stations do not appear to be neatly maintained, and bait can be seen dispersed several feet from the station (see [Figure 3.5](#)), thereby allowing other animals free

Altamont Winds Inc.

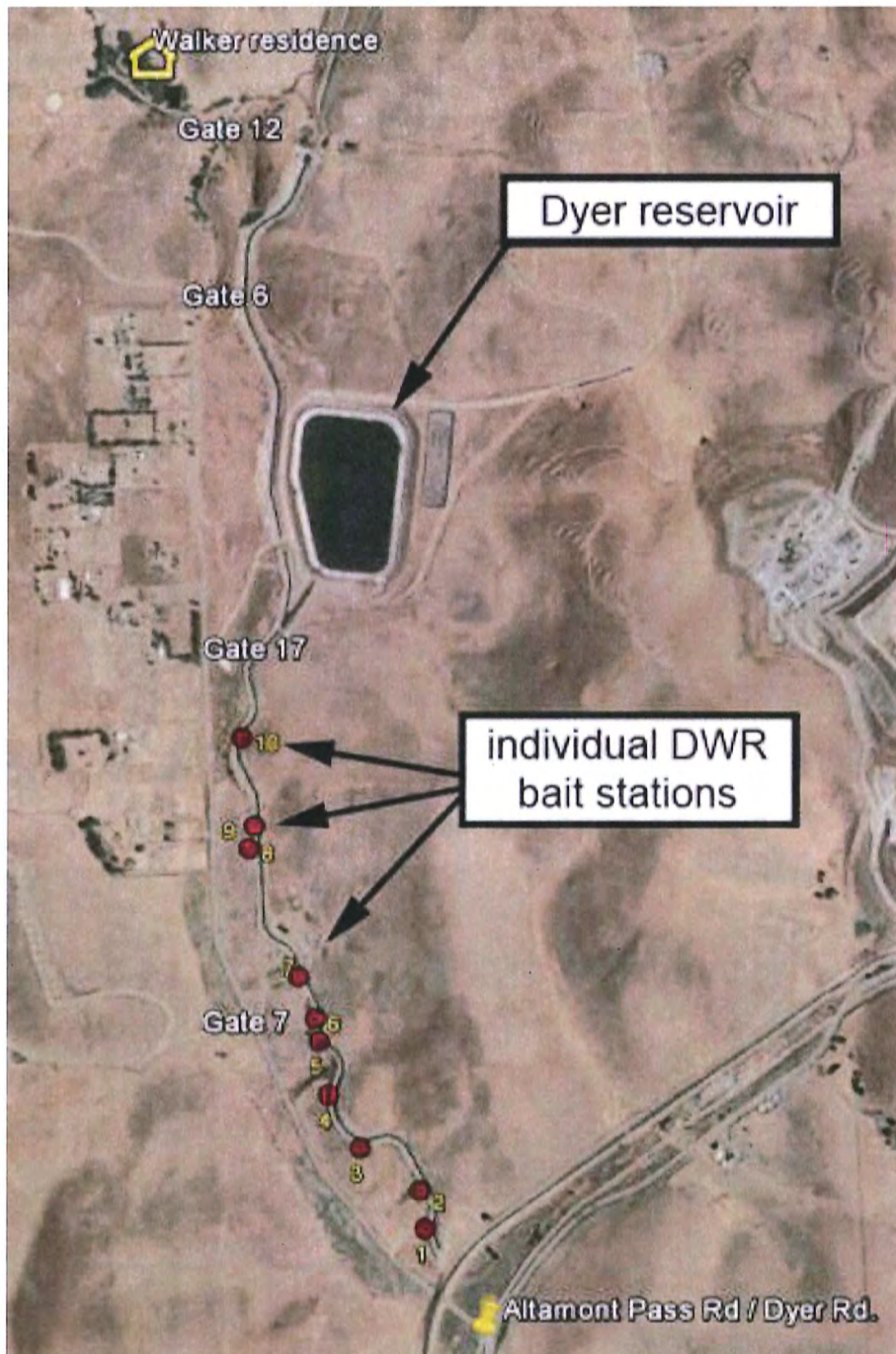


Figure 3.3 DWR Bait Stations (approximate) along Dyer Reservoir Canal

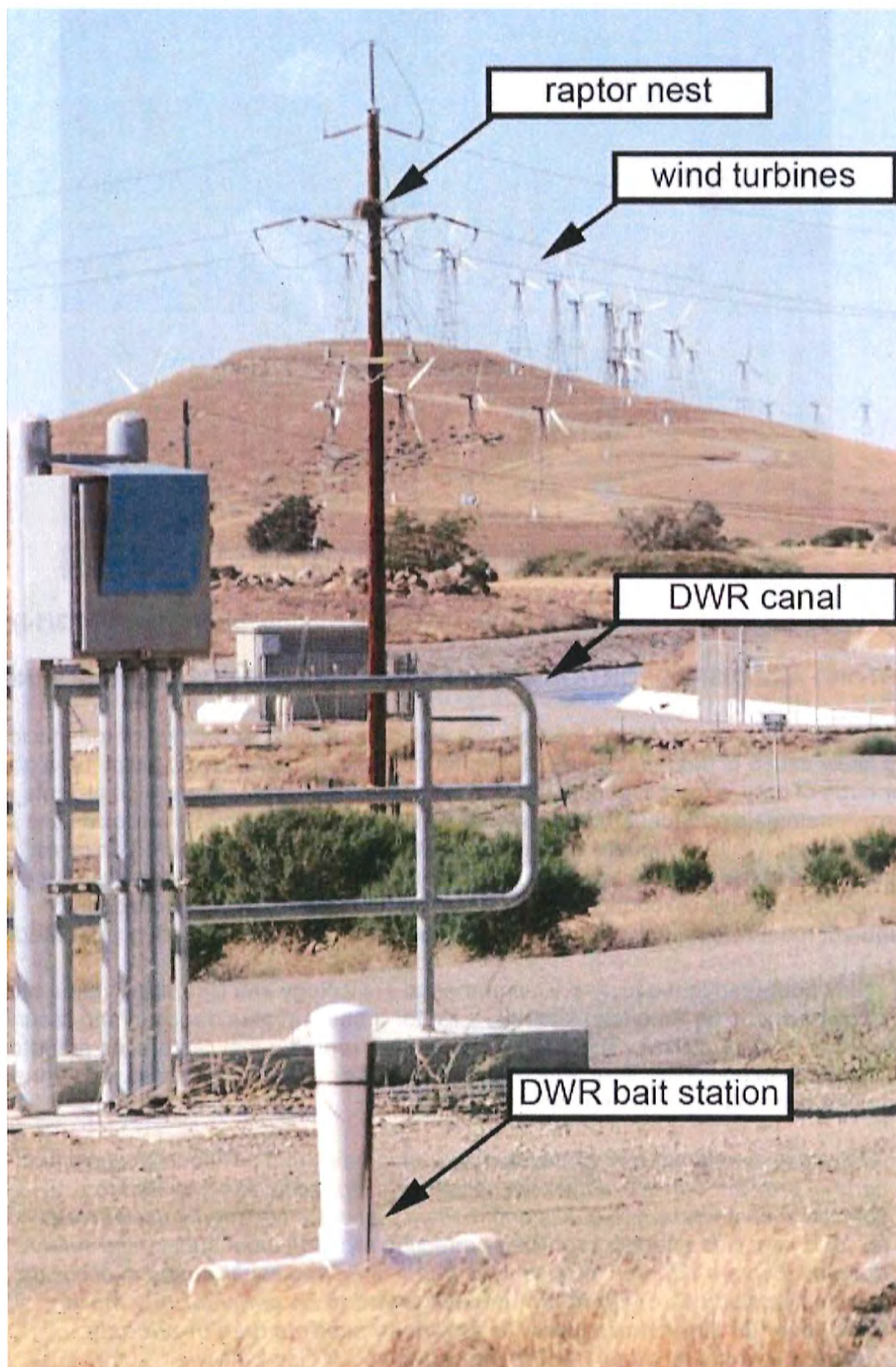


Figure 3.4 Typical DWR Dyer Canal Bait Station (photo date 07/22/14)



Figure 3.5 Poison Falling Out of the DWR Bait Station (photo date 07/23/14)

4. RAPTORS ARE DISPROPORTIONATELY AT RISK TO RODENTICIDE POISONING

Secondary poisoning of non-target animals is a well-documented side effect of rodenticide use that is a likely cause of death for many raptors found dead in the APWRA. Raptors, a general term for birds of prey, such as, eagles, hawks, and owls, hunt and scavenge on rodents and other small mammals abundant throughout the APWRA and ingest whatever toxins are present in the food chain. While it appears that no toxicity tests have been conducted on raptor carcasses found in the APWRA specifically (most likely because stakeholders were unaware of DWR's wide-spread use of rodenticide until recently), the risks to raptors posed by anticoagulant rodenticides, such as the diphacinone used by DWR, are widely published.

A 2011 study published in the journal *Environmental Toxicology and Chemistry* researched the toxicity of diphacinone on American kestrels, a raptor present in abundance in and around the APWRA. (Rattner et al., 2011). The study's lead author reported that raptors, as predators, are more susceptible to poisoning from anticoagulant rodenticide than previous studies done on other species of birds may have indicated:

*"Our study, combined with previous research in hawk and owl species show that birds of prey are considerably more sensitive to diphacinone compared to species such as bobwhite quails and mallards [species commonly used in tests for toxic pesticide effects]. . . . Their protection requires more substantial safety margins than are afforded to species of game birds traditionally used in pesticide registration studies. . . . **Diphacinone was found to be considerably more toxic [over 20 times more toxic] to American kestrels than previously reported in tests of other wildlife test species.**" (Wiley-Blackwell, 2011 (emphasis added)).*

The study further estimated that “an endangered hawk or owl would be at risk if it consumed as little as 3 to 4 grams of liver from a poisoned rodent.” (Wiley-Blackwell, 2011).

In 2012, a non-profit wildlife rehabilitation center in San Rafael, California tested 138 rodent-consuming wildlife, 43% of which were raptors, for anticoagulant rodenticide poisoning. (Figure 4.1 below shows a map of locations where tested animals were recovered.) Over 75% of the subject animals tested positive for secondary rodenticide poisoning. (WildCare, 2014). According to the same group, “[i]n 2007, two juvenile Cooper’s Hawks were found dead in a wading pool in Berkeley. Both tested positive for rodenticide poisoning.” (Hungry Owl Project, 2014).

In one extreme case study, owls feeding on rodents were monitored following the implementation of a program of anticoagulant rodenticide baiting to control vole populations in an apple orchard. (Hegdal and Colvin, 1988). According to the study, when more than 20% of the foraging range was treated with anticoagulant rodenticide, minimum owl mortality increased to 58%. If less than 10% of the foraging area had been treated, mortality fell to 17%. (Hegdal and Colvin, 1988).

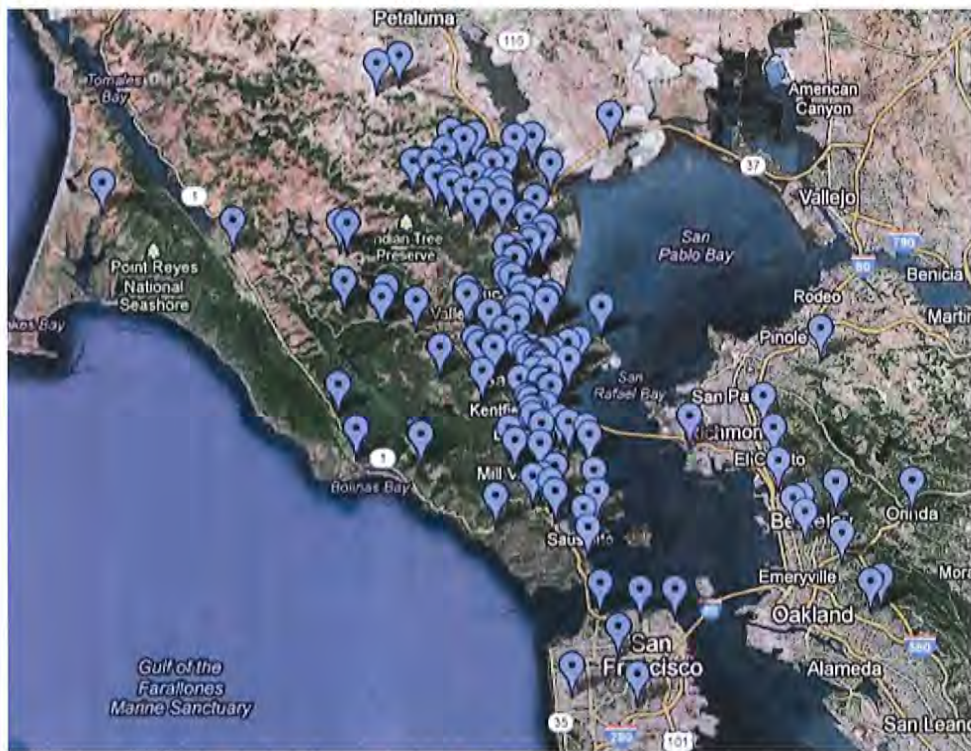


Figure 4.1 Map showing the location where rodenticide-positive animals tested by the WildCare animal center were found (source: WildCare, 2014).

Regulatory agencies in California have taken notice of the dangers of anticoagulant rodenticides to non-target animals and birds. In a 2013 memorandum from the California Department of Pesticide Regulation (“CDPR”), its assessment and peer review of anticoagulant rodenticide restrictions, explains: “Exposure of non-target wildlife to brodifacoum and bromadiolone [anticoagulant rodenticides], particularly avian and mammalian predators and scavengers, is widespread in California and elsewhere,” and “recent work has indicated that birds of prey have an increased sensitivity compared to other avian species.” (CDPR, 2013). The California

Department of Fish and Wildlife (“**CDFW**”) also clearly notes on the agency’s website that “[t]hroughout California, the use of poison baits to control rodents has injured and killed numerous wild animals and pets. This is because predatory and scavenging birds and mammals, like owls, hawks, raccoons, bobcats, mountain lions, foxes, skunks and coyotes that eat dead or dying rodents that have consumed these baits, will also be poisoned.” (CDFW, 2014).

Ingesting a lethal dose of poison may also not be the only means by which DWR rodenticide use is contributing to avian mortality in the APWRA. Sublethal doses of anticoagulant rodenticide cause internal bleeding and dehydration, making an animal more susceptible to disease and accidents. (Lemus et al., 2011). According to one study specifically analyzing the effects of anticoagulant rodenticides on raptors, “Sublethal hemorrhage [caused by rodenticide ingestion] may interfere with locomotion, predisposing animals to predation, accidental trauma, and reduced food intake,” with “possibility of toxic injury to the liver.” (Stone et al., 2003). In this weakened state, eagles and other birds that have ingested poisoned prey will be more likely to become disoriented during flight, and thus, more inclined to accidentally collide with a wind turbine or other vertical structure. In this way, even avian fatalities showing signs of collision with a wind turbine may be indirectly caused by poisoning.

5. ALTERNATIVES TO THE USE OF RODENTICIDES

Simple, cost-effective alternative means of rodent deterrence are available and could replace the use of lethal animal poisoning along DWR projects in the APWRA. One potential alternative is the use of wire mesh placed as a vertical and/or horizontal barrier, just beneath the surface of the ground immediately adjacent to critical aqueduct and reservoir areas susceptible to damage caused by ground squirrels, as shown in [Figure 5.1](#). Installation of a concrete barrier is another effective method to prevent rodent tunneling. The availability of relatively simple, cost-effective solutions to potential rodent damage makes DWR’s use of rodenticide unjustifiable and indefensible, especially considering the substantial risk to raptors, including eagles



Figure 5.1 Wire mesh barriers to protect from for rodent damage

6. CONCLUSION

DWR's widespread use of anticoagulant rodenticide in the APWRA is very likely to be a direct and indirect cause of death in non-target wildlife, including golden eagles and other protected raptors, from secondary poisoning. Recent studies have shown that raptors are particularly susceptible to poisoning by anticoagulant rodenticides, the ingestion of which can result in death or debilitation. The number of intact bird carcasses found through the APWRA avian fatality monitoring program suggests a cause of death for many birds that is unrelated to wind turbine strikes, despite the attribution of these fatalities to the wind farms. Further, even recovered carcasses showing evidence of a turbine collision may have been debilitated or otherwise impaired due to the ingestion of rodenticide poison, indirectly contributing to death.

In addition, a significant quantity of raptors (including eagles) are found each year during the winter off-season when wind turbines are NOT operating (i.e., each year from Nov. 1 thru Feb. 15), which provides credence to this evidence of poisoning impacts. Such avian finds are wrongly attributed to wind turbines, when instead may be the result of DWR poisoning.

In conclusion, the practice of using poison bait stations by the DWR in the APWRA should be stopped immediately in favor of more environmentally conscious alternatives. We have requested that the DWR provide us with information about their poisoning program within the APWRA, but thus far we have not received any documentation.

7. REFERENCES

California Department of Fish and Wildlife (CDFW), Rodenticides can harm wildlife; please use carefully, available at <https://www.dfg.ca.gov/education/rodenticide/> (accessed July 31, 2014).

California Department of Pesticide Regulation (CDPR), Summary of Second Generation Anticoagulant Rodenticides Assessment Peer Review Comments and Responses, June 27, 2013, available at http://www.cdpr.ca.gov/docs/registration/reevaluation/chemicals/brodifacoum_final_peer_review_cmmnts.pdf (accessed July 31, 2014).

Hungry Owl Project. Information: Rodenticides, available at <http://www.hungryowl.org/information/rodenticides.html> (accessed July 31, 2014).

J.A. Lemus, C. Bravo, M. Garcia-Montijano et al., Side effects of rodent control on non-target species: rodenticides increase parasite and pathogen burden in great bustards, *The Science of the Total Environment*, Oct. 2011, abstract available at <http://www.ncbi.nlm.nih.gov/pubmed/21889190> (accessed August 4, 2014).

William Quarles, *Protecting Raptors from Rodenticides*, Bio-Integral Resource Center-Common Sense Pest Control Quarterly XXVII(1-4), 2011, available at <http://www.birc.org/RaptorQ.pdf> (accessed August 4, 2014).

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WildCare, *Is rat poison a problem in YOUR neighborhood?*, available at http://www.wildcarebayarea.org/site/PageServer?pagename=Animal_Emails_Rodenticide_Results_February_2013 (accessed August 4, 2014).

Wiley - Blackwell. (2011, March 10). American birds of prey at higher risk of poisoning from pest control chemicals. Science Daily, *available at* www.sciencedaily.com/releases/2011/03/110310070457.htm (accessed July 31, 2014).

EXHIBIT A

DWR Rodent Poison Use in the APWRA

Diphacinone is an anticoagulant rodenticide poison known to be harmful to raptors, including eagles. A 2011 study published in the journal *Environmental Toxicology and Chemistry* studied the effects of diphacinone on American kestrels in the laboratory. Kestrels were over 20 times more sensitive to the lethal effects of diphacinone than those species of birds used in EPA tests to determine the toxic effects of diphacinone. The same study estimated that a raptor would be at risk if it consumed as little as 3 to 4 grams of liver from a poisoned rodent.

The DWR manages both the South Bay Aqueduct near Dyer Reservoir and the California Aqueduct near Bethany Reservoir (see [Figure 3.1](#) above), within the APWRA. The photos in [Figures A.1 – A.3](#) below were taken by AWI personnel during field inspections along the DWR aqueducts in July 2014.



Figure A.1 DWR Bait Station Poison Warning Label (photo date 07/18/14)

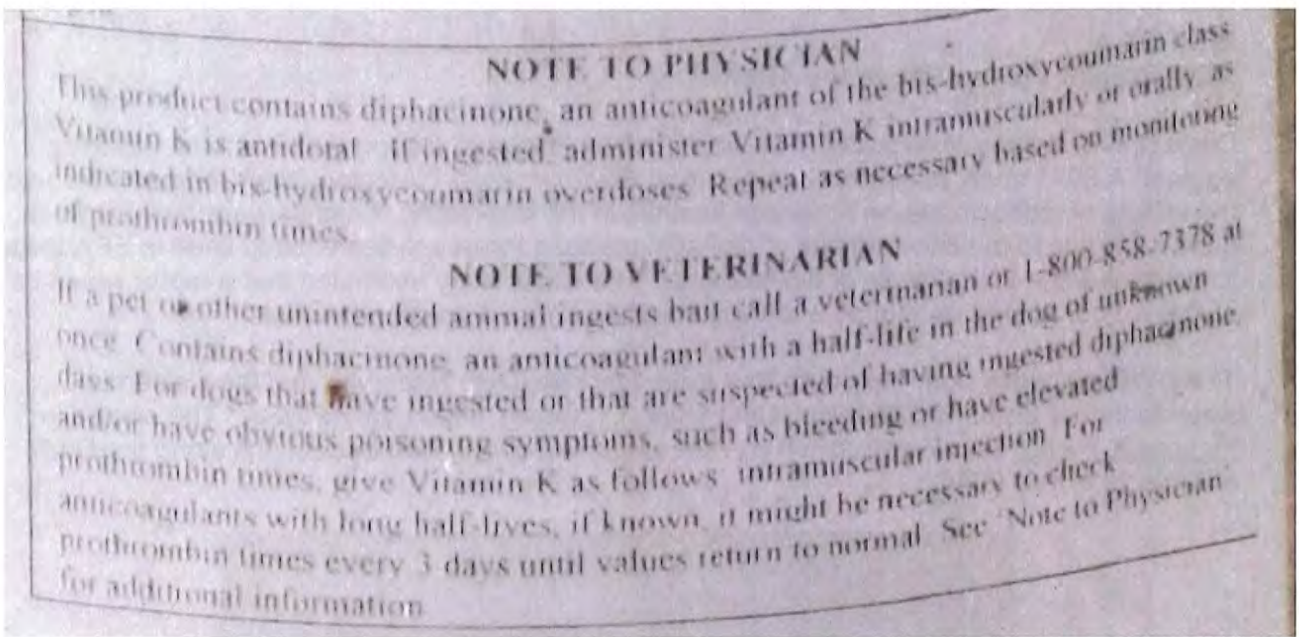


Figure A.2 DWR Bait Station Warning Label Detail (photo date 07/18/14)
As evidenced by [Figure A.3](#), these DWR bait stations are active and contain diphacinone, an anticoagulant rodenticide. Such rodenticide poison is often colored blue to warn against human and pet ingestion.



Figure A.3 Close Up of DWR Poison (photo date 07/23/14).

NOTICE OF PUBLIC HEARING
to Consider Appeals Regarding
CERTIFICATION OF THE SUPPLEMENTAL
ENVIRONMENTAL IMPACT REPORT for
CONDITIONAL USE PERMIT, PLN2014-00028:
MODIFICATIONS TO EXISTING CONDITIONAL USE
PERMITS (Extension To 2018) – ALTAMONT WINDS INC.
and
DENIAL OF SAID MODIFICATIONS
Said actions made by the Alameda County (East) Board of
Zoning Adjustments on February 2, 2015

NOTICE IS HEREBY GIVEN that the Alameda County Board of Supervisors will hold a public hearing to consider the appeal of Audubon California and affiliated regional chapters of the decision of the East County Board of Zoning Adjustments (EBZA) on February 2, 2015 (Resolution Z-15-03) to certify the Final Supplemental Environmental Impact Report, prepared to evaluate Conditional Use Permit PLN2014-00028, an application to modify 16 existing Conditional Use Permits (extension to October 31, 2018, of permits set to expire on October 31, 2015), for 828 turbines owned and operated by Altamont Winds Inc. in the Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), with a rated capacity of approximately 85.8 megawatts (MW).

NOTICE IS HEREBY ALSO GIVEN that said public hearing will consider the appeal of Altamont Winds, Inc., of the EBZA on February 2, 2015 (Resolution Z-15-04) to deny Conditional Use Permit PLN2014-00028.

IF YOU CHALLENGE the County's action in court, you may be limited to only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Board of Supervisors at or prior to the public hearing.

SAID PUBLIC HEARING will be held on Tuesday, March 10, 2015 beginning at 1:00 p.m., in the Board Chambers of Alameda County Board of Supervisors, 1221 Oak Street, fifth floor, Oakland, California.

ALL PERSONS INTERESTED in this matter may appear and be heard at this hearing. If you have any questions please contact the Planning Department at (510) 670-5400.

ANIKA CAMPBELL-BELTON
CLERK OF THE BOARD OF SUPERVISORS



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

December 30, 2014

Chris Bazar
Agency Director

Albert Lopez
Planning Director

224
West Winton Ave
Room 111

Hayward
California
94544

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**AMENDED* Notice of Availability of a
Draft Supplemental Environmental Impact Report for
Modifications to Existing Conditional Use Permits –
Altamont Winds Inc. (AWI): 2018 CUP Extension
Amended Notice to Extend the Comment Period
Planning Case PLN2014-00028 / SCH# 2014092057**

SUMMARY:

Notice is hereby given by the County of Alameda, Community Development Agency, Planning Department, as the lead agency pursuant to the California Environmental Quality Act (CEQA), that the above-named Draft Supplemental Environmental Impact Report (DSEIR) is available for public review and comment. Comments on the DSEIR will be received for a 45-day period, **plus an additional 10 (ten) days** between ~~November 18, 2014 and January 2, 2015~~ **and January 12, 2015**, after which a Final SEIR will be prepared containing comments and responses to comments, that together with the DSEIR will form the Final SEIR. The Final SEIR will be used by the East County Board of Zoning Adjustments in its consideration of approval of the proposed CUP modifications, described below.

PROJECT LOCATION:

Within the approximately 14,436-acre Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), in the eastern portion of Alameda County, bisected by Interstate I-580. The subject Conditional Use Permits (CUPs) apply to 828 existing wind turbines and supporting infrastructure owned by Altamont Winds, Inc. (AWI, Applicant), and which have a total footprint of approximately 233 acres distributed across the Alameda County portion of the APWRA. The AWI facilities are intermixed with other wind turbines and facilities not owned by AWI, as well as with ongoing ranching and other land uses.

As part of this extension, AWI is in discussions with another wind farm operator in the APWRA that shares common infrastructure with AWI, regarding a contemplated wind turbine exchange. In such a scenario, AWI would exchange approximately 300 wind turbines it presently owns south of I-580 for an equal number of wind turbines owned and operated by another company, Green Ridge Power LLC, north of I-580. As proposed, and under assurances from both companies, such an exchange will not increase the capacity or quantity of AWI's operating turbines. The result would be that after such an exchange AWI would no longer own or operate any wind turbine energy assets south of I-580.

PROJECT DESCRIPTION:

AWI has applied to Alameda County to modify its CUPs, specifically related to operational and decommissioning schedules for its 828 existing wind turbines, which have a nameplate generating capacity of 85.8 MW. The AWI application requests that the existing CUPs, set to expire on October 31, 2015 under modifications approved in July 2013, be extended for three (3) years, through October 31, 2018 under specified conditions, for operation of its estimated 828 turbines.

* Amendments to the Notice are shown in **bold underline** and ~~strikeout~~. Please note that some additional information is provided separate from the extension of the comment period.

Notice of Availability of a Draft Supplemental Environmental Impact Report for the Modifications to Existing Conditional Use Permits – Altamont Winds Inc. (AWI)
November 17, 2014 December 30, 2014, Amended Notice to Extend the Comment Period
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The SEIR is intended to supplement an Environmental Impact Report (EIR), certified in July 2013, that evaluated the application made by AWI in 2011 to modify these same CUPs as they had been approved in September of 2005. The 2013 FEIR is available on the County Planning Department website at <http://www.acgov.org/cda/planning/landuseprojects/awipermit-pln2011-102.htm>.

The prior 2013 EIR evaluated AWI's application to replace the schedule adopted in 2005 for phased decommissioning (shut down and removal) of existing turbines in steps in 2009, 2013, 2015 and 2018, in anticipation of repowering (replacement with current generation turbines), with full operation through October 2015 only, and without any partial or phased decommissioning. The 2013 EIR included as Alternative 3 the potential full operation of the turbines through October 2018, at a limited level of analysis, as provided for in the CEQA Guidelines (Section 15126.6(d)), to provide "sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project."

The County determined that a Supplement to the 2013 EIR should be prepared in order to address the environmental impact of AWI's proposed project modification because, among other reasons, the 3-year extension requested by AWI is a substantial change to the project, which will cause a substantial increase in the severity of previously-identified significant environmental impacts. The Supplemental EIR is the appropriate mechanism to make the required revisions to the 2013 EIR; the consideration of operations through 2018 as one of four project alternatives in the 2013 EIR does not adequately address the scope and detail of revisions necessary to evaluate the changed project scope.

When the County certified the EIR in July 2013 for the modifications that provided for full operations through 2015, a finding was made regarding this alternative that: "Alternative 3 would better serve the project objectives of renewable energy, but would also very substantially increase the avian mortality impacts compared to the project and all other alternatives. For the purpose of meeting the project objectives and minimizing significant impacts on special status avian wildlife, Alternative 3 is considered infeasible." On the basis of this determination, the County has determined it is necessary to provide additional information, which this SEIR is intended to provide, together with the same kind of notice and public review as provided for a draft EIR under Section 15087 of the CEQA Guidelines. The SEIR supplements the prior EIR with additional analysis beyond that included in the Alternatives analysis to provide a basis for making the findings required by CEQA. In addition, although the County has determined that there are no new substantial changes to the project that were not evaluated in the prior 2013 EIR that require preparation of a subsequent EIR, but rather that only relatively minor additional information and changes are required for the 2013 EIR to adequately apply to the current proposal. However, to the extent new information has become available since the prior FEIR, the County CDA has incorporated that information into the DSEIR. As such, the SEIR is intended to comply with the standards established in the CEQA Guidelines for supplemental EIRs (Section 15163).

The SEIR does not address repowering. At the time that AWI proposes repowering, a separate project EIR will be required, which may 'tier' from the separate Program EIR that was recently completed and certified (November 2014) and which evaluated overall repowering of the Alameda County portion of the APWRA on a program level, as well as serving as the project EIR for two repowering projects south of I-580, which were also approved at that time.

The 2013 FEIR provided a full discussion of the prior project's potential environmental effects on the following resource areas: Air Quality and Greenhouse Gases (GHGs); Biological Resources; Noise; and Hazards and Hazardous Materials. Impacts were distinguished as those resulting from continued operations of the turbines through 2015 (and as alternatives, through 2016 and 2018), and from planned decommissioning activities to shut down and remove the turbines. Because the current project is limited in

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scope to changes in the operational schedule – the three-year extension to 2018 – and would have no effect on decommissioning activities, which will remain subject to the findings and mitigation monitoring and reporting program of the 2013 EIR, impacts resulting solely from decommissioning activities are not discussed, and the County CDA will instead rely entirely on the analyses and mitigation measures as described in the 2013 FEIR for operational impacts, and not any decommissioning-related impacts.

ANTICIPATED SIGNIFICANT ENVIRONMENTAL EFFECTS:

The 2013 FEIR's analysis of biological resources indicated that extending the term of the CUPs through October 31, 2018 would have significant and unavoidable adverse impacts on both common and special-status avian species (Impact BIO-1), including the four focal raptor species: American kestrel, burrowing owl, golden eagle, and red-tailed hawk. The 2014 DSEIR's analysis of current project impacts identifies the following impact on biological resources to be *significant and unavoidable*:

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

With respect to an issue raised during the scoping period following the Notice of Preparation, of potential releases of lubricant oil into the environment from the extended operation of existing turbines, the DSEIR determined there would be *no impact* on the following:

- Impact HAZ-1: Result in a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.

PUBLIC REVIEW:

One of the purposes of CEQA itself is in large part to inform the public of the likely environmental consequences of public and private projects such as the proposed modifications to the CUPs. The purpose of this Notice, consistent with Sections 15086 and 15087 of the CEQA Guidelines, is to consult with and request comments on the DSEIR from responsible agencies, organizations, Native American tribes, and interested parties as to its environmental analyses.

The DSEIR is available for review during normal business hours (8:30 a.m. to 5:00 p.m.), Monday through Friday, at the Alameda County Community Development Agency, Planning Department, at 224 West Winton Avenue, Room 111, Hayward, California, 94544. It is also available at the Livermore Public Library, Civic Center Branch, 1188 South Livermore Ave, Livermore, CA 94550-9315, 10:00 a.m. to 9:00 p.m. Monday to Thursday; 10:00 a.m. to 6:00 p.m. Friday 10:00 a.m. to 5:00 p.m. Saturday and 10:00 a.m. to 5:00 p.m., Sunday. The DSEIR may also be viewed or downloaded at the Alameda County website: (<http://www.acgov.org/cda/planning/landuseprojects/awipermit.htm>), or select Pending Land Use Projects – Current Development Projects – Wind Turbine Projects - Altamont Winds, Inc. Permit Modification – Application No. PLN2014-28, at <http://www.acgov.org/cda/planning>. Comments on the DSEIR may be submitted to:

Sandra Rivera, Assistant Planning Director
ATTN: AWI Permit Modification EIR
Alameda County Community Development Agency
224 W. Winton Avenue, Suite 110
Hayward, CA 94544

Please include a return address and contact name with your written comments. Comments can also be sent via email with subject line "AWI Permit Modification EIR" to: sandra.rivera@acgov.org.

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Although CEQA does not require formal hearings at any stage of the environmental review process (State CEQA Guidelines Section 15202[a]), it does encourage “wide public involvement, formal and informal... in order to receive and evaluate public reactions to environmental issues” (State CEQA Guidelines Section 15201) and requires the lead agency to provide the public with the opportunity to provide comments. The County, as lead agency, circulated an NOP of a SEIR (SCH # 2014092057) for the proposed project on September 16, 2014. The NOP was distributed for a 30-day comment period that ended on October 15, 2014. Comments received on the NOP were considered in the preparation of the DSEIR. Appendix A of the DSEIR contains the NOP and written comments received on the NOP.

The DSEIR incorporates public and agency responses to the NOP. Like the NOP, the DSEIR is being circulated for review and comment by appropriate agencies, as well as organizations and individuals who have requested notification. In accordance with Section 15205(d) of the CEQA Guidelines, the County has scheduled a 45-day public review period for the DSEIR, **now expanded to a 55-day review period** beginning on November 17, 2014 and ending on ~~January 2, 2015~~ **January 12, 2015**, at 5:00 p.m., **allowing an additional 10 (ten) days for comments in recognition of the Winter holiday period.** Within ~~that~~ **the original** 45-day period, the County ~~will hold~~ **has held** one public hearing to request verbal comments on the DSEIR, at the following time and place:

Thursday, December 18, 2014, 1:30 p.m.
Meeting of the East County Board of Zoning Adjustments
City of Pleasanton Council Chambers,
200 Old Bernal Avenue, Pleasanton

~~The m~~Meeting facilities ~~will be~~ **are** accessible to persons with disabilities. If special translation or signing services or other special accommodations are needed, please contact Nilma Singh at 510-670-5400 or nilma.singh@acgov.org at least 48 hours before the meeting.

Following the close of the public review period for the DSEIR, the County will prepare a Final EIR, incorporating all comments received during the public comment period, for consideration **of its certification** by the East County Board of Zoning Adjustments (EBZA), tentatively scheduled for ~~Thursday~~ **Tuesday, January 22, 2015, February 3, 2015**. As required by CEQA (Section 21092.5), the Final EIR, including written responses to the comments submitted by public agencies, will be available at least 10 days prior to certification.

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**ATTACHMENT: Assessor Parcel Numbers
SCH# 2014092057**

LIST OF CUPS, LANDOWNERS AND APNS

CUP NO.	LANDOWNER	ASSESSOR'S PARCEL NUMBERS	APPROXIMATE ACRES
C-8036	Frick/Costa	99B-5680-15	207.12
C-8037	Pombo	99B-6300-2-1, 99B-6300-2-2, 99B-6425-1-6, 99B-6325-2-4 and 99B-6400-1-7	224.26
C-8134	Rooney	99B-6125-2	160.21
C-8137	Mulqueeney	99B-7900-1-5, 99B-7900-1-7, 99B-7890-2-4, 99B-7890-2-5, 99B-7890-2-6, 99B-7925-2-4, 99B-7925-2-1, 99B-7925-2-5, 99B-7950-2, 99B-7975-1, 99B-7980-1, 99B-7985-1-6, 99B-7985-1-4, 99B-7985-1-3, 99B-7985-1-5, 99A-1800-2-4, 99A-1800-2-3 and 99B-8050-1	4,447.50
C-8191	Mulqueeney	99B-7910-1-1	592.84
C-8243	ACWMA	99A-1780-1-4, 99A-1770-2-1, 99A-1770-2-2, 99A-1770-2-3, 99A-1810-1 and 99A-1790-3	1,324.83
C-8216	ACWMA	99A-1810-1	240.81 (parcel acreage included in C-8243)
C-8231*	Altamont Landfill	99B-6225-1, 99B-6250-1, 99B-6275-1-1	1,547.80
C-8232	Egan	99B-6125-3	160.47
C-8233	Elliott	99B-6125-4	157.54
C-8235	Corbett	99B-5650-1-4 and 99A-1785-1-14	284.96
C-8236	Dunton	99B-5680-1	330.46
C-8237	Valhalla (Devincenzi)	99B-5610-1 and 99B-6075-3	665.98
C-8238	Ralph (north)	99B-7300-1-5 and 99B-7375-1-7	766.57
C-8239*	Jackson	99B-6125-5	325.59
C-8241	Walker	99B-6100-2-10, 99B-6100-2-11, 99B-6100-2-12, 99B-6100-3-10, 99B-6100-3-15, 99B-6100-3-11	1,314.55
C-8242	Gomes (north)	99B-6150-4-10, 99B-6150-3 and 99B-6150-2-7	635.48
C-8244	Gomes (south)	99B-6425-2-3, 99A-1790-2 and 99A-1795-1	1,049.48
TOTAL ACREAGE			14,195.64

Source: AWI, 2014

Notes:

1. The above table includes those parcels and CUPs on which AWI currently has installed wind turbines, as well as those parcels and CUPs on which turbines owned by other wind companies are presently installed and whose wind turbines may be obtained in exchange on a turbine-for-turbine basis with turbines currently owned by AWI.
2. Many of the wind farms in the APWRA overlap, with different wind energy facility operating companies on a single parcel of land. Therefore, other wind companies beside AWI currently operate wind farms within the project area described above.
3. Two additional CUPs, C-8231 and C-8239 (landowners Waste Management Inc. and Jackson, respectively), apply to turbines proposed to be acquired by AWI or its affiliates in a proposed asset exchange, and would contain turbines subject to the proposed modifications.

**MINUTES OF MEETING
EAST COUNTY BOARD OF ZONING ADJUSTMENTS
DECEMBER 18, 2014
(Approved January 22, 2015)**

REGULAR MEETING

CALL TO ORDER: *The Chair called the meeting to order at 1:30 p.m.*

MEMBERS PRESENT: Members Larry Gosselin, Vice-Chair; Jim Goff; and Jon Harvey, Chair.

OTHERS PRESENT: Sandra Rivera, Deputy Planning Director; Jana Beatty, Senior Planner; Andrew Young, Planner; Heather Littlejohn, County Counsel's Office; and Nilma Singh, Recording Secretary.

There were approximately twenty-four people in the audience.

PLEDGE OF ALLEGIANCE

OPEN FORUM: Open forum is provided for any members of the public wishing to speak on an item not listed on the agenda. Each speaker is limited to three (3) minutes. *No one requested to be heard under open forum.*

NEIGHBORHOOD PRESERVATION AND ZONING ORDINANCE ABATEMENT ~ None
ALCOHOLIC BEVERAGE SALE REGULATION ADMINISTRATIVE HEARING ~ None

APPROVAL OF MINUTES FROM PREVIOUS MEETINGS

1. APPROVAL OF BOARD MINUTES ~ November 12, 2014

Member Goff made the motion to approve the November 12th Minutes as submitted and Chair Harvey seconded. Motion carried unanimously, 3/0.

CONSENT CALENDAR:

- 2. KIMBRO/CROWN CASTLE/CORE DEVELOPMENT/SPRINT, CONDITIONAL USE PERMIT, PLN2014-00134 ~** Application to allow continued operation of a telecommunications facility with modifications, in a "A" (Agricultural) District, located at 5810 Mission Road, west side, approximately 1.2 miles north of Vargas Road, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 96-0056-008-12.

Staff Planner: Richard Tarbell

Continued from October 23, 2014

Moved from the Regular Calendar; to be continued without discussion to the January hearing.

Member Gosselin made the motion to approve the modified Consent Calendar and Member Goff seconded. Motion carried unanimously, 3/0.

REGULAR CALENDAR:

2. **KIMBRO/CROWN CASTLE/CORE DEVELOPMENT/SPRINT, CONDITIONAL USE PERMIT, PLN2014-00134** ~ Application to allow continued operation of a telecommunications facility with modifications, in a "A" (Agricultural) District, located at 5810 Mission Road, west side, approximately 1.2 miles north of Vargas Road, Sunol area of unincorporated Alameda County, bearing Assessor's Parcel Number: 96-0056-008-12.
Staff Planner: Richard Tarbell
Continued from October 23, 2014

This item was moved to the Consent Calendar, to be continued without discussion.

3. **ALTAMONT WINDS, INC., MODIFICATIONS TO EXISTING (YEAR 2005, AS MODIFIED IN 2013) CONDITIONAL USE PERMITS, PLN2014-00028 - Informational Item Only** ~ Public Hearing to receive comments on the Draft Supplemental Environmental Impact Report (DSEIR) **on an** application to modify conditions on 16 conditional use permits, for continued operation of an estimated 828 existing utility-scale wind turbines with a combined (current) generation capacity of 85.8 megawatts (MW). The application specifically requests that the existing CUPs, which are set to expire on October 31, 2015 under modifications approved in July 2013, be extended for three (3) years, through October 31, 2018, under specified conditions. The existing turbines are located throughout the approximately 14,436-acre Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), in the eastern portion of Alameda County, bisected by Interstate I-580, on up to 58 parcels bearing 58 separate Assessor's Parcel Numbers.
Staff Planners: Sandra Rivera and Andrew Young

Mr. Young, with a powerpoint presentation, discussed the Draft Supplemental EIR.

Chris Knoppe, Project Manager, Power Engineers, with a powerpoint, discussed the following: Proposed Project Being Evaluated; Project Operational Area; D Supplemental EIR (DSEIR); CEQA, 2013 FEIR; Biological Resource Impacts; Hazards & Hazardous Materials and SEIR Process Schedule.

Public testimony was called for. Bob Cooper, 4000 Dyer Road, Livermore, submitted photographs and read his written testimony—expressed oil leakage concerns and urged a denial unless repowered.

Doug Bell, EBRPD, indicated that extensive written comments will be submitted and discussed four major comments re SEIR: 1) inadequate, especially impacts; 2) calculation

of Fatality Rate; 3) mitigation efforts re cost of average raptor rehab; & 4) Asset exchange; and, formally requested an extension of the comment period.

Michael Lynes, representing Audubon, in opposition discussed the inadequacy of the SEIR, cost of raptor rehab (more than \$500), repowering, indicated that detailed written comments will be submitted and agreed with Mr. Bell re request of an extended comment period.

Member Gosselin asked both Mr. Bell and Mr. Lynes if there would be any consideration of mitigation to justify an extension.

Rick Koebee, AWI, explained the oil leakage and mitigation (inspection during off season); mitigation for eagle impact, repowering, background information re asset exchange and added that a detailed presentation will be provided at the January 22nd hearing.

Public testimony was closed. The Board discussed the possibility of an extension. *Staff will confirm the continuance date. Member Gosselin requested, if possible, a copy of the turbine Maintenance Log to all interested parties and the FSEIR to reflect specific reasons for the changes of the COA.*

The Chair announced a 5-minute recess and the hearing reconvened at 3:00 p.m.

4. **EDF RENEWABLE ENERGY – PATTERSON PASS WIND PROJECT, CONDITIONAL USE PERMIT, PLN2012-00214, and GOLDEN HILLS WIND LLC – GOLDEN HILLS WIND PROJECT, PHASE 1 – CONDITIONAL USE PERMIT, PLN2014-00032** ~ public hearing to receive comments and recommendations of the EBZA regarding the roles and responsibilities of the Altamont Pass Wind Resource Area Technical Advisory Committee (APWRA TAC) pursuant to Condition 88 of the Patterson Pass Wind Project (and matching Condition 94 of the Golden Hills Wind Project), both of which Conditional Use Permits were approved by the EBZA on November 12, 2014. The TAC is intended to oversee the post-construction avian mortality monitoring program, review and provide advice on Avian Protection Plans proposed by the operators, and on the implementation of adaptive management measures that may be required.

Staff Planners: Sandra Rivera and Andrew Young

Ms. Rivera provided an oral presentation re an email statement from Member Gosselin who also provided a further explanation. Ms. Rivera, with a powerpoint, discussed the following: Purpose of hearing, TAC; Other TAC references in Program EIR; TAC membership concepts under B10-11g; Compensatory Mitigation under B10-11h; TAC proposal by EBZA member; TAC member roles per proposal; Other aspects of proposal; Proposed role of TAC to implement landscape-scale compensatory mitigation strategies; Main topic of concerns; Concepts considered by staff; County proposal; County Proposal for adjunct TAC members; Core TAC roles based on Program EIR; Additional TAC roles; Limitations on any County TAC; and, Discussion & Questions.

The Board discussed the following: current process; existing TAC representatives-two agencies; guidelines/By-Laws; core group; possible future TAC members (expanded TAC); coordination with EACCS-perhaps a subcommittee/working group and transparency.

Doug Bell, Contra Costa TAC member, explained their formation and importance of consistency.

Member Gosselin suggested an invitation to other agencies; and discussed landscape-scale mitigation and the Fish & Wildlife Eagle Guidelines.

Michael Lynes, Audobon, discussed commitment from regulatory agencies.

Staff summarized the Board discussion: Core TAC expansion as needed; confer with CC TAC; timeline/staff to coordinate meetings; invitations to potential members, and list of documents.

STAFF COMMENTS & CORRESPONDENCE: *None*

COMMISSION ANNOUNCEMENTS, COMMENTS AND REPORTS: *Member Gosselin discussed the timeline for the availability of environmental documents, and, the Chair noted his discussions with staff re future agenda management.*

ADJOURNMENT: *There being no further business, Member Goff moved to adjourn the meeting at 4:10 p.m. Member Gosselin seconded the motion. The motion was carried 3/0.*

ALBERT LOPEZ, SECRETARY
EAST COUNTY BOARD OF ZONING ADJUSTMENTS



**ALAMEDA COUNTY CDA
PLANNING DEPARTMENT**

**PUBLIC COMMENT HEARING ON A DRAFT SUPPLEMENTAL
ENVIRONMENTAL IMPACT REPORT**

TO: EAST COUNTY BOARD OF ZONING ADJUSTMENTS
HEARING DATE: DECEMBER 18, 2014

GENERAL INFORMATION

**APPLICATION: MODIFICATIONS TO 16 EXISTING CONDITIONAL USE PERMITS
(APPROVED YEAR 2005, AS MODIFIED IN 2013), PLN2014-00028**

APPLICANT: ALTAMONT WINDS, INC.

REQUEST: To extend 16 conditional use permits, which are set to expire on October 31, 2015 under modifications approved in July 2013, for three (3) years, through October 31, 2018, under specified conditions, for operation of an estimated 828 existing utility-scale wind turbines with a combined existing (current) generation capacity of 85.8 megawatts (MW). The application could also apply to two additional CUPs for an estimate 300 turbines that may be acquired by the applicant in an asset exchange.

LOCATION, SPECIFIC PERMITS, OPERATORS, PROPERTY OWNERS AND PARCEL NUMBERS: The existing turbines are located throughout the approximately 14,436-acre Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), in the eastern portion of Alameda County, bisected by Interstate I-580, on up to 58 parcels bearing 58 separate Assessor's Parcel Numbers.
Conditional Use Permit Numbers, Facility Permittee/Land Owner family names and Assessor's Parcel Numbers (APNs) as follows:

C-8036, Altamont Infrastructure Company/Frick & Costa, APN: 099B-5680-015-00;
C-8037, Altamont Infrastructure Company/Pombo, APNs: 099B-6300-002-01, 099B-6300-002-02, 099B-6325-002-03, 099B-6325-002-04 and 099B-6425-001-06;
C-8134, Altamont Infrastructure Company/Rooney, APN: 099B-6125-002-00;
C-8137, Altamont Infrastructure Company/Mulqueeney, APNs: 099A-1800-002-03, 99A-1800-002-04, 99b 7890-002-04, 99B-7890-002-05, 99B-7900-001-05, 99B-7900-001-07, 99B-7910-001-01, 99B-7925-001-03, 99B-7925-001-04, 99B-7925-002-04, 99B-7925-002-05, 99B-7975-001-00, 99B-7980-001-00, 99B-7985-001-03, 99B-7985-001-04, 99B-7985-001-05, 99B-7985-001-06 and 99B-8050-001-00;
C-8191, WindWorks Inc./Mulqueeney, APN: 099B-7910-001-01;
C-8216, WindWorks Inc./Alameda County Waste Management Authority, APN: 099A-1810-001-00;
C-8232, Altamont Infrastructure Company/ 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/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-6100-003-13;

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.

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

Two additional CUPs, C-8231 and C-8239 (landowners Waste Management Inc. and Jackson, respectively), apply to turbines proposed to be acquired by AWI or its affiliates in a proposed asset exchange, and would contain turbines subject to the proposed modifications.

ZONING: A-BE 160 and A-BE-320 (Agriculture, Minimum Building Site Area 160 and 320 acres, respectively) Districts, intended to promote implementation of general plan land use proposals (or designations) for agricultural and other non-urban uses, to conserve and protect existing agricultural uses, and to provide space for and encourage such uses in places where more intensive development is not desirable or necessary. (Section 17.06.010). Permitted uses include a variety of agricultural and agricultural support uses, including crop, vine and tree farms, animal husbandry, wineries, fish hatcheries, trails, and on qualified building sites, single family and secondary dwelling units. Conditionally permitted uses include privately-owned wind electric generators.

GENERAL PLAN DESIGNATION: The site is subject to the East County Area Plan (ECAP), adopted in 1994 and amended substantially in November 2000 by the voter-approved Ordinance/Initiative Measure D. The ECAP designates the site as Large Parcel Agriculture (LPA), and establishes minimum parcel sizes for specific areas of the East County (100 acres for the subject parcels) and maximum building intensity (floor area ratio or FAR). Subject to the provisions, policies and programs of the ECAP, the LPA designation permits one single family residence per parcel, agricultural uses, agricultural processing facilities, public and quasi-public uses, quarries, landfills and related facilities, "windfarms and related facilities, utility corridors and similar uses compatible with agriculture."

ENVIRONMENTAL REVIEW: A Draft Supplemental Environmental Impact Report (DSEIR) has been prepared to evaluate the potential environmental impacts of the application to extend for three years the existing CUPs, and which is "tiered" from an EIR that was certified by the EBZA on July 18, 2013 for modifications approved on the same date, to allow full operation of the 828 existing turbines through October 31, 2015. The prior EIR addressed continuing operations of the turbines and decommissioning activities (i.e., removal of old turbines for repowering). The DSEIR began circulating for the purpose of public and agency comment on November 17, 2014. The comment period will end on January 2, 2015, after which a Final SEIR will be prepared, comprising both the Draft SEIR and a Response to Comments document.

RECOMMENDATIONS:

That the East County Board of Zoning Adjustments take public comment on the Draft Supplemental Environmental Impact Report.

PERTINENT FACTS:

Physical Features: The subject CUPs are widely distributed across the Alameda County portion of the Altamont Pass Wind Resource Area (APWRA). The project location containing AWI's existing wind turbines falls within an approximately 14,196-acre portion of the 50,000-acre APWRA. The APWRA extends across the northeastern hills of Alameda County and a smaller proportion of Contra Costa County to the north. The region is generally characterized by rolling foothills of annual grassland. The area in which the CUPs are permitted is mostly treeless with relatively steep terrain on the west and gently rolling hills on the east toward the floor of the Central Valley. The underlying landscape generally consists of undeveloped grazing land. Major features of the area include the wind turbines, ancillary facilities, an extensive grid of high voltage power transmission lines, substations, microwave towers, a landfill site, Interstate 580, railroad track lines, ranch houses, and clusters of rural residential homes on Dyer and Midway Roads.

History/Background: The 16 subject CUPs were initially approved by the EBZA in November 2003 and January 2004 with conditions, as the continued operation of existing wind farm facilities, including turbines and infrastructure. These permits, along with 13 other CUPs approved on those dates, were approved with a determination that they were categorically exempt from CEQA as the continued operation of existing facilities; the approvals were subsequently appealed by the Center for Biological Diversity, Californians for Renewable Energy, and Golden Gate Audubon Society for resolution by the County Board of Supervisors, primarily on the grounds that the CUPs were not exempt from CEQA, due to special circumstances represented by high levels of avian mortality. The Board of Supervisors acted on September 22, 2005 to uphold the EBZA's approval, but imposed a number of operational restrictions on wind farm operations, including the progressive or phased shutdown and removal of specified percentages of turbines, in order to enable repowering of their wind energy assets (i.e., replacement of the older turbines, installed in the 1980s and 1990s with current generation, much larger turbines). Other key requirements included a winter seasonal shutdown during peak avian migration through the APWRA, the establishment of a Scientific Review Committee, and requirements for the preparation of an EIR to address both continuing operations through the end of the permit term in 2018 and repowering of the APWRA. It should be noted, however, that the 16 CUPs applied originally to a total of over 2,600 turbines, including 920 that were "beneficially owned" by AWI, and the remainder by other operators. All but 4 of the 16 permits are 'held' by Altamont Infrastructure Co. (AIC), which is a service company that does not own but instead only manages turbines under a compact among the different wind companies.

The first phase of decommissioning took place in 2009, at which time AWI was required to remove 10 percent of its 920 turbines. An additional 25 percent of the original 920 turbines (for a cumulative total of 35 percent) were to be permanently removed by September 30, 2013, followed by 50 percent of the original turbine number (for a cumulative total of 85 percent) by September 30, 2015, and the remaining 15 percent of turbines by September 30, 2018. In July 2011, AWI applied to the County CDA to modify the 2005 CUPs to:

1. Remove the requirement for phased decommissioning.
2. Remove winter seasonal shutdown requirements.
3. Provide for 100 percent of AWI's turbines be decommissioned by the end of 2015.

The 2013 FEIR was prepared to evaluate the environmental effects of such modifications and to identify mitigation measures to reduce any significant environmental effects identified. It also met the 2005 CUP requirement that an EIR be prepared to evaluate existing operations and phased decommissioning, and identified numerous mitigation measures to reduce and avoid the impacts of turbine removal in advance of repowering, although no specific repowering project had been proposed at that time.

PROJECT DESCRIPTION

The current project proposal is a request to modify 16 existing Conditional Use Permits (CUPs), approved in 2005 and modified in July 2013 (application PLN2011-00102), for continued operation of the wind farm assets of Altamont Winds, Inc. (AWI), now comprised of 828 wind turbines with a rated capacity of 85.8 MW. Specifically, AWI's request would provide for the wind farm turbines to continue operating through October 2018, as a change from the current expiration of the CUPs on October 31, 2015. While the CUPs as approved in 2005 provided for operations through September 2018, they also required phased shutdown and removal, with a combined 35 percent of all turbines removed by September 2013 and an additional 50 percent removed by September 2015, so that only 15 percent of the original number of turbines would be operating between 2015 and 2018. The modifications approved in 2013 in effect exchanged the phased shutdown requirement for a complete shutdown in October of 2015, in order to initiate repowering of its wind farm assets in 2016.

The Applicant, AWI, contends that its progress in developing a repowering program for its turbines is constrained by ongoing commercial and regulatory difficulties, and that the CUP modifications allowing it to operate through 2018 are necessary in the event that circumstances beyond AWI's control prevent it from initiating repowering in 2015 or in a financially feasible manner after the current CUPs expire in 2015. AWI proposes to operate through 2018 only on the condition that it has diligently pursued repowering of its wind farm assets, and can demonstrate that circumstances beyond AWI's control have delayed completion of the repowered project. Conditions of approval would require an annual review to document AWI's efforts to repower its assets.

Asset Exchange. Concurrently with the request for an extension through 2018, AWI is in discussions with another wind farm operator, Green Ridge Power LLC (an operating entity of NextEra Energy Resources, aka NEER), for an exchange of wind turbine assets. Specifically, approximately 300 wind turbines currently owned by AWI south of I-580 would be acquired by Green Ridge and an equal number of wind turbines would be acquired by AWI north of I-580, currently operating under CUPs C-8231 and C-8239, so that the permit modifications would apply to a total of 18 existing CUPs, if the asset exchange occurs. As proposed, and under assurances from both companies, such an exchange will not increase the capacity or quantity of AWI's operating turbines. Green Ridge will shut down and remove the turbines it will acquire, for the purpose of repowering.

The asset exchange is recognized in the Draft SEIR and certain aspects of it are discussed, such as that it would result in a decrease of roughly 1.7 MW in AWI's rated annual capacity, and that it would result in a moderate reduction in the number of operating high-risk turbines (HRT) turbines, specifically those rated 8.5 to 10.0 for their relative risk of striking birds.

HEARING FOR COMMENTS ON THE DRAFT EIR

EIR Summary: The Draft Supplemental EIR (DSEIR) has been prepared as a supplement to the 2013 EIR, which was certified in July 2013 as a complete assessment of the environmental impacts of AWI's existing operations. The 2013 EIR provided a comprehensive identification of the environmental impacts of AWI's operation through 2015, as well as the air quality and noise effects of decommissioning activities (i.e., construction-related effects). The DSEIR is not intended to re-evaluate the assessment of those impacts, but is only meant to evaluate the additional environmental effects attributable to the additional three years of operations proposed by AWI (2015 through 2018), which are limited almost exclusively to biological resources and in particular, avian mortality.

Although the 2013 FEIR evaluated the alternative of continuing operations until October 31, 2018, that alternative was rejected by the EBZA due to the additional number of avian fatalities. The EBZA, on

recommendation from Planning staff, determined that the environmentally superior project, other than the No Project alternative, was Alternative 1, which was the project then proposed, but with winter season shutdowns continuing through each year of operations, through 2015. The County determined that the level of analysis provided in the 2013 EIR of AWT's operations through 2018 (Alternative 3) was not sufficient to make the required findings for the purpose of CEQA, and therefore determined that the current proposal required the preparation of a Supplemental EIR.

In accordance with CEQA Guidelines Sections 15162 and 15163, a Supplemental EIR may augment an EIR prepared for an existing project to address any project changes, new information of substantial importance that was not known or could have been known without the exercise of reasonable diligence or changed circumstances occurring since the time the prior document was certified. In the case of changes to a previously approved project, as is the case here, the purpose of an SEIR is to provide only the additional analysis necessary to make the previous EIR adequately apply to the project as modified.

As with the 2013 EIR, the analysis quantifies effects on the four focal raptor species that were the subject of the 2007 Settlement Agreement, including golden eagle, red-tailed hawk, burrowing owl and American kestrel, as well as all bird species known to inhabit the APWRA. The DSEIR used the same method as the 2013 EIR to quantify the relative, projected number of bird deaths in the years 2013 to 2018, which was the range of years used in the 2013 EIR to show avian mortality impacts and changes due to that proposal, between the baseline (no project) conditions (with phased shutdown and decommissioning between 2013 and 2018) and complete shutdown in 2015.

An Executive Summary in the DSEIR includes Table ES-4, that briefly summarizes the impacts that were identified, and also identified topic areas that were excluded from the analysis as not relevant or applicable to the site location or nature of the project. The Draft SEIR's analysis of Project impacts determined that one environmental impact on biological resources would be significant and unavoidable:

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

The DSEIR identifies three distinct mitigation measures to address the impact, two of which were previously included in the 2013 EIR, namely continuing the winter seasonal shutdown (Mitigation Measure 16), and retrofitting electrical power poles (Mitigation Measure 17). To further mitigate and compensate for the projected level of avian mortality resulting from the proposed CUPs extension, the DSEIR identified Mitigation Measure "BIO-17a", as a suite of optional measures to compensate for the loss of special-status avian species, including golden eagles, by contributing to conservation efforts. This measure is adopted almost verbatim and directly from the *Program EIR* for the *Altamont Pass Wind Resource Area Repowering* that was certified in November, 2014, and includes measures that may be outlined in a programmatic eagle take permit, contributing to raptor recovery activities, raptor conservation, and regional raptor habitat conservation efforts. Such measures would be based on a Resource Equivalency Analysis (REA) or similar type of compensation assessment. The DSEIR indicates that the result of these mitigation measures would reduce the impact on avian species, but that they would not eliminate the effects or reduce it to a level that is less than significant, and the impacts would remain significant and unavoidable.

In response to a specific comment in response to the Notice of Preparation from a resident on Dyer Road, regarding the appearance of oil or other lubricants being released from leaking turbine generators or other equipment, including along the turbine blades, the DSEIR also provides supplemental information on the potential of a significant leak of hazardous materials into the environment. A soil sample from near a transformer was analyzed by a specialist lab, and its report was included in the DSEIR. Staining on the wind turbine blades was determined to be rust and mineral deposits released from the turbine hub, and is

not a hazardous material. The DSEIR also reported that the turbines are regularly monitored and maintained by the operator to prevent any release of hazardous materials, with annual maintenance of turbines and rotor blades. The DSEIR determined that the impacts were less than significant and did not warrant the requirement for any mitigation measures.

Public Review, Notices and Hearings: The California Environmental Quality Act (CEQA) does not require formal hearings at any stage of the environmental review process (State CEQA Guidelines Section 15202(a)); however, it does encourage “wide public involvement, formal and informal...in order to receive and evaluate public reactions to environmental issues” (State CEQA Guidelines Section 15201) and requires the lead agency to provide the public with the opportunity to provide comments. The County, as lead agency, circulated a Notice of Preparation (NOP) of the DSEIR (SCH # 2014092057) for the proposed CUP extensions on September 15 2014. The NOP was distributed for a 30-day comment period through October 15, 2014. Comment letters received on the NOP were considered in the preparation of the EIR. Appendix A of the DSEIR contains the NOP, written comments received on the NOP (one letter, from the California State Attorney General, was inadvertently left out of the Appendix and is attached to this staff report, along with a response to the letter from the applicant, AWI).

Comments on the DSEIR received during the 45-day public review period will be considered in the preparation of a Final SEIR. The public review period began on November 17, 2014 and will end on January 2, 2015 at 5:00 p.m. Within that 45-day period, the County will hold one public hearing to request verbal comments on the DSEIR, which is the subject of the current hearing.

The DSEIR was made available for review during normal business hours at the Planning Department offices in Hayward and the Livermore Public Library on South Livermore Avenue in Livermore during its regular hours. The DSEIR was also made available for viewing or downloading at the Alameda County website: <http://www.acgov.org/cda/planning/landuseprojects/awipermit-pln2014-28.htm>. The Notice of Availability (NOA) of the DSEIR was mailed to all of the interested parties and agencies.

The item is currently scheduled to be heard on January 22, 2015, for consideration of the Final SEIR, a Staff Report, attachments and draft Resolution. The draft Resolution will provide a mechanism to convey applicable conditions to the asset-exchanged turbines.

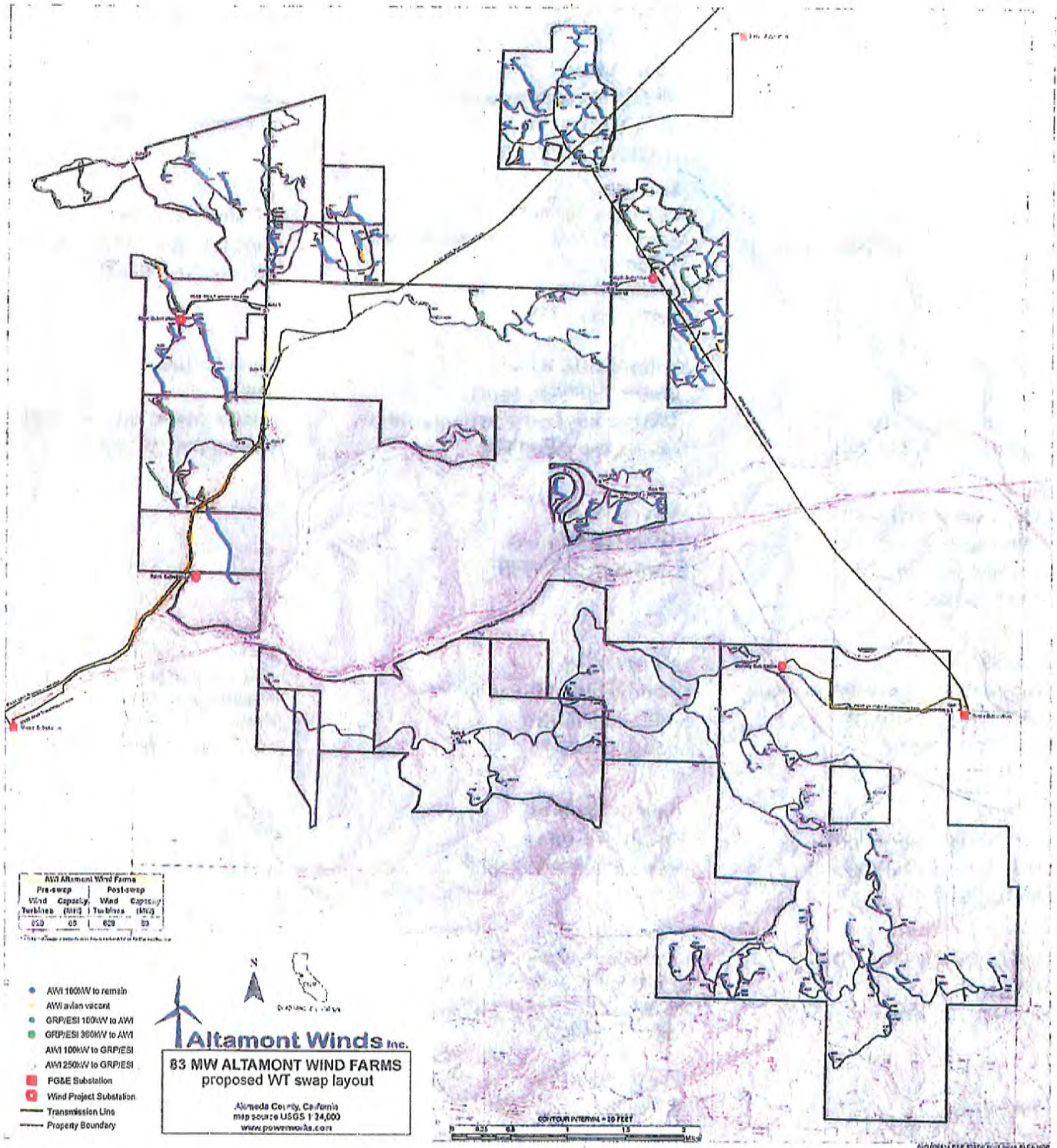
Recommendation: That the East County Board of Zoning Adjustments take public comment on the Draft Supplemental Environmental Impact Report.

Staff Planner: Andrew Young, Planner III

Reviewed By: Sandra Rivera, Assistant Planning Director

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Exhibit A
DISTRIBUTION OF ALTAMONT WINDS INC. WIND ENERGY PLANT
Including Representation of Proposed Asset Exchange



**AMENDED Notice of Availability of a
SEIR for Modifications to Existing CUPs
– AWI Jan 12, 2015 – Mailing List**

A-Interested Parties

John Howe
Ogin, Inc.
Altamont Operation
14740 Altamont Pass Road
Tracy, CA 95391

John Kopchick
Contra Costa County
Dept of Conservation & Development
30 Muir Road
Martinez, CA 94553

Kim Delfino
Defenders of Wildlife
1303 J Street, Suite 270
Sacramento, CA 95814

Leslie Koenig
Alameda County Resource
Conservation District
3585 Greenville Road, #2
Livermore, CA 94550

Matt Vander Sluis
The Planning & Conservation League
1107 – 9th Street, Suite 901
Sacramento, CA 95814

Nancy Rader
CA Wind Energy Association
2560 Ninth Street, Suite 213-A
Berkeley, CA 94710

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PO Box 581043
N. Palm Springs, CA 92258-1043

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Santa Cruz, CA 95062

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Altamont Landfill & Resource Recovery
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San Francisco, CA 94109

Heath Bartosh
California Native Plant Society
832 Escobar Street
Martinez, CA 94553

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Tri-Valley Conservancy
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Bay Delta Region – Habitat Conservation
Planning Branch
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Napa, CA 94558

Diane Dugan
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Sacramento, CA 95826

Dr. Allen Fish
Golden Gate Raptor Observatory
Bldg 201, Fort Mason
San Francisco, CA 94123

Glenn Kirby
30520 Hoylake Street
Hayward, CA 94544

Tara Mueller
Office of the Attorney General
1515 Clay Street
Oakland, CA 94612

Scott Wilson
CA Dept of Fish & Wildlife
7329 Silverado Trail
Napa, CA 94558

Thom Kato
Lawrence Livermore National Lab
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Livermore, CA 94550

B-Property Owners

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Oakland CA 94612

State of California
PO Box 23440
Oakland, CA 94623

Doris House
PO Box 1212
Livermore, CA 94551

PG&E Company
PO Box 770000
San Francisco, CA 94177

Darrel & Karen Sweet
12233 N. Flynn Road
Livermore, CA 94550

Richard & Pamela Corbett Trs
PO Box 2299
Livermore, CA 94551

City of Santa Clara
1500 Warburton Avenue
Santa Clara, CA 95050

Jymiece & Scullion Donald Silva
1681 – 5th Street
Livermore, CA 94550

Ralph & Onita Pombo Trs
32919 S. Tracy Blvd
Tracy, CA 95377

W.P. Company 843-1-25A-4
1416 Dodge Street
Omaha NE 68179

Santucci Properties, LLC
3940 Mines Road
Livermore, CA 94550

Bill & Elree Langford
17950 Midway Road
Tracy, CA 95377

Wildlands Inc.,
3855 Atherton Road
Rocklin, CA 95765

Grass Lands Property LLC
1268 Hartman Road
Livermore, CA 94551

Waste Management of Alameda
County Inc.,
PO Box 1450
Chicago, IL 60690

Jackson Land & Cattle LLC and
Jackson A M TR SU Etal
6835 N. Vasco Road
Livermore, CA 94551

Ralph Properties II
2443 Fair Oaks Blvd, #311
Sacramento, CA 95825

Midway Power LLC
PO Boc 770000
San Francisco, CA 94177

Trustees of Brethren Church of Altamont
10501 Altamont Pass Road
Livermore, CA 94551

Robert Vieux TR
10501 Altamont Pass Road
Livermore, CA 94551

Dunton & Susan TRS
5179 Saddle Brook Dr
Oakland, CA 94619

Matin Moghadam & Jeanne M
10 Wanflete Ct
Orinda, CA 94563

Contreras Rigoberto & Nelly Trs
9290 S. Flynn Road
Livermore, CA 94550

Bjarne Hansen L Trust
9782 S. Flynn Road
Livermore, CA 94550

Mulqueeney Ranch Properties
PO Box 2053
Livermore, CA 94551

Tzenwen & Lin Bihwan Guo
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Hayward, CA 94544

Union Pacific Railroad Co
1700 Farnam Street, 10th Floor
Omaha, NE 68102

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Livermore, CA 94551

Humphrey Cornelius & Kathleen
Rooney Trs Etal
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Livermore, CA 94550

Alice Elliott & Joanne Elliott TR Etal
86 Cardinal Way
Santa Rosa, CA 95409

Alameda County Flood Control
Public Works Agency
399 Elmhurst Street
Hayward

Abbas & Sophia Humayun Etal
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Modesto, CA 95356

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& Casey Robert
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Livermore, CA 94551

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Livermore, CA 94551

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Livermore, CA 94551

Brendan & Jill Alchorn Trs
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Livermore, CA 94551

Alan & Lauralee Ragsdale
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Miamisburg, OH 45342

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Strieff L G & V R Trs & McCabe & MP Trs
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Peter Pawlowski
Ogin, Inc.,
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Michael Lynes, Executive Director
Audubon California
P.O. Box 160694
Sacramento, CA 95816-0694

Michael Lynes, Executive Director
Audubon California
220 Montgomery St., Ste. 1000
San Francisco, CA 95104-3402

Matt Vander Sluis
The Planning & Conservation League
1107 – 9th Street, Suite 901
Sacramento, CA 95814



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

November 17, 2014

Chris Bazar
Agency Director

Albert Lopez
Planning Director

224
West Winton Ave
Room 111

Hayward
California
94544

phone
510.670.5400
fax
510.785.8793

www.acgov.org/cda

**Notice of Availability of a
Draft Supplemental Environmental Impact Report for
Modifications to Existing Conditional Use Permits –
Altamont Winds Inc. (AWI): 2018 CUP Extension**
Planning Case PLN2014-00028

SUMMARY:

Notice is hereby given by the County of Alameda, Community Development Agency, Planning Department, as the lead agency pursuant to the California Environmental Quality Act (CEQA), that the above-named Draft Supplemental Environmental Impact Report (DSEIR) is available for public review and comment. Comments on the DSEIR will be received for a 45-day period, between November 18, 2014 and January 2, 2015, after which a Final SEIR will be prepared containing comments and responses to comments, that together with the DSEIR will form the Final SEIR. The Final SEIR will be used by the East County Board of Zoning Adjustments in its consideration of approval of the proposed CUP modifications, described below.

PROJECT LOCATION:

Within the approximately 14,436-acre Alameda County portion of the Altamont Pass Wind Resource Area (APWRA), in the eastern portion of Alameda County, bisected by Interstate I-580. The subject Conditional Use Permits (CUPs) apply to 828 existing wind turbines and supporting infrastructure owned by Altamont Winds, Inc. (AWI, Applicant), and which have a total footprint of approximately 233 acres distributed across the Alameda County portion of the APWRA. The AWI facilities are intermixed with other wind turbines and facilities not owned by AWI, as well as with ongoing ranching and other land uses.

As part of this extension, AWI is in discussions with another wind farm operator in the APWRA that shares common infrastructure with AWI, regarding a contemplated wind turbine exchange. In such a scenario, AWI would exchange approximately 300 wind turbines it presently owns south of I-580 for an equal number of wind turbines owned and operated by another company, Green Ridge Power LLC, north of I-580. As proposed, and under assurances from both companies, such an exchange will not increase the capacity or quantity of AWI's operating turbines. The result would be that after such an exchange AWI would no longer own or operate any wind turbine energy assets south of I-580.

PROJECT DESCRIPTION:

AWI has applied to Alameda County to modify its CUPs, specifically related to operational and decommissioning schedules for its 828 existing wind turbines, which have a nameplate generating capacity of 85.8 MW. The AWI application requests that the existing CUPs, set to expire on October 31, 2015 under modifications approved in July 2013, be extended for three (3) years, through October 31, 2018 under specified conditions, for operation of its estimated 828 turbines.

The SEIR is intended to supplement an Environmental Impact Report (EIR), certified in July 2013, that evaluated the application made by AWI in 2011 to modify these same CUPs as they had been approved in September of 2005. The 2013 FEIR is available on the County Planning Department website at <http://www.acgov.org/cda/planning/landuseprojects/awipermit-pln2011-102.htm>.

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The prior 2013 EIR evaluated AWI's application to replace the schedule adopted in 2005 for phased decommissioning (shut down and removal) of existing turbines in steps in 2009, 2013, 2015 and 2018, in anticipation of repowering (replacement with current generation turbines), with full operation through October 2015 only, and without any partial or phased decommissioning. The 2013 EIR included as Alternative 3 the potential full operation of the turbines through October 2018, at a limited level of analysis, as provided for in the CEQA Guidelines (Section 15126.6(d)), to provide "sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project."

The County determined that a Supplement to the 2013 EIR should be prepared in order to address the environmental impact of AWI's proposed project modification because, among other reasons, the 3-year extension requested by AWI is a substantial change to the project, which will cause a substantial increase in the severity of previously-identified significant environmental impacts. The Supplemental EIR is the appropriate mechanism to make the required revisions to the 2013 EIR; the consideration of operations through 2018 as one of four project alternatives in the 2013 EIR does not adequately address the scope and detail of revisions necessary to evaluate the changed project scope.

When the County certified the EIR in July 2013 for the modifications that provided for full operations through 2015, a finding was made regarding this alternative that: "Alternative 3 would better serve the project objectives of renewable energy, but would also very substantially increase the avian mortality impacts compared to the project and all other alternatives. For the purpose of meeting the project objectives and minimizing significant impacts on special status avian wildlife, Alternative 3 is considered infeasible." On the basis of this determination, the County has determined it is necessary to provide additional information, which this SEIR is intended to provide, together with the same kind of notice and public review as provided for a draft EIR under Section 15087 of the CEQA Guidelines. The SEIR supplements the prior EIR with additional analysis beyond that included in the Alternatives analysis to provide a basis for making the findings required by CEQA. In addition, although the County has determined that there are no new substantial changes to the project that were not evaluated in the prior 2013 EIR that require preparation of a subsequent EIR, but rather that only relatively minor additional information and changes are required for the 2013 EIR to adequately apply to the current proposal. However, to the extent new information has become available since the prior FEIR, the County CDA has incorporated that information into the DSEIR. As such, the SEIR is intended to comply with the standards established in the CEQA Guidelines for supplemental EIRs (Section 15163).

The SEIR does not address repowering. At the time that AWI proposes repowering, a separate project EIR will be required, which may 'tier' from the separate Program EIR that was recently completed and certified (November 2014) and which evaluated overall repowering of the Alameda County portion of the APWRA on a program level, as well as serving as the project EIR for two repowering projects south of I-580, which were also approved at that time.

The 2013 FEIR provided a full discussion of the prior project's potential environmental effects on the following resource areas: Air Quality and Greenhouse Gases (GHGs); Biological Resources; Noise; and Hazards and Hazardous Materials. Impacts were distinguished as those resulting from continued operations of the turbines through 2015 (and as alternatives, through 2016 and 2018), and from planned decommissioning activities to shut down and remove the turbines. Because the current project is limited in scope to changes in the operational schedule – the three-year extension to 2018 – and would have no effect on decommissioning activities, which will remain subject to the findings and mitigation monitoring and reporting program of the 2013 EIR, impacts resulting solely from decommissioning activities are not discussed, and the County CDA will instead rely entirely on the analyses and mitigation measures as described in the 2013 FEIR for operational impacts, and not any decommissioning-related impacts.

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ANTICIPATED SIGNIFICANT ENVIRONMENTAL EFFECTS:

The 2013 FEIR's analysis of biological resources indicated that extending the term of the CUPs through October 31, 2018 would have significant and unavoidable adverse impacts on both common and special-status avian species (Impact BIO-1), including the four focal raptor species: American kestrel, burrowing owl, golden eagle, and red-tailed hawk. The 2014 DSEIR's analysis of current project impacts identifies the following impact on biological resources to be *significant and unavoidable*:

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

With respect to an issue raised during the scoping period following the Notice of Preparation, of potential releases of lubricant oil into the environment from the extended operation of existing turbines, the DSEIR determined there would be *no impact* on the following:

- Impact HAZ-1: Result in a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.

PUBLIC REVIEW:

One of the purposes of CEQA itself is in large part to inform the public of the likely environmental consequences of public and private projects such as the proposed modifications to the CUPs. The purpose of this Notice, consistent with Sections 15086 and 15087 of the CEQA Guidelines, is to consult with and request comments on the DSEIR from responsible agencies, organizations, Native American tribes, and interested parties as to its environmental analyses.

The DSEIR is available for review during normal business hours (8:30 a.m. to 5:00 p.m.), Monday through Friday, at the Alameda County Community Development Agency, Planning Department, at 224 West Winton Avenue, Room 111, Hayward, California, 94544. It is also available at the Livermore Public Library, Civic Center Branch, 1188 South Livermore Ave, Livermore, CA 94550-9315, 10:00 a.m. to 9:00 p.m. Monday to Thursday; 10:00 a.m. to 6:00 p.m. Friday 10:00 a.m. to 5:00 p.m. Saturday and 10:00 a.m. to 5:00 p.m., Sunday. The DSEIR may also be viewed or downloaded at the Alameda County website: (<http://www.acgov.org/cda/planning/landuseprojects/awipermit.htm>, or select Pending Land Use Projects – Current Development Projects – Wind Turbine Projects - Altamont Winds, Inc. Permit Modification – Application No. PLN2014-28, at <http://www.acgov.org/cda/planning>. Comments on the DSEIR may be submitted to:

Sandra Rivera, Assistant Planning Director
ATTN: AWI Permit Modification EIR
Alameda County Community Development Agency
224 W. Winton Avenue, Suite 110
Hayward, CA 94544

Please include a return address and contact name with your written comments. Comments can also be sent via email with subject line "AWI Permit Modification EIR" to: sandra.rivera@acgov.org.

Although CEQA does not require formal hearings at any stage of the environmental review process (State CEQA Guidelines Section 15202[a]), it does encourage "wide public involvement, formal and informal... in order to receive and evaluate public reactions to environmental issues" (State CEQA Guidelines Section 15201) and requires the lead agency to provide the public with the opportunity to provide comments. The County, as lead agency, circulated an NOP of a SEIR (SCH # 2014092057) for the proposed project on September 16, 2014. The NOP was distributed for a 30-day comment period that

Notice of Availability of a Draft Supplemental Environmental Impact Report for the Modifications to Existing Conditional Use Permits – Altamont Winds Inc. (AWI)

November 17, 2014

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ended on October 15, 2014. Comments received on the NOP were considered in the preparation of the DSEIR. Appendix A of the DSEIR contains the NOP and written comments received on the NOP.

The DSEIR incorporates public and agency responses to the NOP. Like the NOP, the DSEIR is being circulated for review and comment by appropriate agencies, as well as organizations and individuals who have requested notification. In accordance with Section 15205(d) of the CEQA Guidelines, the County has scheduled a 45-day public review period for the DSEIR, beginning on November 17, 2014 and ending on January 2, 2015 at 5:00 p.m. Within that 45-day period, the County will hold one public hearing to request verbal comments on the DSEIR, at the following time and place:

Thursday, December 18, 2014, 1:30 p.m.
Meeting of the East County Board of Zoning Adjustments
City of Pleasanton Council Chambers,
200 Old Bernal Avenue, Pleasanton

The meeting facilities will be accessible to persons with disabilities. If special translation or signing services or other special accommodations are needed, please contact Nilma Singh at 510-670-5400 or nilma.singh@acgov.org at least 48 hours before the meeting.

Following the close of the public review period for the DSEIR, the County will prepare a Final EIR, incorporating all comments received during the public comment period, for consideration by the East County Board of Zoning Adjustments (EBZA) tentatively scheduled for Thursday, January 22, 2015. As required by CEQA (Section 21092.5), the Final EIR, including written responses to the comments submitted by public agencies, will be available at least 10 days prior to certification.

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**ATTACHMENT: Assessor Parcel Numbers
SCH# 2014092057**

LIST OF CUPS, LANDOWNERS AND APNS

CUP NO.	LANDOWNER	ASSESSOR'S PARCEL NUMBERS	APPROXIMATE ACRES
C-8036	Frick/Costa	99B-5680-15	207.12
C-8037	Pombo	99B-6300-2-1, 99B-6300-2-2, 99B-6425-1-6, 99B-6325-2-4 and 99B-6400-1-7	224.26
C-8134	Rooney	99B-6125-2	160.21
C-8137	Mulqueoney	99B-7900-1-5, 99B-7900-1-7, 99B-7890-2-4, 99B-7890-2-5, 99B-7890-2-6, 99B-7925-2-4, 99B-7925-2-1, 99B-7925-2-5, 99B-7950-2, 99B-7975-1, 99B-7980-1, 99B-7985-1-6, 99B-7985-1-4, 99B-7985-1-3, 99B-7985-1-5, 99A-1800-2-4, 99A-1800-2-3 and 99B-8050-1	4,447.50
C-8191	Mulqueoney	99B-7910-1-1	592.84
C-8243	ACWMA	99A-1780-1-4, 99A-1770-2-1, 99A-1770-2-2, 99A-1770-2-3, 99A-1810-1 and 99A-1790-3	1,324.83
C-8216	ACWMA	99A-1810-1	240.81 (parcel acreage included in C-8243)
C-8231*	Altamont Landfill	99B-6225-1, 99B-6250-1, 99B-6275-1-1	1,547.80
C-8232	Egan	99B-6125-3	160.47
C-8233	Elliott	99B-6125-4	157.54
C-8235	Corbett	99B-5650-1-4 and 99A-1785-1-14	284.96
C-8236	Dunton	99B-5680-1	330.46
C-8237	Valhalla (Devincenzi)	99B-5610-1 and 99B-6075-3	665.98
C-8238	Ralph (north)	99B-7300-1-5 and 99B-7375-1-7	766.57
C-8239*	Jackson	99B-6125-5	325.59
C-8241	Walker	99B-6100-2-10, 99B-6100-2-11, 99B-6100-2-12, 99B-6100-3-10, 99B-6100-3-15, 99B-6100-3-11	1,314.55
C-8242	Gomes (north)	99B-6150-4-10, 99B-6150-3 and 99B-6150-2-7	635.48
C-8244	Gomes (south)	99B-6425-2-3, 99A-1790-2 and 99A-1795-1	1,049.48
TOTAL ACREAGE			14,195.64

Source: AWI, 2014

Notes:

1. The above table includes those parcels and CUPs on which AWI currently has installed wind turbines, as well as those parcels and CUPs on which turbines owned by other wind companies are presently installed and whose wind turbines may be obtained in exchange on a turbine-for-turbine basis with turbines currently owned by AWI.
2. Many of the wind farms in the APWRA overlap, with different wind energy facility operating companies on a single parcel of land. Therefore, other wind companies beside AWI currently operate wind farms within the project area described above.
3. Two additional CUPs, C-8231 and C-8239 (landowners Waste Management Inc. and Jackson, respectively), apply to turbines proposed to be acquired by AWI or its affiliates in a proposed asset exchange, and would contain turbines subject to the proposed modifications.

Notice of Completion & Environmental Document Transmittal

Mail to: State Clearinghouse, P.O. Box 3044, Sacramento, CA 95812-3044 (916) 445-0613
 For Hand Delivery/Street Address: 1400 Tenth Street, Sacramento, CA 95814

SCH #2014092057

Project Title: Modifications to Existing Conditional Use Permits - Altamont Winds Inc.

Lead Agency: County of Alameda Community Development Agency

Contact Person: Sandra Rivera

Mailing Address: 224 West Winton Ave., Rm. 111

Phone: 510-670-5400

City: Hayward

Zip: 94544

County: Alameda

Project Location: County: Alameda

City/Nearest Community: Livermore

Cross Streets: Project is bisected by Interstate I-580,

Zip Code: _____

Longitude/Latitude (degrees, minutes and seconds): _____ " N / _____ " W Total Acres: 14,196

Assessor's Parcel No.: See attached list

Section: _____

Twp.: _____

Range: _____

Base: _____

Within 2 Miles. State Hwy #: Interstate I-580 bisects site

Waterways: _____

Airports: _____

Railways: _____

Schools: _____

Document Type:

CEQA: ☐ NOP

☐ Draft EIR

NEPA: ☐ NOI

Other: ☐ Joint Document

☐ Early Cons

☒ Supplement/Subsequent EIR

☐ EA

☐ Final Document

☐ Neg Dec

(Prior SCH No.) _____

☐ Draft EIS

☐ Other: _____

☐ Mit Neg Dec

Other: _____

☐ FONSI

Local Action Type:

☐ General Plan Update

☐ Specific Plan

☐ Rezone

☐ Annexation

☐ General Plan Amendment

☐ Master Plan

☐ Prezone

☐ Redevelopment

☐ General Plan Element

☐ Planned Unit Development

☒ Use Permit

☐ Coastal Permit

☐ Community Plan

☐ Site Plan

☐ Land Division (Subdivision, etc.)

☐ Other: _____

Development Type:

☐ Residential: Units _____

Acres _____

☐ Office: Sq.ft. _____

Acres _____

Employees _____

☐ Transportation: Type _____

☐ Commercial: Sq.ft. _____

Acres _____

Employees _____

☐ Mining: Mineral _____

☐ Industrial: Sq.ft. _____

Acres _____

Employees _____

☒ Power: Type Wind MW 85.8

☐ Educational: _____

☐ Waste Treatment: Type _____

MGD _____

☐ Recreational: _____

☐ Hazardous Waste: Type _____

☐ Water Facilities: Type _____

MGD _____

☐ Other: _____

Project Issues Discussed in Document:

☐ Aesthetic/Visual

☐ Fiscal

☐ Recreation/Parks

☐ Vegetation

☐ Agricultural Land

☐ Flood Plain/Flooding

☐ Schools/Universities

☐ Water Quality

☐ Air Quality

☐ Forest Land/Fire Hazard

☐ Septic Systems

☐ Water Supply/Groundwater

☐ Archeological/Historical

☐ Geologic/Seismic

☐ Sewer Capacity

☐ Wetland/Riparian

☒ Biological Resources

☐ Minerals

☐ Soil Erosion/Compaction/Grading

☐ Growth Inducement

☐ Coastal Zone

☒ Noise

☐ Solid Waste

☐ Land Use

☐ Drainage/Absorption

☐ Population/Housing Balance

☒ Toxic/Hazardous

☒ Cumulative Effects

☐ Economic/Jobs

☐ Public Services/Facilities

☐ Traffic/Circulation

☐ Other: _____

Present Land Use/Zoning/General Plan Designation:

Large Parcel Agriculture

Project Description: (please use a separate page if necessary)

The proposed project consists of modifications to AWI's existing CUPs, as amended in July 2013, for continued wind power operation and maintenance activities within the Alameda County portion of the APWRA through October 31, 2018. As amended in 2013, the wind power operations were scheduled to terminate on October 31, 2015, subject to new and revised conditions. A Notice of Preparation was previously circulated with details and background information on the proposed changes. Comments on the Draft Supplemental EIR will be accepted between November 17, 2014 and January 2, 2015. Copies of the Draft Supplemental EIR will be available for review at the Permit Center of the County Planning Department, 399 Elmhurst Avenue, Hayward, CA 94544 and the Livermore Public Library, 1188 S. Livermore Ave, Livermore, CA 94550.

Note: The State Clearinghouse will assign identification numbers for all new projects. If a SCH number already exists for a project (e.g., Notice of Preparation or previous draft EIR), it must be included.

Reviewing Agencies Checklist

Lead Agencies may recommend State Clearinghouse distribution by marking agencies below with an "X".
If you have already sent your document to the agency please denote that with an "S".

<input type="checkbox"/> Air Resources Board	<input type="checkbox"/> Office of Historic Preservation
<input type="checkbox"/> Boating & Waterways, Department of	<input type="checkbox"/> Office of Public School Construction
<input type="checkbox"/> California Emergency Management Agency	<input type="checkbox"/> Parks & Recreation, Department of
<input type="checkbox"/> California Highway Patrol	<input type="checkbox"/> Pesticide Regulation, Department of
<input type="checkbox"/> Caltrans District # _____	<input type="checkbox"/> Public Utilities Commission
<input type="checkbox"/> Caltrans Division of Aeronautics	<input type="checkbox"/> Regional WQCB # _____
<input type="checkbox"/> Caltrans Planning	<input type="checkbox"/> Resources Agency
<input type="checkbox"/> Central Valley Flood Protection Board	<input type="checkbox"/> Resources Recycling and Recovery, Department of
<input type="checkbox"/> Coachella Valley Mtns. Conservancy	<input type="checkbox"/> S.F. Bay Conservation & Development Comm.
<input type="checkbox"/> Coastal Commission	<input type="checkbox"/> San Gabriel & Lower L.A. Rivers & Mtns. Conservancy
<input type="checkbox"/> Colorado River Board	<input type="checkbox"/> San Joaquin River Conservancy
<input type="checkbox"/> Conservation, Department of	<input type="checkbox"/> Santa Monica Mtns. Conservancy
<input type="checkbox"/> Corrections, Department of	<input type="checkbox"/> State Lands Commission
<input type="checkbox"/> Delta Protection Commission	<input type="checkbox"/> SWRCB: Clean Water Grants
<input type="checkbox"/> Education, Department of	<input type="checkbox"/> SWRCB: Water Quality
<input type="checkbox"/> Energy Commission	<input type="checkbox"/> SWRCB: Water Rights
<input type="checkbox"/> Fish & Game Region # _____	<input type="checkbox"/> Tahoe Regional Planning Agency
<input type="checkbox"/> Food & Agriculture, Department of	<input type="checkbox"/> Toxic Substances Control, Department of
<input type="checkbox"/> Forestry and Fire Protection, Department of	<input type="checkbox"/> Water Resources, Department of
<input type="checkbox"/> General Services, Department of	
<input type="checkbox"/> Health Services, Department of	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Housing & Community Development	<input type="checkbox"/> Other: _____
<input type="checkbox"/> Native American Heritage Commission	

Local Public Review Period (to be filled in by lead agency)

Starting Date November 14, 2014

Ending Date December 30, 2014

Lead Agency (Complete if applicable):

Consulting Firm: Power Engineers, Inc.
Address: 731 East Ball Road, Suite 100
City/State/Zip: Anaheim, CA 92805
Contact: Chris Knopp
Phone: 858-810-5381

Applicant: Altamont Winds, Inc.
Address: 15850P Jess Ranch Road
City/State/Zip: Tracy, CA 95377
Phone: 925-724-0175

Signature of Lead Agency Representative: _____

Date: 11/14/14

Authority cited: Section 21083, Public Resources Code. Reference: Section 21161, Public Resources Code.

ATTACHMENT: Assessor Parcel Numbers

SCH# 2014092057

LIST OF CUPS, LANDOWNERS AND APNS

CUP NO.	LANDOWNER	ASSESSOR'S PARCEL NUMBERS	APPROXIMATE ACRES
C-8036	Frick/Costa	99B-5680-15	207.12
C-8037	Pombo	99B-6300-2-1, 99B-6300-2-2, 99B-6425-1-6, 99B-6325-2-4 and 99B-6400-1-7	224.26
C-8134	Rooney	99B-6125-2	160.21
C-8137	Mulqueeney	99B-7900-1-5, 99B-7900-1-7, 99B-7890-2-4, 99B-7890-2-5, 99B-7890-2-6, 99B-7925-2-4, 99B-7925-2-1, 99B-7925-2-5, 99B-7950-2, 99B-7975-1, 99B-7980-1, 99B-7985-1-6, 99B-7985-1-4, 99B-7985-1-3, 99B-7985-1-5, 99A-1800-2-4, 99A-1800-2-3 and 99B-8050-1	4,447.50
C-8191	Mulqueeney	99B-7910-1-1	592.84
C-8243	ACWMA	99A-1780-1-4, 99A-1770-2-1, 99A-1770-2-2, 99A-1770-2-3, 99A-1810-1 and 99A-1790-3	1,324.83
C-8216	ACWMA	99A-1810-1	240.81 (parcel acreage included in C-8243)
C-8231*	Altamont Landfill	99B-6225-1, 99B-6250-1, 99B-6275-1-1	1,547.80
C-8232	Egan	99B-6125-3	160.47
C-8233	Elliott	99B-6125-4	157.54
C-8235	Corbett	99B-5650-1-4 and 99A-1785-1-14	284.96
C-8236	Dunton	99B-5680-1	330.46
C-8237	Valhalla (Devincenzi)	99B-5610-1 and 99B-6075-3	665.98
C-8238	Ralph (north)	99B-7300-1-5 and 99B-7375-1-7	766.57
C-8239*	Jackson	99B-6125-5	325.59
C-8241	Walker	99B-6100-2-10, 99B-6100-2-11, 99B-6100-2-12, 99B-6100-3-10, 99B-6100-3-15, 99B-6100-3-11	1,314.55
C-8242	Gomes (north)	99B-6150-4-10, 99B-6150-3 and 99B-6150-2-7	635.48
C-8244	Gomes (south)	99B-6425-2-3, 99A-1790-2 and 99A-1795-1	1,049.48
TOTAL ACREAGE			14,195.64

Source: AWI, 2014

Notes:

1. The above table includes those parcels and CUPs on which AWI currently has installed wind turbines, as well as those parcels and CUPs on which turbines owned by other wind companies are presently installed and whose wind turbines may be obtained in exchange on a turbine-for-turbine basis with turbines currently owned by AWI.
2. Many of the wind farms in the APWRA overlap, with different wind energy facility operating companies on a single parcel of land. Therefore, other wind companies beside AWI currently operate wind farms within the project area described above.
3. Two additional CUPs, C-8231 and C-8239 (landowners Waste Management Inc. and Jackson, respectively), apply to turbines proposed to be acquired by AWI or its affiliates in a proposed asset exchange, and would contain turbines subject to the proposed modifications



ALAMEDA COUNTY COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT

Chris Bazar
Agency Director

Albert Lopez
Planning Director

224
West Winton Ave
Room 111

Hayward
California
94544

phone
510.670.5400
fax
510.785.8793

www.acgov.org/cda

September 15, 2014

FROM: Sandra Rivera, Assistant Planning Director
Alameda County Community Development Agency
224 W. Winton Avenue, Suite 110
Hayward, CA, 94544

SUBJECT: Notice of Preparation (Notice) of a Supplemental Environmental Impact Report for Modifications to Existing Conditional Use Permits – Altamont Winds Inc. (AWI) (PLN2014-00028)

SUMMARY

The County of Alameda (County) is issuing this Notice of Preparation to inform agencies and interested parties that the County will prepare a Supplemental Environmental Impact Report (SEIR) for proposed modifications to 16 existing Conditional Use Permits (CUPs), for turbines owned and operated by Altamont Winds Inc. in the Alameda County portion of the Altamont Pass Wind Resource Area (AC/APWRA). Altamont Winds Inc. (the Applicant, together with its operating subsidiary WindWorks Inc., and collectively, AWI) has submitted an application requesting that these CUPs, set to expire on October 31, 2015 under modifications approved in 2013, be extended through October 31, 2018 under specified conditions, for operation of its estimated 828 turbines, which have a rated capacity of approximately 85.8 MW.

The SEIR is intended to supplement an Environmental Impact Report (EIR), certified in July 2013, that evaluated the application made by AWI in 2011 to modify these same CUPs as they had been approved in September of 2005. Although the current proposal for operations through 2018 was evaluated in the prior EIR as an alternative (Alternative 3), it was only at a limited level of analysis, as provided for in the CEQA Guidelines (Section 15126.6(d)), to provide "sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project." The County made the following finding in 2013 when it certified the EIR regarding this alternative: "Alternative 3 would better serve the project objectives of renewable energy, but would also very substantially increase the avian mortality impacts compared to the project and all other alternatives. For the purpose of meeting the project objectives and minimizing significant impacts on special status avian wildlife, Alternative 3 is considered infeasible." On the basis of this determination, it is necessary to provide additional information, which this SEIR is intended to provide, together with the same kind of notice and public review as provided for a draft EIR under Section 15087 of the CEQA Guidelines. The SEIR will supplement the prior EIR with additional analysis beyond that included in the Alternatives analysis to provide a basis for making the findings required by CEQA.

The 2011 application sought to replace the schedule adopted in 2005 for phased decommissioning (shut down and removal) of existing turbines in anticipation of repowering (replacement with current generation turbines), beginning with 10% removal by September 2009, 35% by 2013, 85% by 2015, and 100% by the end of the CUP term in 2018. The schedule proposed in 2011 and approved in 2013, eliminated the phased decommissioning and provided for operation of the wind farm through October 2015, subject to new and revised conditions. Other changes were also requested by AWI, such as cessation of the winter seasonal shutdown imposed by the County through the administration of the CUPs, but these changes were not approved by the County.

The CUPs as approved in 2005 required that an EIR be prepared to evaluate ongoing operations, proposed decommissioning and repowering. The EIR certified in 2013 served this purpose in part by evaluating the environmental impacts of ongoing operations and anticipated decommissioning, but did not evaluate any repowering project. The SEIR that is the subject of this Notice will not evaluate a repowering project, but will evaluate the environmental impacts of the requested change to the scheduled expiration of the CUPs under which AWI's turbines are operated. A separate CEQA document (an Addendum or Supplemental EIR) 'tiered' from the Altamont Pass Wind Resource Area Repowering Program EIR that is currently in the form of a Draft Program EIR, will address the repowering proposal by AWI.

The County will serve as the Lead Agency for the SEIR, which will be prepared pursuant to the California Environmental Quality Act (CEQA, 1970, as amended) and in accordance with relevant federal, state and local regulations. The County has determined that a Supplemental EIR is required to evaluate the three-year CUP extension requested by AWI, which is a substantial change to the Project compared to the Project as evaluated in the prior EIR. Although the three-year extension was evaluated in the prior EIR as an Alternative, the adoption and implementation of the extension will result in a substantial increase in the severity of previously identified significant effects and will require important revisions of that EIR, pursuant to Public Resources Code Section 21166 and CEQA Guidelines Section 15162. The County is preparing a Supplemental EIR, rather than a Subsequent EIR, based on its determination, pursuant to CEQA Guidelines Section 15163, that only minor additions and changes are necessary to make the previous EIR adequate to apply to the Project for the changes proposed by the applicant.

Based on the substantial evidence contained in the prior EIR, which included the currently-proposed extension of the CUPs through 2018 as an Alternative, and the evidence represented by the current application, in light of the whole record, the County considers the changes to the Project, from how it was defined for the prior EIR (operations through 2015, with conditions and required mitigation measures) to the current definition of operations through 2018 (with anticipated additional conditions and similar mitigation measures), would increase the severity of previously identified significant effects. For example, full operations (i.e., without phased decommissioning, although with seasonal shutdowns) for an additional three years will increase the total projected number of avian fatalities due to Project operations.

The County does not anticipate that major revisions to the EIR are necessary to identify new environmental impacts that were not disclosed in the prior EIR. Additionally, although there have been some changed circumstances since 2013, the County does not find that there are substantially changed circumstances that would result in new or substantially different significant impacts on the environment. Furthermore, no new information of substantial importance shows that the CUP extension to 2018 would have significant impacts not discussed in the prior EIR. However, to the extent new information has become available since the prior EIR, the County intends to incorporate that information into the SEIR.

The SEIR will be used by the East County Board of Zoning Adjustments in its consideration of approval of the proposed CUP modifications. The County is soliciting the views of agencies, organizations and interested parties as to the scope and content of the environmental resources and topics to be evaluated in the SEIR. In accordance with CEQA, agencies are requested to review the content of this NOP and provide comments on any environmental issues related to the statutory responsibilities of the agency.

CEQA sets the review and comment period for an NOP to end 30 days after publication. The County therefore requests comments on this NOP be received no later than the close of business on Wednesday, October 15, 2014. Provide a name for a contact person in your agency. Send written comments to:

Sandra Rivera, Assistant Planning Director
ATTN: AWI Permit Modification Supplemental EIR
Alameda County Community Development Agency
224 W. Winton Avenue, Suite 110
Hayward, CA, 94544

Comments can also be sent via e-mail with subject line "AWI Permit Modification Supplemental EIR" to sandra.rivera@acgov.org. Please include a return address and contact name with your written comments.

Project Location

The proposed project would extend numerous CUPs for 828 existing wind turbines that are widely distributed within an approximately 14,000-acre portion of the 50,000-acre Altamont Pass Wind Resource Area (APWRA) in eastern Alameda County, California (**Figure 1**). The project site is bisected by Interstate 580. The portion of the site lying southerly of I-580 constitutes approximately 7,700 acres, with the remainder lying northerly of I-580. The lands are currently under permit by AWI or its affiliates either solely or as a shared arrangement with other wind farm operators. In preparation for repowering, AWI is in discussions with another wind farm operator in the APWRA regarding a contemplated wind turbine exchange, whereby AWI would exchange some of its wind turbines for an equal number of wind turbines owned and operated by another wind farm operator. Such an exchange would result in AWI operating wind turbines on different parcels of land than those on which it presently operates (**Figure 2**). Under no circumstances, however, will any such exchange increase the capacity or quantity of AWI's operating turbines. **Table 1** below outlines existing CUPs, landowners, Assessor's Parcel Numbers (APNs), and approximate acreage for the lands that may be included either in whole or in part in the project, including lands on which AWI may operate following an exchange scenario as contemplated above. Partial inclusion of some parcels is necessary because AWI does not have control of all turbines on all parcels.

Table 1. Existing Conditional Use Permits (As of the time of this Notice)

CUP No.	Landowner	Assessor's Parcel Numbers	Approximate Acres
C-8036	Costa (was Frick)	99B-5680-15	207.12
C-8037	Pombo	99B-6300-2-1, 99B-6300-2-2, 99B-6425-1-6, 99B-6325-2-4 and 99B-6400-1-7	224.26
C-8134	Rooney	99B-6125-2	160.21
C-8137	Mulqueeney	99B-7900-1-5, 99B-7900-1-7, 99B-7890-2-4, 99B-7890-2-5, 99B-7890-2-6, 99B-7925-2-4, 99B-7925-2-1, 99B-7925-2-5, 99B-7950-2, 99B-7975-1, 99B-7980-1, 99B-7985-1-6, 99B-7985-1-4, 99B-7985-1-3, 99B-7985-1-5, 99A-1800-2-4, 99A-1800-2-3 and 99B-8050-1	4,447.50
C-8191	Mulqueeney	99B-7910-1-1	592.84
C-8243	ACWMA	99A-1780-1-4, 99A-1770-2-1, 99A-1770-2-2, 99A-1770-2-3, 99A-1810-1 and 99A-1790-3	1,324.83
C-8216	ACWMA	99A-1810-1 (parcel acreage included in C-8243)	240.81
C-8232	Egan	99B-6125-3	160.47
C-8233	Elliott	99B-6125-4	157.54
C-8235	Corbett	99B-5650-1-4 and 99A-1785-1-14	284.96
C-8236	Dunton	99B-5680-1	330.46
C-8237	DeVincenzi (was Valhalla)	99B-5610-1 and 99B-6075-3	665.98
C-8238	Ralph (north)	99B-7300-1-5 and 99B-7375-1-7	766.57
C-8241	Walker	99B-6100-2-10, 99B-6100-2-11, 99B-6100-2-12, 99B-6100-3-10, 99B-6100-3-15, 99B-6100-3-11	1,314.55
C-8242	Gomes (north)	99B-6150-4-10, 99B-6150-3 and 99B-6150-2-7	635.48
C-8244	Gomes (south)	99B-6425-2-3, 99A-1790-2 and 99A-1795-1	1,049.48
TOTAL ACREAGE			14,195.64

Notes:

1. The above table includes those parcels and CUPs on which AWI currently has installed wind turbines, as well as those parcels and CUPs on which turbines owned by other wind companies are presently installed and whose wind turbines may be obtained in exchange on a turbine-for-turbine basis with turbines currently owned by AWI.
2. Many of the wind farms in the APWRA overlap, with different wind energy facility operating companies on a single parcel of land. Therefore, other wind companies beside AWI currently operate wind farms within the project area described above.
3. Two CUPs, C-8231 and C-8239, that previously applied to turbines owned by AWI or its affiliates, are no longer operated by AWI or its affiliates.

Proposed Project

The proposed project consists of operational modifications to AWI's existing CUPs, as amended in July 2013, for continued wind power operation and maintenance activities within the Alameda County portion of the APWRA through October 31, 2018.

The project facilities consist of 828 existing, operating wind turbines on concrete foundations, plus support facilities, occupying approximately 155 acres within a 14,196-acre area. The turbines have a nameplate capacity of 85.8 MW and rest on lattice and tubular towers that range in height from 60 to 82 feet, generally sited in strings along ridgelines. Support facilities include existing gated, graveled access roads, a power collection and transmission interconnection system, meteorological towers ranging from 60 to 100 feet in height, communication systems, maintenance equipment areas, and offsite facilities including AWI's wind farm main service yard (located near Tracy), and the main wind farm control center, shared with other wind farm operators (located in Livermore). The power collection and transmission interconnection system consists of pad-mount transformers, underground cables, overhead conductors on poles, circuit breakers and switches, electrical metering/protection devices, and the existing Dyer, Frick, Ralph, and Midway substations. Electrical power is collected from the turbines and transmitted to the substations, where its voltage is increased for interconnection with Pacific Gas and Electric's (PG&E) transmission lines.

The existing project operations consists of 828 turbines and ancillary facilities, with a maximum combined generation capacity of 85.8 MW, through October 31, 2015. After this point, operations would be extended for three additional years, through October 31, 2018, on the condition that AWI has diligently pursued development of a repowered wind farm on the project site, but where circumstances beyond AWI's control have delayed completion of the repowered project. Mitigation for impacts resulting from operation of the project through October 31, 2018 will be carried out in accordance with the mitigation measures prescribed in the 2013 EIR.

Probable Environmental Effects

In accordance with CEQA Guidelines Section 15161, the AWI Permit Modification SEIR will examine the environmental impacts of the requested CUP modifications, focusing primarily on the changes in the environment that would result from the proposed extension of the wind farm's operational schedule.

Based on the project description and the County's understanding of the environmental issues associated with the project, the Draft SEIR will evaluate the impacts the proposed CUP modifications may have on biological resources, paying particular attention to impacts to avian species associated with the project's proposed extended operation of wind turbines.

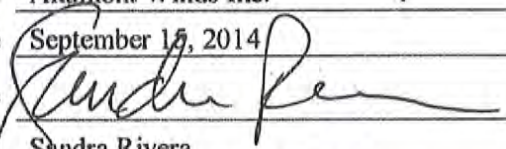
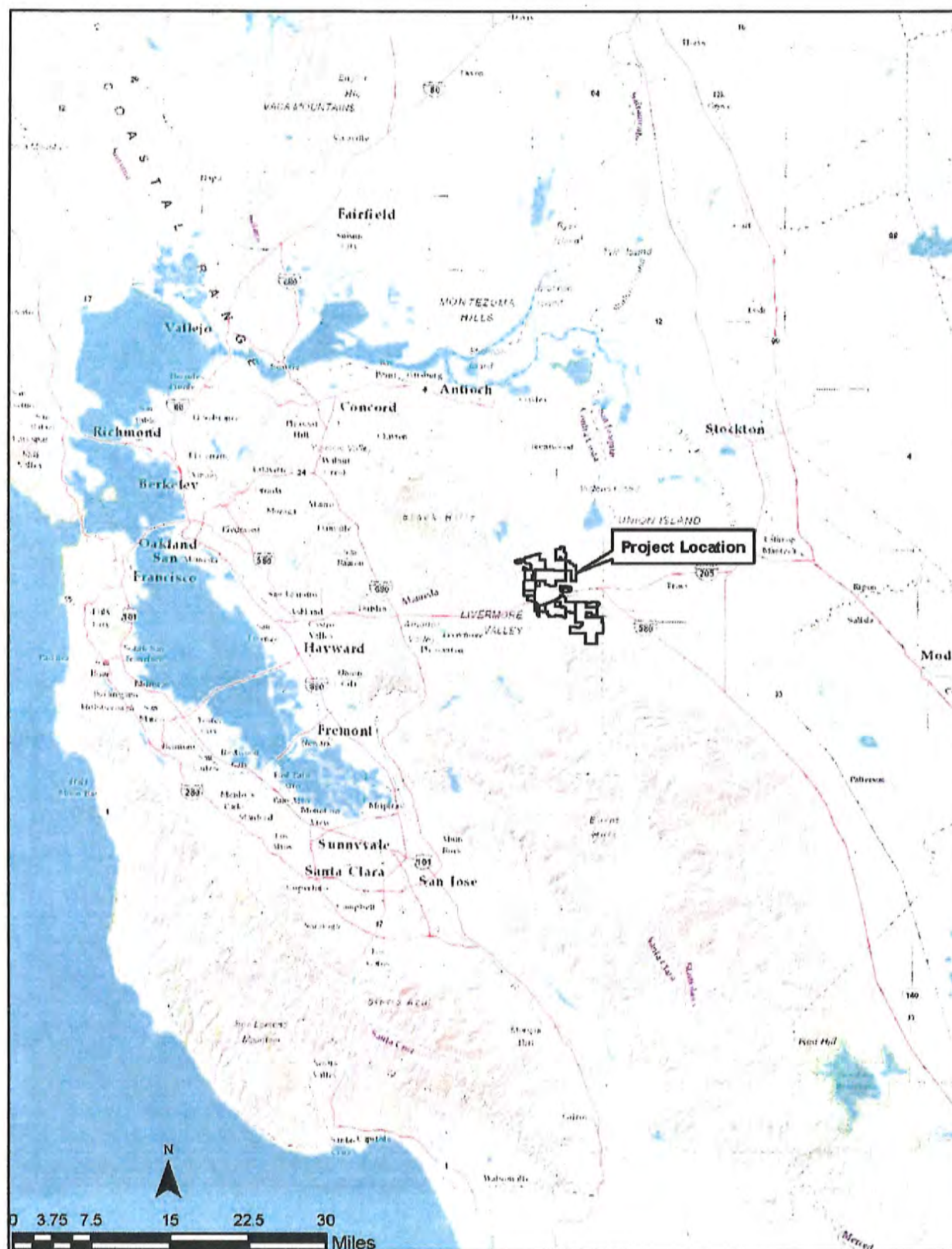
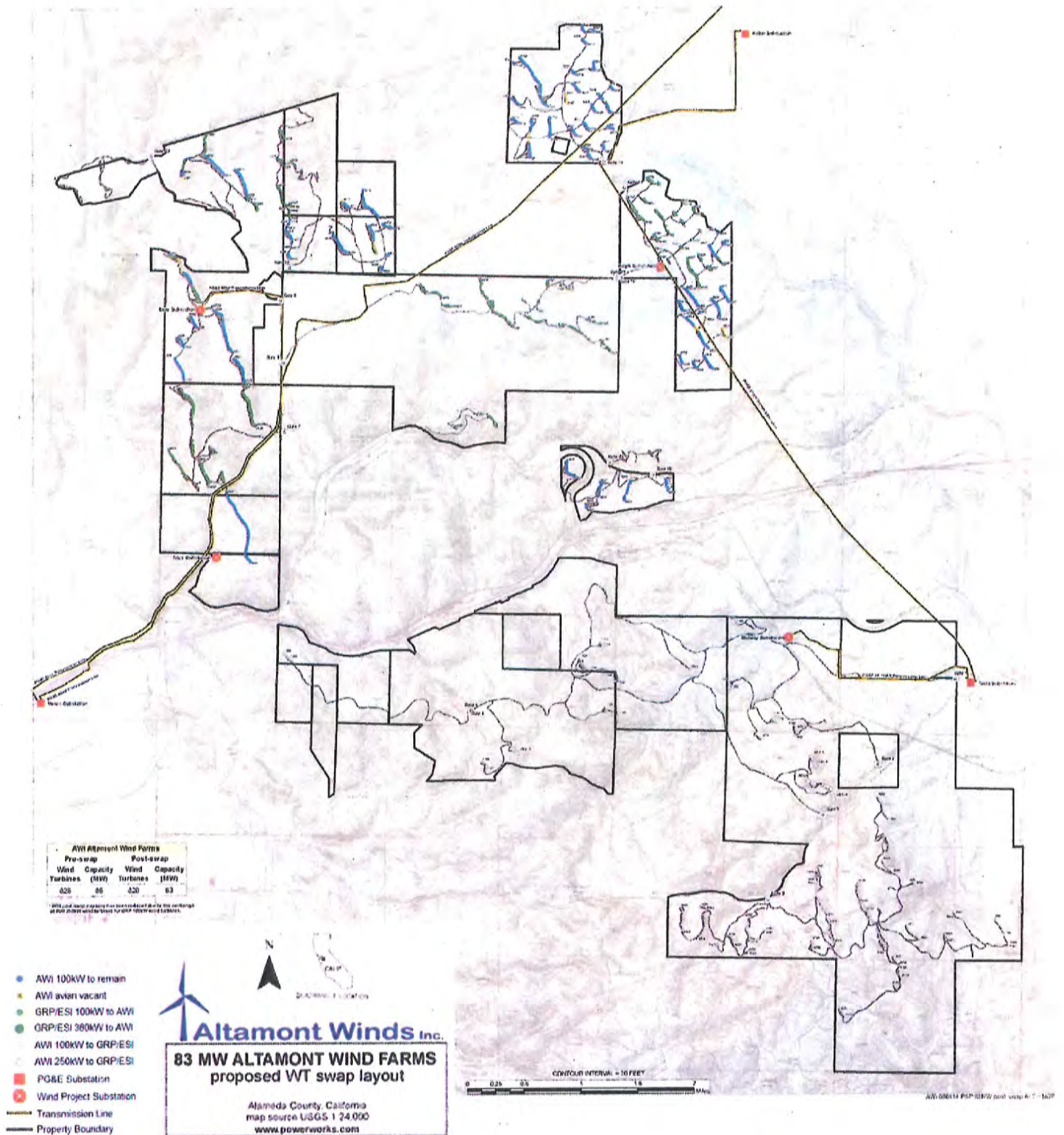
Project Title	<u>Modifications to Existing Conditional Use Permits</u>
Project Applicant	<u>Altamont Winds Inc.</u>
Date	<u>September 15, 2014</u>
Signature	
Name	<u>Sandra Rivera</u>
Title	<u>Assistant Planning Director</u>
Telephone/e-mail	<u>510-670-5400 / sandra.rivera@acgov.org</u>

FIGURE 1
Project Location Map





Standard Application

Application Received	
By: <u>Ajron</u>	Date: <u>2-28-14</u>
Application #: <u>2014-00028</u>	

WE WILL NOT ACCEPT INCOMPLETE SUBMITTALS!!

1. Type of application: *Check one or more*

- ☐ Boundary Adjustment
 ☐ Subdivision
 ☐ Conditional Use Permit
 ☐ Variance
 ☐ Site Development Review
 ☐ Rezoning
☐ Administrative Conditional Use Permit
 ☐ Sign Review
 ☒ Other:* Modifications to existing CUPS

2. Brief description of application:*

Modifications to existing wind farm CUPS to

(1) modify the time line to permanently cease operation of existing wind turbines and (2) replace certain mitigation measures with new ones.

3. Project site:

Altamont Pass Wind Resource Area, see attached separate sheet.

Address City State Zip Code

4. Assessor's parcel number(s):

See attached separate sheet.

5. Special instructions to access property (e.g. dogs, gates, alarms, etc.):*

Contact Applicant

to arrange for escorted access.

6. Land owner:

See attached separate sheet.

NAME COMPANY

Address City State Zip Code

Contact Phone(s) Fax # Email Address

7. Applicant:

William Damon, Vice President Altamont Winds Inc. & WindWorks Inc.

(if different from above)

NAME COMPANY (see sep. sheet)

☐ Same as above 15850 Jess Ranch Road Tracy, California 95377

Address City State Zip Code

925.724.0175 925.447.1789 wd@powerworks.com

Contact Phone(s) Fax # Email Address

8. Primary contact person:

Andrew Roth, Gen. Counsel Altamont Winds Inc.

NAME COMPANY

☐ Land Owner ☐ Applicant 15850 Jess Ranch Road Tracy, California 95377

☐ Other (fill in information) Address City State Zip Code

925.455.7251 925.447.1789 ajr@powerworks.com

Contact Phone(s) Fax # Email Address

FOR PLANNING DEPARTMENT USE ONLY

Side Distance (f,m) Direction

Of Cross Street

Uninc. Area/District Zoning

ROW FWL SBL

Lot Area: (ft) (ac)

History

Alameda County

COMMUNITY DEVELOPMENT AGENCY
PLANNING DEPARTMENT



Offices: 224 West Winton Avenue, Room 111
Hayward, CA 94544

Permit Center: 399 Elmhurst Street, Room 141
Hayward CA 94544

Ph: (510) 670-5400 Fax: (510) 785-8793

www.acgov.org/cda/planning

September 2012

AFFIDAVIT:

1. I attest under penalty of perjury to the truth and accuracy of all the facts, exhibits, maps, and attachments presented with and made a part of this application.
2. I hereby authorize County staff and members of review bodies, including but not limited to the Castro Valley Municipal Advisory Council, the Board of Zoning Adjustments, the Planning Commission, and the Board of Supervisors, to enter upon my property to verify or obtain information, to view the property, or to photograph the property and the surrounding area as part of the application review process. (Please note any special instructions regarding access to your property such as dogs, gates, alarms, etc.)

I understand that staff will make all efforts to notify me of such site visits, but that this may not always be possible.

3. I understand that unless this is a fixed fee application, the money I have submitted constitutes a deposit and that costs necessary to process the application will be billed against this deposit. The County will bill charges for County staff time spent processing this application at an hourly rate that represents salary plus overhead and will bill consultant charges at actual cost. In addition, the County will bill direct costs, including but not limited to actual costs of mailing or publication of notices or actions, against the deposit.

The deposit is based on the typical time it takes to process an application similar to mine. However, processing time can vary depending on the specifics of an application and it is possible, particularly if my application becomes controversial, that the processing time, and thus the cost, may exceed the estimated time. If this happens, I am responsible for the additional costs. When costs approach the amount of my deposit, the County will notify me and request an additional deposit based on the County's best estimate of the additional time necessary to complete the application review.

It is also possible that the costs to process my application will be less than the deposit. If this happens the County will refund the balance of my deposit, less additional post-approval costs such as landscape inspections, after the appeal period for the approval has passed. Should I withdraw my application, County staff will stop working on it and refund the balance of my deposit less any costs to which the County has committed as of the date of withdrawal, such as costs of publication.

I further understand that I am liable for the cost of processing my application regardless of whether the County approves, approves with modifications, or denies my application, and that all applications approved by the County will be conditioned to require that the County be made whole for any costs of processing the application that may be outstanding.

4. I understand that acceptance of this application and accompanying material does not constitute acceptance of this application as complete. I further understand that although my application may be deemed complete for purposes of initial review, it is possible that I may need to submit additional information as the review proceeds or after final action on my application before I can implement my project, including but not limited to the following:

- Additional information as needed to complete an environmental review under the California Environmental Quality Act;
- Additional information as needed to clarify the application or address questions raised either as a result of responses received from the referral of my application to other public agencies and interested parties or in response to issues raised at public hearings by members of the hearing body or the general public who submit written or oral testimony at the hearings;
- Final information that will be necessary to meet Public Works Agency Stormwater Management requirements;
- Revised plans, elevations, or other material necessary to illustrate or otherwise conform to changes that the final approval body makes to my original submittal;
- Additional material, such as landscape or drainage improvement plans, that may be required under a condition or provision of approval.

I understand that delay of information submittal or submittal of inaccurate information may delay the review process.

5. I understand that if I make changes in proposed plans during the review process or in approved plans before construction permits are issued, during construction, or prior to final inspection and occupancy, such changes will require additional design review by County staff and the advisory and approval bodies. It is my responsibility to submit such revised plans to County staff in a timely manner. This may require four to six or more additional weeks of review and processing time from the time I submit complete plans. Depending on the final outcome of the approval process, I may have to submit revised plans consistent with that action as noted above. In addition, any unauthorized building, demolition, grading, landscaping, or other site plan changes made during the review period will require correction at my expense.
6. I understand that any representations made to me in a pre-application meeting or otherwise prior to or during the application review process regarding cost or timing are best-guess estimates and that I cannot bind or hold the County to them. I understand that factors such as changes to my project or issues raised by approval bodies or members of the public during the review process, including at public hearings, can extend the time necessary to complete the review and reach a decision on my application.
7. Furthermore, I hereby agree to hold the County harmless from all costs and expenses, including attorney's fees, that the County incurs or held to be the liability of the County in connection with the County's defense of its actions in any proceeding brought in any State or Federal Court challenging the County's actions with respect to my project. This includes but is not limited to actions brought pursuant to the California Environmental Quality Act, the Alameda County Zoning Ordinance, or other State and County code and ordinance requirements. If I fail to defend adequately the County, the County may provide its own legal defense and subdivider or its successors shall be responsible for the County's reasonable attorneys' fees. This agreement to hold the County harmless shall extend to any successors in interest to this application. I agree that if this application is signed by more than one person the obligations and liabilities of each person is joint and several, with each person being responsible for the entire obligation.

Applicant Signature: <i>William L. Damon</i>	Altamont Winds Inc. & WindWorks Inc. by William Damon, Vice President	Date: January 30, 2014
Landowner Signature: On file with original CUP renewal applications		Date:

Conditional Use Permit

- For complete filing instructions, see the **Standard Application** form.
- For general procedures and guidelines, read the handout "*Applying for a Conditional Use Permit*"
- You must make an appointment with a Planning Department staff member to determine if materials or information (in addition to those listed below) are needed to evaluate your project.
- If Conditional Use Permit involves new construction or additions, then subject information required per Site Development Review Supplemental forms.
- If you have any questions, please call (510) 670-5410.

1. Applicant Name: Altamont Winds Inc. and WindWorks Inc.
2. Contact the Planning Department at (510) 670-5410 to make an appointment with a Senior Planner to submit the following materials to the Alameda County Planning Department (Zoning Counter) at 399 Elmhurst Street, Hayward, California. **We will not accept incomplete applications.** Please use the following checklist to ensure the application is complete.

Required

Standard Application form.

Application Supplement: *Conditional Use Permit* form.

Filing Fee Deposit: Make check payable to "Treasurer, County of Alameda."

\$1,500 deposit for all Districts. **\$4,000** deposit to approve: *an outdoor recreation facility, sanitary landfill, flight strip, heliport, cemetery, church, or school*. If this deposit is depleted, the Planning Staff will advise you that additional funds must be deposited to continue the processing of this application. Any remaining unexpended money will be refunded.

Plot plan (20 copies): Show all information as shown on the **Sample Plot Plan** on the back of this form. Minimum paper size is 8½ x 11 inches. Larger plans shall be folded to 8½ x 11 inches.

Written Statement: On an attached sheet, briefly explain how your property specifically relates to each of the following findings required to approve a Conditional Use Permit.

1. The use is required by the public need.
2. The use will be properly related to other land uses transportation and service facilities in the vicinity.
3. The use, if permitted, under all the circumstances and conditions of the particular case, will not materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood.
4. The use will not be contrary to the character or performance standards established for the District in which it is to be located.

Supporting Documents: Other documents to support the project may include elevations, floor plans, applicable permits from other County, State or Federal agencies.

Alameda County Planning Department

224 West Winton Avenue, Room 111, Hayward, CA 94544

Phone: (510) 670-5400 Fax: (510) 785-8793 Web: <http://www.acgov.org/cda/planning>

If Conditional Use Permit involves new construction or additions, then subject information required per Site Development Review Supplemental forms.

Other Information requested by Planner: None.

Call for appointment to meet with a Senior Planner for submittal.

Applicant Signature verifying that the applicant understands the application process:

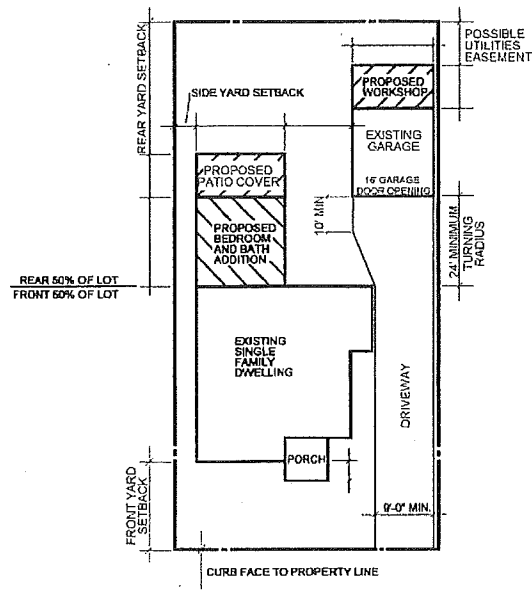
William J. Damon

Applicant Signature Altamont Winds Inc. & WindWorks Inc. Date Jan. 30, 2014
by William Damon, Vice President

Sample Site Plan

Site Plan should include the following:

1. North direction arrow.
2. Scale. You must use 1 inch = an even number of feet (i.e. 20 feet, 40 feet, 100 feet, or 600 feet depending on the size of your property).
3. Boundaries of the parcel, including dimensions (you may need a plot map of your property).
4. Location, dimensions, and purpose of rights-of way and easements within the property.
5. Location, dimensions, and use of all existing and proposed structures.
6. Distances of existing and proposed structures from all property lines, from rights-of way, easements, and other structures.
7. Location of all utilities labeled existing or proposed, including septic tank and drainfield, water, power, phone etc.
8. Location and dimensions of all proposed and existing roads, driveways, parking areas, patios, decks, walkways, and other impervious (paved) area(s).
9. Location of any surface water (streams, culverts, drainage ways), or any distinguishing land features such as slopes within or adjacent to the parcel.
10. Extent of area which will be disturbed by construction activity, clearing, digging, or earth moving.
11. On the back of your site plan, please provide detailed directions to the site.
12. Vicinity map.



TYPICAL PLOT PLAN DETAIL

Revised 1/09

Alameda County Planning Department

224 West Winton Avenue, Room 111, Hayward, CA 94544

Phone: (510) 670-5400 Fax: (510) 785-8793 Web: <http://www.acgov.org/cda/planning>

Stormwater Requirements Pre-Screening Checklist

Complete this form for all projects regardless of size. The purpose of this form is to identify requirements for stormwater controls.

NOT APPLICABLE

A. Project Information

A.1 Project Name: 86 MW Altamont Pass Wind Project

A.2 Project Address/Location: Altamont Pass Wind Resource Area

A.3 Project Engineer:

		Yes	No
A.4	Does the project propose to alter external structure or site characteristics? If Yes, continue to A.5. If No, project is non-Regulated and does not have C3 requirements. STOP HERE. NO FURTHER C3 EVALUATION NEEDED.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
A.5	Is this a single family house project that is not part of a larger development? If Yes, continue to A.6. If No, continue to A.7.	<input type="checkbox"/>	<input type="checkbox"/>
A.6	Will this project create or replace more than 2,500 square feet of impervious surface? If Yes, Skip to and complete Table 1. If No, complete Sections B, C, and D. The project is non-Regulated and does not have C3 requirements.	<input type="checkbox"/>	<input type="checkbox"/>
A.7	Does the project include the creation or replacement of more than 5,000 square feet of parking lot? If Yes, the project may be Regulated. Skip to and complete Table 1. If No, continue to A.8.	<input type="checkbox"/>	<input type="checkbox"/>
A.8	Does the project create or replace more than 5,000 square feet of impervious surface at a restaurant and auto related facility? If Yes, the project may be Regulated. Skip to and complete Table 1. If No, continue to A.9.	<input type="checkbox"/>	<input type="checkbox"/>
A.9	Does the project create or replace more than 10,000 square feet of impervious surface? If Yes, the project may be Regulated. Skip to and complete Table 1. If No, continue to A.10.	<input type="checkbox"/>	<input type="checkbox"/>
A.10	Will this project create or replace more than 2,500 square feet of impervious surface? If Yes, Skip to and complete Table 1. If No, complete Sections B, C, and D. The project is non-Regulated and does not have C3 requirements.	<input type="checkbox"/>	<input type="checkbox"/>

Table 1: Impervious and Pervious Surfaces

Identify separately the surface area(s) of Building(s) footprint, Driveway(s), Patio(s), Impervious deck(s), Uncovered parking lot (including top deck of parking structure), Impervious trails, Miscellaneous paving or structures, and Off-lot Impervious Surface (Streets, Sidewalks and/or Bike lanes built as part of new street) for Questions B through G below.	SQUARE FEET	
A. Total lot or site area of the proposed development.		
B. Existing impervious surface area (Pre-Project) located within the proposed development.		
C. The amount of existing impervious surface (Question B above) that will be removed and will not be replaced.		
D. The amount of existing impervious surface (Question B above) that will be removed and replaced in kind.		
E. The amount of existing impervious surface (Question B above) that will be removed and replaced with other types of impervious surface.		
F. The amount of newly created impervious surface.		
G. Add Questions D, E, and F above. This is the project's on-site impervious surface area.		
H. The amount of impervious surface created or replaced off-site.		
I. Add Questions G and H above. This is the project's total impervious surface area which is subject to water quality control.		
	Yes	No
J. Does the Total Impervious Surface (identified in I) equal 10,000 sq.ft. or more? If YES, The Project is a Regulated Project. and all sections of this checklist apply. If NO, the Project is non-Regulated and only Sections B, C, and D of this checklist apply.	<input type="checkbox"/>	<input type="checkbox"/>
K. Does the total amount of Replaced impervious surface (identified in D and E) equal 50 percent or more of the Pre-Project Impervious Surface (identified in B)? If YES, the entire site is regulated. If NO, the requirements apply only to the impervious surface created and/or replaced.	<input type="checkbox"/>	<input type="checkbox"/>

Continue to next page

B. Select Appropriate Site Design Measures (Required for C.3 Regulated Projects; all other projects are encouraged to implement site design measures, which may be required at municipality discretion. Starting December 1, 2012, projects that create and/or replace 2,500 – 10,000 sq.ft. of impervious surface must include one of Site Design Measures a through f.¹ Consult with municipal staff about requirements for your project.)

B.1 Is the site design measure included in the project plans?

Yes	No	Plan Sheet No.	
<input type="checkbox"/>	<input type="checkbox"/>		a. Direct roof runoff into cisterns or rain barrels and use rainwater for irrigation or other non-potable use.
<input type="checkbox"/>	<input type="checkbox"/>		b. Direct roof runoff onto vegetated areas.
<input type="checkbox"/>	<input type="checkbox"/>		c. Direct runoff from sidewalks, walkways, and/or patios onto vegetated areas.
<input type="checkbox"/>	<input type="checkbox"/>		d. Direct runoff from driveways and/or uncovered parking lots onto vegetated areas.
<input type="checkbox"/>	<input type="checkbox"/>		e. Construct sidewalks, walkways, and/or patios with permeable surfaces.
<input type="checkbox"/>	<input type="checkbox"/>		f. Construct bike lanes, driveways, and/or uncovered parking lots with permeable surfaces.
<input type="checkbox"/>	<input type="checkbox"/>		g. Minimize land disturbance and impervious surface (especially parking lots).
<input type="checkbox"/>	<input type="checkbox"/>		h. Maximize permeability by clustering development and preserving open space.
<input type="checkbox"/>	<input type="checkbox"/>		i. Use micro-detention, including distributed landscape-based detention.
<input type="checkbox"/>	<input type="checkbox"/>		j. Protect sensitive areas, including wetland and riparian areas, and minimize changes to the natural topography.
<input type="checkbox"/>	<input type="checkbox"/>		k. Self-treating area (see Section 4.2 of the C.3 Technical Guidance)
<input type="checkbox"/>	<input type="checkbox"/>		l. Self-retaining area (see Section 4.3 of the C.3 Technical Guidance)
<input type="checkbox"/>	<input type="checkbox"/>		m. Plant or preserve interceptor trees (Section 4.1, C.3 Technical Guidance)

C. Source controls required by the Alameda County Building Code

Are these features in project?		Features that require source control measures	Source control measures (Refer to Local Source Control List for detailed requirements)	Is source control measure included in project plans?		
Yes	No			Yes	No	Plan Sheet No.
<input type="checkbox"/>	<input type="checkbox"/>	Storm Drain	Mark on-site inlets with the words "No Dumping! Flows to Bay" or equivalent.	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Floor Drains	Plumb interior floor drains to sanitary sewer ² [or prohibit].	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Parking garage	Plumb interior parking garage floor drains to sanitary sewer. ³	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Landscaping	<ul style="list-style-type: none"> Retain existing vegetation as practicable. Select diverse species appropriate to the site. Include plants that are pest- and/or disease-resistant, drought-tolerant, and/or attract beneficial insects. Minimize use of pesticides and quick-release fertilizers. Use efficient irrigation system; design to minimize runoff. 	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Pool/Spa/Fountain	Provide connection to the sanitary sewer to facilitate draining. ³	<input type="checkbox"/>	<input type="checkbox"/>	

Continue to next page

¹ See MRP Provision C.3.a.i(6) for non-C.3 Regulated Projects, C.3.c.i(2)(a) for Regulated Projects, C.3.i for projects that create/replace 2,500 to 10,000 sq.ft. of impervious surface and stand-alone single family homes that create/replace 2,500 sq.ft. or more of impervious surface.

² Any connection to the sanitary sewer system is subject to sanitary district approval.

<input type="checkbox"/>	<input type="checkbox"/>	Food Service Equipment (non-residential)	<ul style="list-style-type: none"> Provide sink or other area for equipment cleaning, which is: <ul style="list-style-type: none"> Connected to a grease interceptor prior to sanitary sewer discharge.³ Large enough for the largest mat or piece of equipment to be cleaned. Indoors or in an outdoor roofed area designed to prevent stormwater run-on and run-off, and signed to require equipment washing in this area. 	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Refuse Areas	<ul style="list-style-type: none"> Provide a roofed and enclosed area for dumpsters, recycling containers, etc., designed to prevent stormwater run-on and runoff. Connect any drains in or beneath dumpsters, compactors, and tallow bin areas serving food service facilities to the sanitary sewer.³ 	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Outdoor Process Activities ³	Perform process activities either indoors or in roofed outdoor area, designed to prevent stormwater run-on and runoff, and to drain to the sanitary sewer. ³	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Outdoor Equipment/ Materials Storage	<ul style="list-style-type: none"> Cover the area or design to avoid pollutant contact with stormwater runoff. Locate area only on paved and contained areas. Roof storage areas that will contain non-hazardous liquids, drain to sanitary sewer³, and contain by berms or similar. 	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Vehicle/ Equipment Cleaning	<ul style="list-style-type: none"> Roofed, pave and berm wash area to prevent stormwater run-on and runoff, plumb to the sanitary sewer³, and sign as a designated wash area. Commercial car wash facilities shall discharge to the sanitary sewer.³ 	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Vehicle/ Equipment Repair and Maintenance	<ul style="list-style-type: none"> Designate repair/maintenance area indoors, or an outdoors area designed to prevent stormwater run-on and runoff and provide secondary containment. Do not install drains in the secondary containment areas. No floor drains unless pretreated prior to discharge to the sanitary sewer.³ Connect containers or sinks used for parts cleaning to the sanitary sewer.³ 	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Fuel Dispensing Areas	<ul style="list-style-type: none"> Fueling areas shall have impermeable surface that is a) minimally graded to prevent ponding and b) separated from the rest of the site by a grade break. Canopy shall extend at least 10 ft in each direction from each pump and drain away from fueling area. 	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Loading Docks	<ul style="list-style-type: none"> Cover and/or grade to minimize run-on to and runoff from the loading area. Position downspouts to direct stormwater away from the loading area. Drain water from loading dock areas to the sanitary sewer.³ Install door skirts between the trailers and the building. 	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Fire Sprinklers	Design for discharge of fire sprinkler test water to landscape or sanitary sewer. ³	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Miscellaneous Drain or Wash Water	<ul style="list-style-type: none"> Drain condensate of air conditioning units to landscaping. Large air conditioning units may connect to the sanitary sewer.³ Roof drains shall drain to unpaved area where practicable. Drain boiler drain lines, roof top equipment, all washwater to sanitary sewer³. 	<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	Architectural Copper	Drain rinse water to landscaping, discharge to sanitary sewer ³ , or collect and dispose properly offsite. See flyer "Requirements for Architectural Copper."	<input type="checkbox"/>	<input type="checkbox"/>	

Continue to next page

³ Businesses that may have outdoor process activities/equipment include machine shops, auto repair, industries with pretreatment facilities.

D. Implement construction Best Management Practices (BMPs) (Applies to all projects).

Best Management Practice (BMP)

Attach the Alameda Countywide Water Pollution Prevention Program's construction BMP plan sheet to project plans and require contractor to implement the applicable BMPs on the plan sheet.

Temporary erosion controls to stabilize all denuded areas until permanent erosion controls are established.

Delineate with field markers clearing limits, easements, setbacks, sensitive or critical areas, buffer zones, trees, and drainage courses.

Provide notes, specifications, or attachments describing the following:

- Construction, operation and maintenance of erosion and sediment controls, include inspection frequency;
- Methods and schedule for grading, excavation, filling, clearing of vegetation, and storage and disposal of excavated or cleared material;
- Specifications for vegetative cover & mulch, include methods and schedules for planting and fertilization;
- Provisions for temporary and/or permanent irrigation.

Perform clearing and earth moving activities only during dry weather.

Use sediment controls or filtration to remove sediment when dewatering and obtain all necessary permits.

Protect all storm drain inlets in vicinity of site using sediment controls such as berms, fiber rolls, or filters.

Trap sediment on-site, using BMPs such as sediment basins or traps, earthen dikes or berms, silt fences, check dams, soil blankets or mats, covers for soil stock piles, etc.

Divert on-site runoff around exposed areas; divert off-site runoff around the site (e.g., swales and dikes).

Protect adjacent properties and undisturbed areas from construction impacts using vegetative buffer strips, sediment barriers or filters, dikes, mulching, or other measures as appropriate.

Limit construction access routes and stabilize designated access points.

No cleaning, fueling, or maintaining vehicles on-site, except in a designated area where washwater is contained and treated.

Store, handle, and dispose of construction materials/wastes properly to prevent contact with stormwater.

Contractor shall train and provide instruction to all employees/subcontractors re: construction BMPs.

Control and prevent the discharge of all potential pollutants, including pavement cutting wastes, paints, concrete, petroleum products, chemicals, washwater or sediments, rinse water from architectural copper, and non-stormwater discharges to storm drains and watercourses.

Name of applicant completing the form: Altamont Winds Inc. & WindWorks Inc.

Signature of applicant completing the form: William Z. Damon Date: Jan. 30, 2014
William Damon, Vice President

Name of Planner: _____ Date: _____

CONDITIONAL USE PERMIT ("CUP") STANDARD APPLICATION SEPARATE SHEET

2. Brief Description of Application. For complete description of the proposed CUP modifications, please see attached Project Description below at Exhibit 1.

All Altamont Pass Wind Resource Area ("APWRA") CUPs and their conditions are memorialized in the County Board of Supervisors' ("BOS") Resolution No. R-2005-463 dated September 22, 2005, as amended by BOS Resolution No. R-2007-111 dated January 11, 2007 and Resolution Z-13-36 dated July 18, 2013 ("BOS Resolutions"). For the purposes of this application, the modification request applies to the following sixteen existing CUPs (as they pertain to wind turbines owned and operated by Altamont Winds Inc. and WindWorks Inc.):

C-8036	C-8191	C-8235	C-8241
C-8037	C-8216	C-8236	C-8242
C-8134	C-8232	C-8237	C-8243
C-8137	C-8233	C-8238	C-8244

3. Project Site. Please refer to the APWRA map, attached as Exhibit 2.

4. Assessor's Parcel Numbers. Please refer to the list of CUPs, landowners and APNs attached as Exhibit 3.

6. Landowners. Again, please refer to the list of CUPs, landowners and APNs attached as Exhibit 3.

7. Applicant. The Applicant is Altamont Winds Inc. and WindWorks Inc. William Damon is Vice President of both companies.

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CONDITIONAL USE PERMIT (“CUP”) APPLICATION SUPPLEMENT SUPPORTING INFORMATION

1. **CUP Standard Application Form.** The completed CUP standard application form is included in Altamont Winds Inc.’s and WindWorks Inc.’s (collectively, “AWI”) conditional use permit (“CUP”) application package.
2. **CUP Application Supplement Form.** The completed CUP application supplement form is included in AWI’s CUP application package.
3. **Filing Deposit Fee.** A check in the amount of \$4,000 to cover the CUP application filing fee deposit is included in AWI’s CUP application package. A copy of this check can be found attached as Exhibit 4.
4. **Plot Plan.** All of the wind turbines and related infrastructure (i.e. wind farm) under the previously approved CUPs referenced in CUP application Section 2 were installed in the 1980s. This application seeks only to modify certain conditions of the relevant CUPs, and does not involve the construction of any new, additional or changed physical improvements. For this reason, a traditional building plot plan is not suited for inclusion in this CUP application. However, please refer to the APWRA map, attached as Exhibit 2, for the location of parcels on which the wind turbines comprising the wind farm are located.
5. **Relationship of Use to Four Findings.** The below information will allow the County to make the following four findings necessary to grant the requested modification of the CUPs (also, please refer to the Project Description attached as Exhibit 1 below).
 - 5.1 **The use is required by the public need.** The underlying need for APWRA wind farms is to continue their contribution towards satisfying the ever-increasing demand of society and consumers for electricity from clean, renewable energy resources. AWI’s existing 86 MW wind farm in the APWRA assists California in meeting its legislated Renewable Portfolio Standard criteria for the generation of renewable energy in the state; this standard requires electric utilities and providers to continuously increase procurement of renewable energy, such as from wind, up to 33% of their annual retail electricity sales by 2020. In addition, these wind farms assist California in meeting its legislated AB 32 global warming solutions criteria, requiring reductions in carbon dioxide and other greenhouse gases emissions by 25% to meet 1990 levels by 2020.

Reduced greenhouse gas and air pollution emissions provide substantial human health, wildlife, and climate benefits, as follows:

- > the wind farm displaces over 600 million pounds of toxic air pollutants and greenhouse gas emissions each year;
- > displacement of greenhouse gases and other pollution prevents over 900 bird deaths over three years (from 2016 through 2018);
- > also helps prevent premature deaths, heart attacks, and respiratory/breathing illnesses in humans.

This extension is also necessary to continue high-skilled wind power jobs in Alameda County preserve jobs for AWI employees, to preserve rental income to Altamont land owners, and to preserve taxes for the County and State, all in the event that repowering is delayed due to

circumstances beyond AWI's control. Without an extension of our permits and repowering, high-skilled wind power jobs in Alameda County will disappear as early as late 2015.

5.2 The use will be properly related to other land uses, transportation, and service facilities in the vicinity. Wind farming is compatible with traditional agricultural use, the other related land use in the vicinity, as evidenced by the successful combination of wind farms and agriculture in the APWRA since the 1980s. AWI's existing 86 MW wind farm is roughly one-seventh of the total 580 MW of wind farms originally built-out in the APWRA. AWI's wind farms have been fully staffed and operational since inception, and no additional facilities, transportation, parking or other service facilities will be required as a result of this CUP modification request.

5.3 The use, if permitted, under all the circumstances and conditions of the particular case, will not materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injurious to property or improvements in the neighborhood. AWI's existing 86 MW wind farm, which is also part of a total of 580 MW of wind farms originally built in the APWRA, has operated harmoniously and safely with persons, property and the public-at-large in the area since the 1980s. Since this CUP modification request does not involve any changes to the existing physical improvements or the methods of operation and maintenance, there will be no changed or increased impacts to persons, property and the public-at-large in the area from what exists today.

5.4 The use will not be contrary to the character or performance standards established for the District in which it is to be located. AWI's existing 86 MW wind farm is located in the A (Agriculture) zoning district, which has as its stated intent to promote implementation of General Plan land use policies for agriculture and other non-urban uses; to conserve and protect existing agricultural uses; and to provide space for and encourage such uses in places where more intensive development is not desirable or necessary for the general welfare. Wind power projects are encouraged by the General Plan in the APWRA. The use of wind farms is compatible with agriculture in all respects, including only the minimal removal of land from agricultural production. In addition, wind farming results in supplemental income for the agricultural property, thereby enhancing the viability of agricultural use and contributing to the longevity of this use, while retaining the land as non-urban open space.

6. Supporting Documents. All supporting documents are included in the attached Exhibits 1, 2 and 3.

7. Site Development Review Supplemental Forms Not Required. AWI's existing 86 MW wind farm is currently located within the APWRA, which is already exhaustively developed for wind farm operations. This CUP modifications request does not involve any new construction or additions, nor are any physical changes to external structures or the site proposed. For this reason, no site development review is required and site development review supplemental forms are not being submitted.

8. Other Information Requested by Planner. No additional information has been requested by the Planner.

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EXHIBIT 1

PROJECT DESCRIPTION

This Project Description describes the operational changes that would occur if the requested modifications to AWI's existing CUPs are approved. These CUPs currently regulate operation of AWI's existing wind energy generation facility, located within Alameda County in the Altamont Pass Wind Resource Area ("APWRA") in northern California, on numerous large parcels that total approximately 14,196 acres in area, or about 22 square miles, compared to the much larger APWRA, totaling over 75 square miles. The CUP modifications described herein were originally proposed in a letter to Alameda County sent on November 21, 2013.

Further, this Project Description identifies the project's regional location, outlines AWI's existing project facilities and operations, and identifies how the proposed revisions relate to the existing facilities and operations. Finally, this chapter outlines the effect of the project's cumulative conditions in the APWRA, as presently anticipated.

2.1 Description of the Existing Facilities and Operations

AWI currently owns and operates a wind energy generation facility comprised of 828 wind turbines and ancillary equipment spread throughout an area of several thousand acres of the APWRA in unincorporated eastern Alameda County. The facility is currently permitted by Alameda County to operate through October 31, 2015, at which point the CUPs for the project will expire and AWI will be required to decommission the facility. For the stated purpose of reducing the impact on certain avian species in the project area, all turbines comprising the facility are shut down from November 1 through February 14 of each year, a period known as the Winter Seasonal Shutdown ("WSSD").

A complete description of the existing facility is given in Section 2.4 in a previous Environmental Impact Report for this facility, *Draft Environmental Impact Report for Modification to Existing (Year 2005) Conditional Use Permits – Altamont Winds Inc. ("2013 EIR")*.

2.2 Proposed Changes to the Altamont Wind Project Conditional Use Permits

This section describes the key components of the project. The project would consist of the continued operation of existing turbines with a combined generation capacity of 85.8 MW on the existing wind energy facility site through October 31, 2015. After this point, operations would be extendable on a year-to-year basis for up to three years (through October 31, 2018), on the condition that AWI has diligently pursued development of a repowered wind farm on the project site (i.e., decommission the existing facility and replace it with an updated facility comprised of fewer, larger wind turbines), but where circumstances beyond AWI's control, as defined, have delayed completion of the repowered project. Additionally, in the event operations continue beyond October 31, 2015, AWI is proposing to replace the mitigation measures stipulated for impacts on certain avian species identified in the 2013 EIR with a new program of on-site mitigation. Specifically, the project would comprise the following components and activities:

2.2.1 Modification of Permanent Shutdown Date and Pursuit of Facility Repowering

Under the proposed permit modifications, AWI will be required to cease operations of the existing wind farm on October 31, 2015 unless (1) AWI has diligently pursued development of a

repowered wind farm on the project site, and (2) circumstances beyond AWI's control delay repowering beyond October 31, 2015.

(a) Diligent pursuit of repowering. To assess AWI's diligent pursuit of repowering, AWI has proposed inclusion of repowering development milestones which must be met as conditions of continuing operation beyond October 31, 2015. These development milestones would be conditions of approval, and failure to achieve these milestones by the dates set forth would constitute noncompliance with the CUPs. These milestones are as follows:

- (1) no later than March 31, 2014, AWI shall submit a project-specific repowering application to Alameda County;
- (2) no later than May 31, 2014, AWI shall submit an affidavit to Alameda County affirming obtainment of site control for the repowered wind farm;
- (3) no later than June 30, 2014, AWI shall begin preparation of a project-specific EIR for the repowering project;
- (4) continuous preparation of the project-specific repowering EIR until completion.

(b) Delay due to circumstance beyond applicant's control. To continue operation of the wind facility beyond October 31, 2015, in addition to diligently pursuing repowering, AWI's repowered project must be delayed beyond that date due to circumstances beyond AWI's control. Such circumstances considered outside of AWI's control which would allow AWI to operate beyond October 31, 2015 shall be:

- (1) delay in completion of an interconnection transmission study despite AWI's initiation of that study, or refusal by the California Independent System Operator to grant transmission/interconnection rights following such related study;
- (2) not able to secure an economic power purchase agreement for the repower project, despite commercially reasonable efforts to do so;
- (3) failure by Congress to renew the federal renewable energy production tax credit ("PTC") beyond 2015, which expired on December 31, 2013;
- (4) land owner site control for repowering is unilaterally withdrawn by the landowner or is otherwise terminated due to no fault of AWI;
- (5) repower permits are delayed or not issued by Alameda Co., including delays fostered by resource agencies and special interest groups, despite AWI's diligent pursuit of such permits;
- (6) procurement of wind turbines and related wind project equipment for repowered facilities is delayed due to market supply constraints;
- (7) the separation of existing Altamont Pass wind power assets (such as, land leases, substations, etc.), necessary to repower the site, is delayed by parties unrelated to AWI.

2.2.2 Modification of Mitigation Measures

Under the existing CUPs, AWI is required to mitigate for the project's contribution to golden eagle mortality by retrofitting hazardous electrical poles within 140 miles of the proposed project in an area with eagles at risk from electrocutions, as determined through coordination with the USFWS. The proposed CUP modifications would remove this mitigation measure and replace it with a number of alternative mitigations designed to achieve an equivalent or greater reduction in avian impact. These proposed replacement mitigation measures consist of:

1. a one-time, permanent shutdown of 50 wind turbines on Oct. 31, 2015;
2. annual mitigation payment of \$525/MW installed capacity (based on Feb. 15, 2016 installed capacity, and amended annually), to be paid toward avian mitigation or other conservation efforts, as determined by Alameda County;
3. at the end of each wind season, AWI will either permanently shut down or install a black blade, at AWI's option, on any operating wind turbine(s) identified to have been involved in a direct strike with any focal species during that wind season. "Identified to have been involved in a direct strike" means that a carcass is actually recovered by the monitoring team, as opposed to a statistically-assumed fatality, and is reasonably attributable to an AWI wind turbine based on the normal attribution criteria used by the monitoring team;
4. if two such fatalities occur at any operating turbine between Feb. 15, 2016 and Nov. 1, 2018, such turbine(s) will be immediately and permanently shut down.

2.3 Post-2016 APWRA Scenario

At the same time the proposed permit modifications potentially come into effect on October 31, 2015, significant changes in the operating landscape of the APWRA will take place that bear upon the impacts of the proposed project.

Following the 2015 wind season, which concludes on October 31, 2015, approximately 1,000 old generation wind turbines owned by other wind companies will be permanently shut down and will be removed. This reduction in turbine quantity and density may result in reduced pressure on local bird populations and migratory individuals in a manner that significantly reduces the mortality rate for raptors in the Altamont Pass.

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EXHIBIT 2
APWRA Map

EXHIBIT A.1, MAP KEY
Altamont Pass Wind Resources Area Permits
January 11, 2007

CUPs highlighted in
yellow apply to AWI

Key Map Number	Current CUP #	Property Owner w/ Key Map Number	Operator
1	C-8241	Walker Family Trust	Altamont Infrastructure Company
2	C-8137	Mulqueeney	Altamont Infrastructure Company
2	C-8191	Mulqueeney	Windworks, Inc.
3	C-8161	Pombo	SeaWest Power Resources
4	C-8023	Johnston	SeaWest Power Resources
5	C-8037	Pombo	Altamont Infrastructure Company
6	C-8238	Ralph Properties II	Altamont Infrastructure Company
7	C-8224	Elworthy	Altamont Power Company
8	C-8031	Corbett	Altamont Power Company
9	C-8036	Frick Trust	Altamont Infrastructure Company
10	C-8263	Patterson Pass Windfarms	EnXco, Inc.
11	C-8031	Corbett	Altamont Power Company
12	C-8216	Alameda Co. Waste Mgmt. Authority	Windworks, Inc.
12	C-8243	Alameda Co. Waste Mgmt. Authority	Altamont Infrastructure Company
13	C-8234	Ralph Properties II	Altamont Infrastructure Company
14	C-8235	Corbett	Altamont Infrastructure Company
15	C-8225	Guo/Lin	Altamont Infrastructure Company
16	C-8240	Hansen	Altamont Infrastructure Company
17	C-8244	Gomes Family Farms	Altamont Infrastructure Company
18	C-8237	Valhalla Enterprises	Altamont Infrastructure Company
19	C-8232	Egan	Altamont Infrastructure Company
20	C-8242	Gomes Family Farms	Altamont Infrastructure Company
21	C-8239	Jackson	Altamont Infrastructure Company
22	C-8231	Waste Mgmt. Inc.	Altamont Infrastructure Company
23	C-8134	Rooney	Altamont Infrastructure Company
24	C-8201	Griffith/Brockman	SeaWest Power Resources
25	C-8236	Dunton	Altamont Infrastructure Company
29	C-8224	Elworthy	Altamont Power Company
30	C-8233	Elliott Family	Altamont Infrastructure Company
32	C-8224	Elworthy	Altamont Power Company
33	C-8173	Wildlands	Altamont Infrastructure Company
34	C-8182	Ralph Properties II	SeaWest Power Resources
35	C-8136	Contra Costa Water District	Altamont Infrastructure Company
36	C-8203	Arnaudo/Castello	SeaWest Power Resources

Note: Permits on Sites 26, 27, 28 and 31 have not been extended.

Properties identified
in red apply to AWI

EXHIBIT A.1, MAP
Altamont Pass Wind Resources Area Permits
September 22, 2005

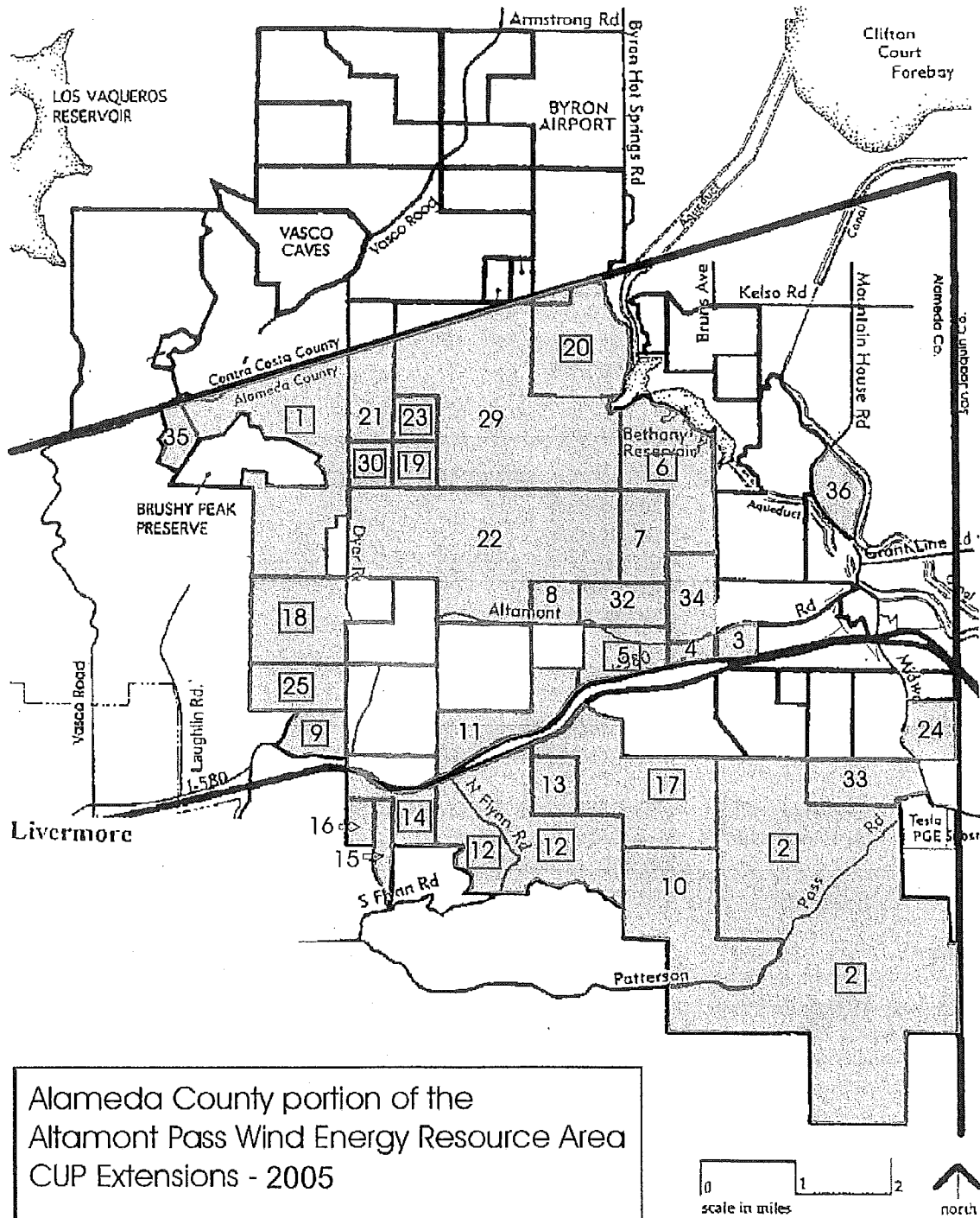


EXHIBIT 3
List of CUPs, Landowners and APNs

CUP No.	Landowner	Assessor's Parcel Numbers	Approximate Acres
C-8036	Frick/Costa	99B-5680-15	207.12
C-8037	Pombo	99B-6300-2-1, 99B-6300-2-2, 99B-6425-1-6, 99B-6325-2-4 and 99B-6400-1-7	224.26
C-8134	Rooney	99B-6125-2	160.21
C-8137	Mulqueeney	99B-7900-1-5, 99B-7900-1-7, 99B-7890-2-4, 99B-7890-2-5, 99B-7890-2-6, 99B-7925-2-4, 99B-7925-2-1, 99B-7925-2-5, 99B-7950-2, 99B-7975-1, 99B-7980-1, 99B-7985-1-6, 99B-7985-1-4, 99B-7985-1-3, 99B-7985-1-5, 99A-1800-2-4, 99A-1800-2-3 and 99B-8050-1	4,447.50
C-8191	Mulqueeney	99B-7910-1-1	592.84
C-8243	ACWMA	99A-1780-1-4, 99A-1770-2-1, 99A-1770-2-2, 99A-1770-2-3, 99A-1810-1 and 99A-1790-3	1,324.83
C-8216	ACWMA	99A-1810-1	240.81 (parcel acreage included in C-8243)
C-8231*	Altamont Landfill	99B-6225-1, 99B-6250-1, 99B-6275-1-1	1,547.80
C-8232	Egan	99B-6125-3	160.47
C-8233	Elliott	99B-6125-4	157.54
C-8235	Corbett	99B-5650-1-4 and 99A-1785-1-14	284.96
C-8236	Dunton	99B-5680-1	330.46
C-8237	Valhalla (Devincenzi)	99B-5610-1 and 99B-6075-3	665.98
C-8238	Ralph (north)	99B-7300-1-5 and 99B-7375-1-7	766.57
C-8239*	Jackson	99B-6125-5	325.59
C-8241	Walker	99B-6100-2-10, 99B-6100-2-11, 99B-6100-2-12, 99B-6100-3-10, 99B-6100-3-15, 99B-6100-3-11	1,314.55
C-8242	Gomes (north)	99B-6150-4-10, 99B-6150-3 and 99B-6150-2-7	635.48
C-8244	Gomes (south)	99B-6425-2-3, 99A-1790-2 and 99A-1795-1	1,049.48
TOTAL ACREAGE			14,195.64


* CUPs C-8231 and C-8239 are not currently granted to AWI or its affiliates.

Notes:

1. The above table includes those parcels and CUPs on which AWI currently has installed wind turbines, as well as those parcels and CUPs on which turbines owned by other wind companies are presently installed and whose wind turbines may be obtained in exchange on a turbine-for-turbine basis with turbines currently owned by AWI.
2. Many of the wind farms in the APWRA overlap, with different wind energy facility operating companies on a single parcel of land. Therefore, other wind companies beside AWI currently operate wind farms within the project area described above.

REEL

IMAGE

 Approved as to Form
DONNA R. ZIEGLER, County Counsel
By Heather M. Littlejohn, Deputy County Counsel

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

On motion of Supervisor _____

Seconded by Supervisor _____

and approved by the following vote:

Ayes: _____ Supervisors

Noes: _____

Excused or Absent: _____

**THE FOLLOWING RESOLUTION WAS ADOPTED MARCH 24, 2015:
NUMBER R-2015-_____**

**RESOLUTION DENYING IN PART AND GRANTING IN PART 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, A REQUEST TO EXTEND 16 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 THE APPELLANT ALTAMONT WINDS, INC.
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/Mulqueeney, APNs: 099A-1800-002-03, 99A-1800-002-04, 99B-7890-002-04, 99B-7890-002-05, 99B-7900-001-05, 99B 7900-001-07, 99B-7910-001-01, 99B 7925-002-04, 99B-7925-002-05, 99B 7975-001-00, 99B-7980-001-00, 99B 7985-001-03, 99B-7985-001-04, 99B 7985-001-05, 99B-7985-001-06 and 99B 8050-001-00;

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

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

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

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

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

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

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

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

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

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

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

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

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, Altamont Winds Inc. and Windworks Inc. filed the subject application in early 2014 requesting extension of 16 permits under which it operated its wind turbine assets through the end of 2018, which was one of the alternatives considered in the 2013 FEIR (Alternative 3), but for which the Board made findings in July 2013 to reject as infeasible and as likely to result in the next highest level of avian mortality after the proposal to operate without the winter season shutdown, and in order to address continued operations only and not the effects of decommissioning addressed in the 2013 EIR, provide the basis for findings in support of operations through 2018, incorporate new mitigation options and provide for adequate public review, the County required the preparation of a Supplemental Environmental Impact Report (SEIR); and

WHEREAS, a Draft SEIR was completed on November 17, 2014, which made the same findings as the original 2013 EIR of significant adverse impacts, either directly or through habitat modifications, on special-status avian species, and identified the same mitigation measures applicable to ongoing operations as the 2013 EIR but also identified a new Mitigation

Measure 17a to provide optional strategies to mitigate impacts on special-status avian species; and

WHEREAS, the East County Board of Zoning Adjustments held a public hearing on said application at the hour of 1:30 p.m. on the 18th day of December, 2014 for the purpose of receiving comments on the Draft SEIR, and again at 1:30 p.m. on the 2nd day of February, 2015 for the purpose of receiving comments on the project proposal, in the City of Pleasanton Council Chambers, 200 Old Bernal Avenue, Pleasanton, California; and

WHEREAS, the 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 found the following with respect to the requested Conditional Use Permit extensions:

1. That the recitals above were accurate and thereby adopted as findings of the Board of Zoning Adjustments;
2. The proposed Statement of Overriding Considerations does not meet the requirements of Section 15093 of the CEQA Guidelines in that it does not identify economic, legal, social, technological or other benefits of the project that outweigh its unavoidable adverse environmental risks, or that are supported by substantial evidence in the record;
3. Based on testimony received, and the evidence before it, that the economic benefit of the proposal to extend for three years the existing CUPs does not exceed the value of impacts on biological resources; and

4. No substantial evidence had been presented that no repowering project, which was the principal intent of the prior Resolution Z-13-36, or that no other wind power project, will move forward should the application be denied, nor has substantial evidence been provided that there would be a loss of jobs as a result of disapproval of the application sufficient to outweigh the unavoidable adverse environmental risks of the project; and

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, 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 March ____, 2015 to deny the appeal by Audubon California regarding the certification of the Final SEIR, and affirms that the SEIR has been completed in compliance with CEQA, that the Final SEIR was presented to the Board and the Board reviewed and considered the information contained in the Final SEIR, and that the Final SEIR reflects the independent judgment of the Board; and

WHEREAS, the Board has considered Exhibit A (Written Findings of Significant Effects), Exhibit B (Mitigation Monitoring and Reporting Program) and Exhibit C (Statement of Overriding Considerations) of this Resolution, each of which are required by State and Local CEQA Guidelines; and

WHEREAS, 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 eliminated or 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 which 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. The Board shall require Mitigation Measure BIO-17 to 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;

OR 2. The Board shall require Mitigation Measure BIO-17 to be implemented on the basis of the average golden eagle fatality rate (0.075) obtained from the Avian Monitoring Reports results for the bird years 2008 to 2012, in recognition that such a rate represents the largest number of years (i.e., more supporting data) during which time the winter season shutdown was in effect;

OR 2. The Board shall require Mitigation Measure BIO-17 to be implemented on the basis of the average golden eagle fatality rates (0.085) obtained from the Avian Monitoring Reports results for the bird years 2005 to 2010, in recognition that such a rate represents the worst-case rate and the worst-case rate available in 2013 used to calculate Mitigation Measure 17 under the 2013 EIR;

BE IT FURTHER RESOLVED that the Alameda County Board of Supervisors does hereby in part deny and in part 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 to 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. Beginning on February 15, 2016, the Permittee shall be limited to operate its wind energy turbine facilities to have an installed total operating capacity of 91.2 MW over three years, either by operating all facilities until June 22, 2017 (i.e., a total of 12-¾ months), or by shutting down 50% of its turbines through October 31, 2018, or in other stages such that the three-year installed or operating capacity may not be greater than 91.2 MWs. The Permittee shall submit its plans to the Planning Director to operate a set number of turbines for a set number of months prior to each February 15 of the years 2016 to 2018, and cease operating all turbines after the installed and operating capacity in these three years reaches 91.2 MWs based on the number and months of operations reported in said plans.
3. By October 31, 2015 ~~2013~~, 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, 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, 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.

4. Unless the Permittee chooses to apply for an eagle take permit as described in Mitigation Measure BIO-17a (and submits a complete draft Eagle Conservation Plan and meets other USFWS requirements for an ETP) within six months of approval of the CUP modifications, the Permittee shall make a deposit to a trust account of adequate funds prior to the start of each operational year (February 15th of each year, starting in 2016), that are dedicated to implementing Mitigation Measure BIO-17 and/or BIO-17a. Such deposits for the use of power pole retrofits, or contributions to regional conservation of raptor habitat may be adjusted (supplemented with additional funds or refunded) at the end of each operational year (2016 to 2018) based on actual expenditures and power pole retrofits completed.
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.
3. Repowering Progress Reporting. The Permittee shall submit a report semi-annually (twice yearly) to the Board of Zoning Adjustments describing, relative to each of the potential obstacles to repowering outlined as "Circumstances Outside of AWI's Control" in the FSEIR.
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 agents, officers and employees from any claim, action or proceeding against Alameda County, and/or its agents, 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. 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, including but not limited to those of the following agencies

- | | |
|--|---|
| a. California Public Utilities Commission | e. Bay Area Air Quality Management District |
| b. California Energy Commission | |
| c. California State Department of Fish and Wildlife | f. United States Fish and Wildlife Service |
| d. California State Water Quality and Control Board - San Francisco and Central Valley Regions | g. Federal Aviation Administration |

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.

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.

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 **24th** day of **March, 2015** to wit:

AYES: Supervisors
NOES: Supervisors
EXCUSED: Supervisors

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

ATTEST:

ANIKA CAMPBELL-BELTON, Clerk
of the Board of Supervisors

By:_____



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:_____

R-2015-##
Item #XX
Agenda 3/____/15

Exhibit A

Written Findings of Significant Effects

In accordance with State Public Resources Code §21081 and CEQA Guidelines Section 15091, the following findings are made and supporting facts provided for each significant environmental effect that has been identified in the Final Supplemental Environmental Impact Report (final 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 final 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 EBZA bases its decision) and mitigation measures in support of the findings. For specific resource mitigation measures, the section and page number where the full text of the mitigation measure occurs is noted in the 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 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 EBZA relating to the SEIR, the approvals, and the project
- All information (including written evidence and testimony) presented to the EBZA by the environmental consultants who prepared the SEIR or incorporated into reports presented to the EBZA
- 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 EBZA certifies that the SEIR has been completed in compliance with CEQA. The EBZA has independently reviewed the record and the SEIR prior to certifying the SEIR and approving the project. By these findings, the EBZA 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 EBZA. The EBZA recognizes the SEIR may contain clerical errors. The EBZA reviewed the entirety of the SEIR and bases its determination on the substance of the information it contains. The EBZA 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 EBZA 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

The EBZA 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 EBZA 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 EBZA 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 permit approval.

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 Significant Irreversible Changes

CEQA Section 21100(b)(2)(B) requires that an EIR identify any significant effect on the environment that would be irreversible if the project were implemented. Section 15126.2(c) of the State CEQA Guidelines characterizes irreversible environmental changes as those involving a large commitment of nonrenewable resources or irreversible damage resulting from environmental accidents.

The project's significant and irreversible changes are discussed in the 2013 Final EIR beginning at page 5-10. The 2013 Final EIR explains that, although the timing of the proposed project operations and decommissioning would differ from the schedule set forth in the existing CUPs, no new construction or physical changes to the environment not previously contemplated in the CUPs are proposed as part of the CUP modifications; therefore no additional nonrenewable resources would be used in project implementation. Further, the 2013 Final EIR notes that wind turbine facilities are considered temporary uses, subject to eventual removal at the end of their useful lifespan or conclusion of use permits, whichever comes first. In addition to the wind farms, the project area is predominantly used for grazing, which could continue unimpeded. The existing wind turbines and associated facilities would therefore not be considered irreversible uses of the project area.

The project is not expected to result in environmental accidents that would cause irreversible damage. Compliance with required plans, such as the Altamont Pass Wind Farms Fire Requirements, would minimize the potential for accidents that could result in environmental damage.

Findings and Recommendations Regarding Growth-Inducing Impacts

Section 15126.2(d) of the State CEQA Guidelines states that an SEIR should discuss "...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. Production of electricity from the project facilities is ongoing and would not create additional availability of energy resources beyond those already permitted for the facilities.

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
Impact BIO-1: Potential to cause a substantial adverse effect, either directly or through habitat modifications, on a special-status species.	<p>BIO-16: Implement Seasonal Shutdowns to Reduce Avian Fatalities</p> <p>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 until February 15 of the following year. No operational modifications will occur during the February 16 to October 31 period. AWI will notify County CDA each year when turbines have been shut down, and again when they have resumed operating.</p>	November 1 to February 15 of each year	Project Applicant	<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 15</p>

	<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, (together identified as Alternative 1 in the analysis of project alternatives) is projected to result in the fatality of approximately one eagle (cumulatively, and statistically, 0.7–1.0) when compared to the existing avian baseline condition (the No Project Alternative) (2013 FEIR Table 3.2-5). Although the baseline fatality rate is higher, this mitigation measure addresses the impacts of the proposed project (with mitigation), which is approximately one additional eagle fatality. 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 29 utility poles as mitigation for the expected level of eagle fatality from the proposed project. AWI may contract directly with an electrical utility to fund this mitigation; however, a written agreement and evidence of the completion of the retrofits must be provided to the County CDA. USFWS has estimated the cost of retrofits at \$7,500 per pole, and therefore AWI may contribute \$217,500 (\$7,500 x 29 poles) to a third party mitigation account (approved by the County CDA) instead of contracting directly with a utility. The third party mitigation account holder would have the responsibility of completing the mitigation or contracting for the mitigation to be completed. Evidence of completion of mitigation must be provided to the County CDA within one year of approval of the proposed project.</p>	<p>Prior to decommissioning and reclamation activities; after decommissioning and reclamation activities</p>	<p>Project Applicant</p>	<p>Reviewing Party County of Alameda</p> <p>Criteria Check to ensure retrofitting of electrical poles has been conducted</p> <p>Monitoring Action Require measure as part of issuing grading/building permits. Verify compensation after decommissioning and reclamation activities.</p>
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<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 using a balanced mix of the options presented below, as well as considering new options suggested by the growing body of knowledge during the course of the project lifespan, 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>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, 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</p>	<p>Compensation measures as detailed in an approved Special-Status Species Mitigation Plan must be implemented within 60 days of the permit approval.</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.</p> <p>Monitoring Action Require measure as part of issuing grading/building permits. Verify compensation after decommissioning and reclamation activities.</p>
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	<p>Special-Status Species Mitigation Plan must be implemented within 60 days of the permit approval. Special-Status Species Mitigation Plans may be revised—and will be reviewed by the County.</p> <ul style="list-style-type: none"> <p>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.</p> <p>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.</p> 		
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Exhibit C

Statement of Overriding Considerations

Pursuant to the requirements of CEQA Sections 21002, 21002.1, and 21081 and Section 15093 of the State CEQA Guidelines, the EBZA finds that approval of Modifications to the Conditional Use Permits (2013) for Altamont Winds, Inc., the potential environmental impacts of which have been evaluated in the Final Supplemental EIR, and as indicated in the above findings, will result in the occurrence of significant effects which are not avoided or substantially lessened, as described in the Written Findings of Environmental Significance. 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

Further, as required by CEQA Section 21081(b) and State CEQA Guidelines Section 15093, the EBZA finds that the unavoidable significant effects listed above are outweighed by specific findings that the project, as mitigated by the measures identified in the EIR, would provide overriding economic and region-wide and statewide environmental benefits. There are no legal, social, technological or other benefits known to the County, nor are such benefits required to be provided (they are only examples of reasons that may be applicable). Specifically, the project will provide the following benefits:

Economic Benefits

The project will maintain the electrical production from the AWI windfarm as has been in place since the beginning of 2013, or a maximum of 85.8 MW, 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 represents 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 Altamont Winds, Inc. to continue operating at its full capacity through 2018 would also serve to maintain a greater number of jobs and higher tax revenue from the production of electricity.

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 under construction in Hayward) that would in part serve to replace electrical energy production capacity that would be eliminated if the project were not approved.

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 31, 2018 and required removal by 2020 will further assist in these repowering efforts.

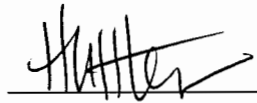
Furthermore, the County recognizes the merits of the research paper prepared by McCubbin and Sovacool for Altamont Winds, Inc., titled *Health, Wildlife and Climate Benefits of the 580 MW Altamont Wind Farm*, which provides detailed documentation of atmospheric and air quality benefits of wind energy production, with human health, wildlife health and other measured ecological advantages. 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 are limited.

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. 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, to the least acceptable level.

REEL

IMAGE



Approved as to Form

DONNA R. ZIEGLER, County Counsel

By Heather M. Littlejohn, Deputy County Counsel

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

On motion of Supervisor _____

Seconded by Supervisor _____

and approved by the following vote:

Ayes: _____ Supervisors

Noes: _____

Excused or Absent: _____

**THE FOLLOWING RESOLUTION WAS ADOPTED MARCH 24, 2015:
NUMBER R-2015- 97**

RESOLUTION DENYING THE APPEAL OF AUDUBON CALIFORNIA, GOLDEN GATE AUDUBON SOCIETY, MOUNT DIABLO AUDUBON SOCIETY, MARIN AUDUBON SOCIETY AND SANTA CLARA VALLEY AUDUBON SOCIETY ("AUDUBON"), OF THE EAST COUNTY BOARD OF ZONING ADJUSTMENTS DECISION ON FEBRUARY 2, 2015 TO CERTIFY THE SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT (SEIR) FOR APPLICATION PLN2014-00028, A REQUEST TO EXTEND 16 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 THE APPELLANT ALTAMONT WINDS, INC. 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/Mulqueeney, APNs: 099A-1800-002-03, 99A-1800-002-04, 99B-7890-002-04, 99B-7890-002-05, 99B-7900-001-05, 99B 7900-001-07, 99B-7910-001-01, 99B 7925-002-04, 99B-7925-002-05, 99B 7975-001-00, 99B-7980-001-00, 99B 7985-001-03, 99B-7985-001-04, 99B 7985-001-05, 99B-7985-001-06 and 99B 8050-001-00;

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

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

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

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

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

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

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

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

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

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

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

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

Additionally, under an asset exchange proposed in 2014 between AWI and Green Ridge Power LLC ("GRP") and included as a potential outcome in the project application, and completed on February 23, 2015, 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 the six CUPs have been 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, Altamont Winds Inc. and Windworks Inc. filed the subject application in early 2014 requesting extension of 16 permits under which it operated its wind turbine assets through the end of 2018, which was one of the alternatives considered in the 2013 FEIR (Alternative 3), but for which the Board made findings in July 2013 to reject as infeasible and as likely to result in the next highest level of avian mortality after the proposal to operate without the winter season shutdown, and in order to address continued operations only and not the effects of decommissioning addressed in the 2013 EIR, provide the basis for findings in support of operations through 2018, incorporate new mitigation options and provide for adequate public review, the County required the preparation of a Supplemental Environmental Impact Report (SEIR); and

WHEREAS, a 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, 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, BIO-17a, to provide optional strategies to mitigate impacts on special-status avian species; 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, the East County Board of Zoning Adjustments held a public hearing 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 Final SEIR and the project proposal, in the City of Pleasanton Council Chambers, 200 Old Bernal Avenue, Pleasanton, California; 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, 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, on February 2, 2015, after receiving public comment on both the Final SEIR and the proposed CUP extensions, the East County Board of Zoning Adjustments voted by two in favor and one opposed to approve Resolution Z-15-03 to certify that the Final SEIR was completed in compliance with CEQA, that the Final SEIR was presented to the Board and it had reviewed and considered the information contained in the Final SEIR, and that the Final SEIR reflected 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 found the following with respect to the requested Conditional Use Permit extensions:

1. That the recitals above were accurate and thereby adopted as findings of the Board of Zoning Adjustments;
2. The proposed Statement of Overriding Considerations does not meet the requirements of Section 15093 of the CEQA Guidelines in that it does not identify economic, legal, social, technological or other benefits of the project that outweigh its unavoidable adverse environmental risks, or that are supported by substantial evidence in the record;
3. Based on testimony received, and the evidence before it, that the economic benefit of the proposal to extend for three years the existing CUPs does not exceed the value of impacts on biological resources; and
4. No substantial evidence had been presented that no repowering project, which was the principal intent of the prior Resolution Z-13-36, or that no other wind power project, will move forward should the application be denied, nor has substantial evidence been provided that there would be a loss of jobs as a result of disapproval of the application sufficient to outweigh the unavoidable adverse environmental risks of the project; and

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 certification of the SEIR and the denial of the permit extensions, as permitted by the Alameda County General Code, 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 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, this Board of Supervisors held a hearing on the appeal on March 24, 2015, at the hour of 11:00 a.m. at which time the Board took public testimony from the Appellants, landowners, other organizations and the public regarding the certification of the SEIR and the denial of the CUP extensions; and

WHEREAS, the Planning Department submitted a letter to the Board of Supervisors summarizing the facts and circumstances of the appeal by Audubon California and affiliated regional groups to overturn the certification of the SEIR, and has made available to the Board all of the documents constituting the record upon which the appeal was taken, indicating that the Final SEIR has been completed in compliance with CEQA including Sections 15089 and 15132 of the CEQA Guidelines, 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

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 Alameda County Board of Supervisors did hear and consider all said reports, recommendations and testimony as hereinabove set forth;

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

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 and the 2 Conditional Use Permits for assets now under the control of Altamont Winds, Inc. located north of Interstate Highway I-580, 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 an elected decision-making body for the local lead agency, and that the certification of the Final SEIR by the Alameda County Board of Supervisors is final, for .
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.

NOW THEREFORE BE IT RESOLVED, that the Alameda County Board of Supervisors does hereby deny the appeal of Audubon California, Golden Gate Audubon Society, Mount Diablo Audubon Society, Marin Audubon Society and Santa Clara Valley Audubon Society, of the East County Board of Zoning Adjustments decision on February 2, 2015 to certify the Supplemental Environmental Impact Report for application PLN2014-00028, and hereby certifies said Supplemental Environmental Impact Report.

ALAMEDA COUNTY BOARD OF SUPERVISORS

THE FOREGOING was **PASSED** and **ADOPTED** by a majority vote of the Alameda County Board of Supervisors this **24th** day of **March, 2015** to wit:

AYES: Supervisors
NOES: Supervisors
EXCUSED: Supervisors

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

ATTEST:
ANIKA CAMPBELL-BELTON, Clerk

of the Board of Supervisors

By: _____



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: _____

THE FOREGOING was **PASSED** and **ADOPTED** by a majority vote of the Alameda County Board of Supervisors this 24th day of March 2015, to wit:

AYES: Supervisors: Carson, Chan, Miley, Valle & President Haggerty – **5**

NOES: None

EXCUSED: None



PRESIDENT, BOARD OF SUPERVISORS

File No: 29114
Agenda No: 49.1
Document No: R-2015-97



I certify that the foregoing is a correct copy of a Resolution adopted by the Board of Supervisors, Alameda County, State of California

ATTEST:

Clerk of the Board
Board of Supervisors

By: 

Deputy