



# Altamont Winds LLC

25 January 2016

Alameda County Board of Supervisors  
Alameda County Administration Building  
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Oakland, California 94612

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**Subject: Appeal of East County Board of Zoning Adjustments' Final Resolution No. Z-16-01, with respect to the Denial of Four Turbine Sites and the Imposition of Improper Conditions in Conditional Use Permit, PLN2014-00056 54 MW Summit Wind Repower Project**

Dear Alameda County Supervisors:

Altamont Winds LLC (“**AW**”) submits this appeal of the East County Board of Zoning Adjustments’ (“**EBZA**”) final Resolution No. Z-16-01, and partial approval of our application for Conditional Use Permit (“**CUP**”) PLN2014-00056, for our 54 MW Summit wind repower project (the “**Project**”). The basis of our appeal is that the EBZA improperly removed four proposed Program Environmental Impact Report (“**PEIR**”) compliant wind turbine sites, and imposed improper additional conditions on the Project that was approved for twenty-seven proposed wind turbine sites.

AW respectfully requests that the Board of Supervisors approve all proposed turbine sites and strike the EBZA’s improper conditions, and approve the CUP subject to those conditions recommended by the Alameda County (“**County**”) staff based on the PEIR and requisite California Environmental Quality Act (“**CEQA**”) checklist (“**Checklist**”), and in conformity with the CUPs granted to all previous repower applicants.

**1. Background and introduction.** On November 12, 2014, the EBZA certified the PEIR, which outlined the anticipated environmental impacts of repowering wind projects within the Alameda County portion of the Altamont Pass Wind Resource Area (“**APWRA**”) and provided a framework for the County to review the expected repowering projects as tiered projects in accordance with CEQA.

This Project is the fourth project to be considered by the EBZA in the repowering of the Alameda County portion of the APWRA. The previous three — Patterson Pass, Golden Hills

and Golden Hills North — were all granted CUPs in compliance with the requirements of the PEIR. The County staff has testified that this Project is consistent with the PEIR.

AW applied for a repowering CUP, and was scheduled a permit approval hearing on November 19, 2015. At that hearing, the EBZA listened to testimony from members of the public, who claimed that certain turbine sites were not sited beyond the proper setback distance from their residences and/or otherwise were simply sited too close to their residences. While the County's engineering consultant assured the EBZA that these turbines were beyond the setback distances, the EBZA continued the hearing to December 10, 2015, to receive and consider further information. After a noticing issue by the County prevented that hearing from going forward in 2015, the EBZA reconvened on January 14, 2016, and despite acknowledging that the turbines in question were properly sited beyond the mandatory setback distances (the investigation of which was purported to be the impetus of the continuance), the EBZA eliminated these four turbine sites from the Project. The EBZA then went on to subject AW's Project to a different and more stringent set of conditions than those imposed on the other three previously approved wind project CUPs, which were tiered off of the same PEIR.

## **2. The four subject turbines are sited to meet all setback requirements.**

**2.1 The specific turbine sites.** The EBZA eliminated proposed turbine sites 23, 24, 25 and 26 (see site plan attached as Exhibit A) from the permit approval.

**2.2 The siting process.** Siting turbines is a complex process that takes into account numerous, varied and often confounding factors, using the best available information for the best overall turbine locations. Such factors include, but are not limited to: air navigation, meteorology, topography, aerodynamics, communication corridors, land easements, wildlife, habitats, cultural resources, public issues, and regulatory issues. All such factors are considered together to site each wind turbine.

**2.3 Post CUP-approval siting considerations.** After the CUP is approved, AW must continue to work with the County Technical Advisory Committee (“**TAC**”) and the Planning Director to finalize the site plan, per the PEIR and Checklist requirements. The Project's final siting and Avian Protection Plan (“**APP**”) are subject to the approval of the Planning Director, and any turbine site(s) could potentially be eliminated by the TAC or disapproved by the Planning Director prior to the issuance of the necessary building permits.

**2.4 The project is consistent with the PEIR setback requirements.** The EBZA-certified PEIR, established the setbacks from residences and other land uses, that turbine sites must be located at or beyond. Three of the four turbine sites eliminated are beyond this setback distance, with turbine site 24 being located only 7 feet within this setback (at current siting tolerances), however, site 24 would be micro-sited prior to construction to be properly located beyond the County's adopted setback standard. Since all turbine sites will be PEIR-compliant, the Project should be approved in its entirety, just as the EBZA approved the Golden Hills and Patterson Pass CUPs in November of 2014 and the Golden Hills North CUP in November of 2015.

**3. The EBZA has singled out the Project to impose arbitrary and capricious conditions that are neither feasible nor rational.** While the EBZA voted to impose three additional conditions on the Project that were not imposed on the prior applicants' repower projects (despite being tiered off the same PEIR), the specific language of the added conditions was

only released to AW on January 22, in the afternoon, and has not yet been fully analyzed by AW. The first condition requires that final turbine siting and the APP be explicitly subject to approval of the Planning Director, who will in turn report to the EBZA. The previous three applicants were not subject to this condition.

The second condition requires that AW submit final siting information and the APP, sufficient for TAC consideration, to the Planning Director within 45 days after the approval of the CUP, despite the staff-recommended conditions of approval stipulating a comprehensive siting process that includes only submitting the above information prior to construction. Forty-five days is not nearly enough time for an applicant to finalize the information being requested, and there is no defensible basis for the EBZA to impose this additional and onerous condition. The Project should be subject only to the same conditions imposed on the previously approved three repower projects, consistent with the PEIR.

The third condition would require AW to incorporate aircraft obstruction warning lights on its turbines that would be “shrouded, directed upwards, or utilize other technology in order to minimize visibility at the ground level,” subject to the approval of the Planning Director and Building Official if Federal Aviation Administration (“**FAA**”) requirements conflict with this condition. This condition will likely run afoul of FAA requirements. There is no rationale for the Planning Director and/or Building Official to have the authority to preempt FAA requirements. Again, the previous three applicants were not subject to this condition.

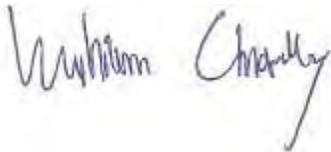
**4. Conclusion.** For the reasons above, AW respectfully requests that that the Board of Supervisors holds AW to the same standards as the other repowering applicants in the Alameda County portion of the APWRA, and the EBZA’s actions to deny turbine sites 23, 24, 25, and 26, and the imposition of additional conditions not imposed on the previously approved three PEIR-tiered repowering projects, be overturned.

Pursuant to a telephone conversation with Assistant Planning Director, Sandra Rivera, on January 25, 2016, AW is not required to include a check in the amount of \$250 with this appeal. Thank you for your consideration.

Please contact us if you have any questions.

Sincerely,

Altamont Winds LLC

A handwritten signature in blue ink that reads "William Charley". The signature is written in a cursive style and is positioned above the typed name.

William Charley  
Legal Counsel

**EXHIBIT A**  
**Site Plan**

