



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 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 4 <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 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 AWP'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.

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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 PRORAM

Impact	Proposed Mitigation Measure	Timing	Implementation	Monitoring
<p>Impact BIO-1: Potential to cause a substantial adverse effect, either directly or through habitat modifications, on a special-status species.</p>	<p>BIO-16: Implement Seasonal Shutdowns to Reduce Avian Fatalities In order to reduce the potential impacts of the proposed project on avian species (to include raptors and special status species), AWI will implement seasonal shutdowns on all turbines for the remaining operational period. Turbines will be turned off on November 1 each year and will remain off 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>	<p>November 1 to <u>until</u> February 15 of each year</p>	<p>Project Applicant</p>	<p>Reviewing Party County of Alameda, SRC</p> <p>Criteria Verify that seasonal shutdowns have been implemented</p> <p>Monitoring Action Verify each year between November 1 and February 15</p>
	<p>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.</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>

	<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 these special-status species mitigation measures. The County will implement the mitigation measures 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 contributing to regional conservation of raptor habitat on 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"):	<u>\$1,355.77</u>
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

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



**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:

- 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.
- 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.
- 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 J. 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



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

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. Danof MP

⑈00 2 209⑈ ⑆ 1 24 10 3 7 9 9 ⑆ 2 2 5 0 0 0 2 2 9 8 ⑈

Details on back.
Security Features Included.

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-

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

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% 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;

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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 rate 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.