

**RESOLUTION NO. Z-15-26 OF
THE EAST COUNTY BOARD OF ZONING ADJUSTMENTS
ADOPTED AT THE HEARING OF AUGUST 27, 2015, CONCERNING
PLN2015-00128**

WHEREAS BROOKFIELD RENEWABLE ENERGY GROUP / MULQUEEN-EY RANCH PROPERTIES, LLC has applied for Conditional Use Permit, PLN2015-00128, a request to construct five meteorological masts and equipment (i.e., remote testing facilities) to measure wind conditions, including four 60-meter (197 feet) towers and one 80-meter (262.5 feet) tower, to be operated temporarily for one to three years, located on four parcels in the A-BE (Agriculture, 160-acre minimum building site area) District, located at 17257 and 17350 Patterson Pass Road, both north and south sides, unincorporated Livermore/ Tracy area of Alameda County, 1,840 feet west of Midway Road (and extending approximately 2.5 miles further west), bearing Assessor Parcel Numbers: 099B-7900-001-05; 099B-7900-001-07; 099B-7975-001-00; and 099B-8050-001-00; and

WHEREAS the Board did hold a public hearing on said application at the hour of 12:30 p.m. on the 27th day of August, in the City of Pleasanton Council Chamber, 200 Old Bernal Avenue, Pleasanton, California; and

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

WHEREAS this application has been reviewed in accordance with the provisions of the California Environmental Quality Act (CEQA) and is considered a tiered project which has been reviewed using a checklist pursuant to Section 15168(c) of CEQA Guidelines, as consistent with the Program Environmental Impact Report (PEIR) certified by the East County Board of Zoning Adjustments on November 12, 2014, such that: a) the scope of the PEIR (i.e., the range of activities evaluated therein) encompasses repowering activities including temporary meteorological tower installation as stated on page 2-14 of the PEIR; b) no new significant impacts not identified in the PEIR would result from the application; and c) such impacts as could potentially result from the application can be avoided or reduced to less than significant impacts by the implementation of mitigation measures that have been identified in the PEIR; and

WHEREAS further in compliance with Section 15091 of the CEQA Guidelines, the Planning Department has prepared a Mitigation Monitoring and Reporting Program, attached herein as Exhibit B, which is required to be implemented by the Permittee and by the County as a condition of approval of the project and that are fully enforceable through permit conditions, agreements, or other measures; and

WHEREAS a Staff Report was submitted to the Board recommending the application be conditionally approved; and

WHEREAS the Applicant appeared at said public hearings and presented testimony in support of the application; and

WHEREAS the Board did hear and consider all said reports, recommendations and testimony as hereinabove set forth;

NOW THEREFORE,

BE IT RESOLVED that the Board finds that:

- (a) The use is required by the public need as the project will help determine if a commercial repowering project is feasible on the project site. The use is required by the public need in that wind energy production in the APWRA represents a major source of renewable energy, which will serve state and local energy objectives. A proposed repowering project, if determined to be feasible based on the results of this met mast monitoring project, would replace existing turbines with more efficient turbines, which also have the potential to reduce avian mortality impacts.
- (b) The use will be properly related to other land uses and transportation and service facilities in the vicinity as the proposed project is an existing wind farm and thus the use is well-suited from a planning and practical perspective for continued use as a wind farm which includes wind regime-testing facilities.
- (c) The use, if permitted, under all the circumstances and conditions of this particular case, will not materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injuries to property or improvements in the neighborhood as the proposed project would be located within an existing wind farm which does not have persons residing or in the vicinity. The masts will be required to comply with FAA requirements, and the 80-meter tower may be subject to lighting requirements.
- (d) The use will not be contrary to the specific intent clauses or performance standards established for the District in which it is to be considered as remote testing facilities are permitted in an "A" Agriculture District with an approved Conditional Use Permit under Section 17.06.040.P, Alameda County Zoning Ordinance, and further that the A district has as its stated intent, "to promote implementation of General Plan land use policies for agriculture and other nonurban uses; to conserve and protect existing agricultural uses; and to provide space for and encourage such uses in places where more intensive development is not desirable or necessary for the general welfare." The proposed project would be consistent with this intent because the development of wind power projects is both allowed and encouraged in the APWRA by the East County Area Plan, the project removes minimal or extremely little land from agricultural production, and the use is appropriately located in non-urban areas and will serve the public welfare and the need for renewable energy.

BE IT FURTHER RESOLVED that the Board does hereby approve the said application as shown by materials labeled Exhibit 'B' dated April 21, 2015 ("Mulqueeney Meteorological Tower Site 1, Site 2, Site 4, Site 5 and Site 6") on file with the Alameda County Planning Department subject to the following conditions:

1. Approval. Approval of this permit authorizes construction of five meteorological masts and equipment (i.e., remote testing facilities) to measure wind conditions, including four 60-meter (197 feet) towers and one 80-meter (262.5 feet) tower, to be operated for one to three years.
2. Compliance and Conditions. Permittee agrees to comply with all applicable regulations, rules and requirements of the County of Alameda and its Agencies, all subdivisions and departments of such agencies, and to comply with specific conditions of approval described herein by the representatives of said agencies, including but not limited to:
 - a. Community Development Agency, Planning Department
 - b. Public Works Agency, Building Inspection Department
 - c. Fire Department, including the Fire Prevention Bureau
 - d. Sheriff's Office

Permittee further agrees to comply with all applicable regulations, rules and requirements of the State of California and United States agencies, including but not limited to the following:

 - e. California State Department of Fish and Wildlife
 - f. United States Fish and Wildlife Service
 - g. Federal Aviation Administration
3. Building Permit. Building permits shall be obtained for each MET tower, and a soils report and geological study may be required. The building permit application shall comply with building codes in effect at the time of submission, and a California licensed architect or engineer is to be designated as the design professional responsible for the project design submittal.
4. Site Plan Details. Applicant shall provide site plans at a scale satisfactory to the Building Inspection Department and Fire Department – Fire Prevention Bureau, showing gate and key box locations, fire and emergency access routes and road widths, water tanks and major structures. The Applicant shall maintain compliance with their site fire plan and resubmit updated plans annually.
5. Fire Department Approval. Applicant shall contact the Alameda County Fire Department, Fire Prevention Bureau, to obtain a fire clearance certificate. The Bureau may be reached by telephone at (510) 670-5853.

6. Liability. By exercise of this Conditional Use Permit, the Permittee agrees to defend, indemnify and hold harmless the County of Alameda, its officers, employees, agents and servants for any and all liability caused by the negligence or wrongful act of the Permittee arising out of the exercise of this Conditional Use Permit, and to pay all claims, damages, judgments, legal costs, adjuster fees, and attorney fees related thereto.
7. Indemnification. The Permittee shall defend, indemnify, and hold harmless Alameda County or its agents, officers, and employees from any claim, action, or proceeding against Alameda County or its, agents, officers or employees to attack, set aside, void, or annul Conditional Use Permit, PLN2015-00128, the Program Environmental Impact Report (PEIR) and its analysis of project impacts, the California Environmental Quality Act (CEQA) findings, determination of significant impacts, the Mitigation Monitoring and Reporting Program (MMRP), or any combination thereof. Such indemnification shall include, but not be limited to, an award of costs and attorney's fees incurred by Alameda County in its defense. The County shall promptly notify Permittee of any such challenge.
8. Mitigation Monitoring and Reporting Program. The Permittee shall implement all applicable mitigation measures identified in the Mitigation Monitoring and Reporting Program (MMRP) attached herein as Exhibit C, and as specified individually herein.
9. Inspections and Cost Recovery. The Permittee shall allow staff of the Alameda County Planning Department, Alameda County Public Works Agency, the California Department of Fish & Wildlife, and any other responsible agency to conduct site inspections during construction and operation of the project in order to ensure compliance with approved permits, plans, and conditions of approval. Inspections shall be conducted at the discretion of said agencies. The project sponsor or its successors shall be responsible for payment of all reasonable costs associated with the necessary inspections to confirm implementation of the conditions of approval herein, including costs incurred by the Community Development Agency, the County Fire Department, the Building Inspection Division, the Public Works Agency or any other applicable Federal, State or County department or agency.
10. Maintenance. The remote testing facility shall be regularly maintained to ensure safety and avoid deterioration of appearance (e.g., paint and debris caught in guy wires).
11. Contact Information: Applicant (Brookfield Renewable Energy Resources, or its representative or successor) shall maintain at all times contact information on file with the Alameda County Planning Department and at each main access gate to the tower masts.
12. Site Restoration. Permittee shall provide written notification to the Board of Zoning Adjustments upon cessation of operations on the site. The permittee/property owner shall remove all improvements authorized under this permit from the site and the property shall be returned to its pre-application condition within three months of cessation.

13. Project Guarantee. Application for Building Permits to implement any portion of this Conditional Use Permit or operation of the remote testing facility shall be accompanied by a financial guarantee, which shall be indexed annually for inflation, satisfactory to County Counsel, for the removal of the facility in the event that its use is abandoned or its use permit expires or is terminated. The amount of the guarantee per facility may be reduced or eliminated if, a) the applicant has more than one such remote testing facility in the County, and/or b) the property owner and lessee of the sites provides for removal of unused improvements through their lease agreements that are satisfactory to the County. If the owner or lessee does not remove any obsolete or unused facilities, the financial guarantee shall be used by the County to remove any obsolete or unused facilities. Applicant and/or property owner shall continue to be responsible for full site reclamation, and shall provide additional funding as may be necessary to fully restore the site. Any unused financial guarantee shall be relinquished to the applicant upon termination of the use and removal of facility or transfer of the lease accompanied by a financial guarantee by the new lessee or owner in compliance with zoning requirements in effect at that time.

14. Signage. Permittee shall provide signage as required by the permitting authority (e.g. Fire Department, Planning Department) including phone numbers of the utility provider for use in case of an emergency. Signs shall be posted on the major entrances to the sites. The masts or mountings shall not be used for advertising.

Pursuant to Section 17-52.050 of the Alameda County Zoning Ordinance 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, said Conditional Use Permit shall terminate on August 27, 2020 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**