

**RESOLUTION NO. R-2021-613**

**A RESOLUTION APPROVING THE MULQUEENEY RANCH WIND PROJECT  
CONDITIONAL USE PERMIT PLN2019-00226, ADOPTING THE FINAL SUBSEQUENT  
ENVIRONMENTAL IMPACT REPORT, AND DENYING THE APPEAL SUBMITTED BY  
AUDUBON CALIFORNIA ET AL.**

**WHEREAS, MULQUEENEY WIND ENERGY, LLC, a wholly-owned subsidiary of Brookfield Power US Holding America Co. (Permittee), filed an application for CONDITIONAL USE PERMIT, PLN2019-00226 (Project) in December 2019, to allow repowering of 518 existing or previously existing old generation wind turbine sites to install and operate up to 36 new turbines with a maximum production capacity of 80 megawatts (MW), using turbines rated between 2.2 to 4.2 MW per turbine, and to make improvements to related infrastructure, on twenty-nine (29) parcels in an area designated in the A (Agriculture) zone district located on roughly 4,600 acres in total area in the southeastern quadrant of the Alameda County portion of the Altamont Pass Wind Resource Area, north and south of Patterson Pass Road, between approximately one-third and four miles west of Midway Road, and between one and five miles south of Interstate 580, including the following Assessor's Parcel Numbers:**

99A-1800-2-3; 99A-1800-2-4; 99B-7890-2-4; 99B-7890-2-5; 99B-7890-2-6;  
99B-7890-4; 99B-7900-1-3; 99B-7900-1-4; 99B-7900-1-5; 99B-7900-1-6;  
99B-7900-1-7; 99B-7900-2; 99B-7910-1-1; 99B-7910-1-2; 99B-7925-2-1;  
99B-7925-2-2; 99B-7925-2-3; 99B-7925-2-4; 99B-7925-2-5; 99B-7925-3;  
99B-7950-2; 99B-7975-1; 99B-7980-1; 99B-7985-1-3; 99B-7985-1-4;  
99B-7985-1-5; 99B-7985-1-6; 99B-8050-1; and 99B-8100-1-1.

**WHEREAS, the subject Project is part of an overall program to repower the entire Altamont Pass Wind Resource Area (APWRA) by replacing older generation turbines with newer, larger turbines that serve to improve turbine efficiency but also have the potential to substantially reduce avian mortality, especially for raptor species; and**

**WHEREAS, the repowering of the APWRA (hereinafter referring only to the Alameda County portion thereof) was the subject of a Program Environmental Impact Report (PEIR) which the East County Board of Zoning Adjustments certified by adoption of Resolution Z-14-40 on November 12, 2014 as being in compliance with the California Environmental Quality Act (CEQA); and**

**WHEREAS, Section 15162 of the CEQA Guidelines provides direction as to the circumstances in which a subsequent EIR shall be prepared including when, based on substantial evidence in light of the whole record, the lead agency determines that substantial changes are proposed in the project or program described and addressed in a prior EIR, or changes in the circumstances under which the project will be undertaken, that together would involve new significant environmental effects or more severe significant effects than previously identified, such that major revisions of the prior EIR are required; and**

**WHEREAS, the Project has been reviewed in accordance with the provisions of CEQA and it was determined that while the Project's scope was described generally as part of**

the 2014 PEIR, the Project proposes individual turbines with a higher nameplate capacity and longer rotor blades, such that the potential or likely effect would be increased avian and bat mortality on a per turbine basis, which supports the County's decision to prepare a subsequent EIR; and

**WHEREAS**, the Project is proposed in the context of new information including additional monitoring reports from similar repowering projects in both Alameda and Contra Costa Counties and further information regarding bat mortality, that combined with the physically larger turbines with a greater MW output together support the County's decision to prepare a subsequent EIR; and

**WHEREAS**, a Notice of Preparation (NOP) of a Subsequent Environmental Impact Report (DSEIR) was issued on April 6, 2020 soliciting public input regarding the environmental analysis of the repowering Project; and

**WHEREAS** the Draft Mulqueeneey Ranch Project Subsequent Environmental Impact Report (DSEIR) was prepared and circulated for public comment between November 6, 2020 and December 21, 2020, and then extended for comment through January 8, 2021; and

**WHEREAS**, in compliance with Sections 15091 and 15093, respectively, of the CEQA Guidelines, the Planning Department has prepared Written Findings of Significant Effects (Exhibit A), a Mitigation Monitoring and Reporting Program (Exhibit B), and a Statement of Overriding Considerations (Exhibit C); and

**WHEREAS**, on April 22, 2021, the East County Board of Zoning Adjustments held a virtual public hearing on the Conditional Use Permit application and the Final Subsequent Environmental Impact Report (SEIR), and adopted Resolutions Z-21-13 and Z-21-14 which certified the Final SEIR for the Mulqueeneey Ranch Wind Repowering Project and approved Conditional Use Permit 2019-00226; and

**WHEREAS**, on April 29th, 2021 a timely appeal letter was filed by Audubon California et al. challenging the decisions of the East County Board of Zoning Adjustments and asserting that the SEIR is inadequate under the California Environmental Quality Act (CEQA), and that the terms of the CUP fail to adequately consider, avoid, minimize, and mitigate impacts on birds and bats as required under CEQA and the County's 2014 Program Environmental Impact Report (PEIR) for repowering turbines in the Altamont Pass; and

**WHEREAS**, attempts to resolve the concerns raised in the appeal letter were not successful through various contacts and meetings held with the interested parties; and

**WHEREAS**, preventative avoidance measures have been added as conditions of approval such as additional micro-siting to minimize raptor fatalities, increasing seasonal evening cut-in speeds to benefit nocturnal bat activity, and potentially using the "IdentiFlight" technology if feasible address the core concerns presented in the appeal; and

**WHEREAS**, oversight of the project through incidental take permit applications from State and Federal Agencies will minimize risk to avian populations and require additional mitigation that could include both changes to the project size and compensation for "take" of

protected species; and

**WHEREAS**, the inclusion of conditions of approval requiring the Permittee to participate in the APWRA Technical Advisory Committee (TAC) to complete a micro-siting analysis, and a review of the project's Avian and Bat Protection Plan prior to commercial operation provides a level of oversight that adequately addresses many of the appellant's concerns; and

**WHEREAS**, continued review of the project's monitoring reports and adaptive management at the Technical Advisory Committee is an iterative process to develop best practices that can be reproduced for other windfarms in the County; and

**WHEREAS**, the East County Board of Zoning Adjustments determined that approval of the Project as conditioned herein, including the implementation of the Mitigation Monitoring and Reporting Program attached herein as Exhibit B, would eliminate or substantially lessen significant effects on the environment where feasible, as indicated in the Written Findings of Significant Effects, attached herein as Exhibit A, and that there are certain 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 herein as Exhibit C; and

**WHEREAS** the Board of Supervisors did hear and consider all reports, recommendations and testimony as hereinabove set forth and asserts the information contained in the attached Exhibits reflects the independent judgment and analysis of the Board;

**NOW THEREFORE**

**BE IT RESOLVED** that the Board of Supervisors finds that:

1. The Board certifies that the above recitals are true and correct.
2. The Board certifies that it has been presented with all the information described in the above recitals and has reviewed and considered this information and the Final Subsequent EIR prior to adopting this Resolution and considering approval of the Project.
3. The Board certifies that the Final Subsequent EIR reflects the County's independent judgment and analysis and has been completed in compliance with CEQA.
4. Notice of the Board's hearings on the Draft Subsequent EIR and Final Subsequent EIR have been given as required by law and the actions were conducted pursuant to the State Planning and Zoning Law, CEQA, the State CEQA Guidelines and the County's CEQA Guidelines.
5. All individuals, groups and agencies desiring to comment were given adequate opportunity to submit oral and written comments on the Final Subsequent EIR which met or exceeded CEQA requirements, and which comments were responded to adequately in the Final Subsequent EIR.

**BE IT FURTHER RESOLVED** that the Board of Supervisors finds that:

1. The use is required by the public need in that wind energy production in the Altamont Pass Wind Resource Area (APWRA) represents a major source of renewable energy. The Project

would generate and supply 100% locally sourced and emissions-free electricity to California, would support California's renewable energy goals, and would help reduce dependence on fossil fuels, a primary factor in global warming or climate change. The Project's energy is to be sold to Alameda County's Community Choice Aggregator (East Bay Community Energy) through a power purchase agreement, which improves County residents' access to locally-produced renewable energy.

2. The use will be properly related to other land uses and transportation and service facilities in the vicinity in that as an existing wind farm, the Project site is well- suited from a planning and practical perspective for continued use as a windfarm. The Project parcels have been developed with wind power project uses for over 30 years and are located a substantial distance away from substantial residential, commercial and industrial uses. Existing supporting facilities will continue to be utilized to transmit the power generated to satisfy the electricity needs of Alameda County and California as a whole.
3. 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 injurious to property or improvements in the neighborhood. The project would serve goals and objectives of the East County Area Plan and County economic development and environmental objectives, would have limited impacts on County services and infrastructure, and as mitigated with the measures to be adopted under the Mitigation Monitoring and Reporting Program attached herein as Exhibit B and the conditions of approval, would not negatively impact the surrounding community.

Furthermore: a) as approved and subject to further TAC input, the subject turbines would be sited and operated in a manner that reduces risks to avian and bat species and according to specified minimum setbacks to reduce any health, safety or aesthetic concerns to any residents in close proximity; b) proper maintenance and operation efforts would be in effect to ensure the safe operation of the turbines; c) fire prevention and security measures would be in place to protect the public and local property; d) construction activities will be conducted in a manner that reduces potential health, safety and environmental concerns; e) the proposed use would not substantially hinder the continued use of the Project sites and surrounding land for cattle grazing as the primary property use; f) any access roads improved for the proposed use would provide improved access to the grazing lands; g) land owners would benefit from the lease payments made by the Permittee, which further supports grazing operations; and h) other improvements, such as roadways, railroads, electrical substations and landfills are not adversely affected by the presence of wind turbines and their associated infrastructure because the proposed Project would replace and/or continue to use existing facilities.

4. 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 in that the proposed Project is located in the A (Agriculture) zoning district, which has as its stated intent: "to promote implementation of General Plan land use policies for agriculture and other nonurban uses; to conserve and protect existing agri- cultural 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 land from agricultural production, and the use is appropriately located in non-urban

areas and serves the public welfare.

**BE IT FURTHER RESOLVED** that the Board adopts the Written Findings of Significant Effects contained in Exhibit A of this Resolution, the Mitigation Monitoring and Reporting Program contained in Exhibit B of this Resolution; and the Statement of Overriding Considerations contained in Exhibit C of this Resolution, which Exhibits are incorporated herein as if fully set forth.

**BE IT FURTHER RESOLVED** that the Board of Supervisors does hereby approve said application in the form of the **Reduced Project Alternative** as defined in the Project Final SEIR including Figure 4-2, Reduced Project Alternative Conceptual Site Plan, on file with the Alameda County Community Development Agency, Planning Department, 224 West Winton, Rm. 111, Hayward, CA, 94544), subject to the following **conditions of approval**:

#### **AUTHORIZATION**

1. **Approval.** Approval of this Permit authorizes Mulqueene Wind Energy, LLC (Mulqueene Wind), a subsidiary of Brookfield Power US Holding America Co. (Permittee), to replace 518 old generation wind turbine sites previously removed from the subject parcels and to install and operate up to 24 new turbines with a maximum production capacity of 80 megawatts (MW), using turbines rated between 2.2 to 4.2 MW per turbine, sited and operated to conform to the Reduced Project Alternative as defined in the Subsequent Environmental Impact Report for the Project, on 29 parcels or parts of parcels, extending over roughly 4,600 acres within the southeastern quadrant of the Alameda County portion of the Altamont Pass Wind Resource Area, north and south of Patterson Pass Road, between approximately one-third and four miles west of Midway Road, and between one and five miles south of Interstate 580, including the following Assessor Parcel Numbers:

99A-1800-2-3; 99A-1800-2-4; 99B-7890-2-4; 99B-7890-2-5; 99B-7890-2-6;  
99B-7890-4; 99B-7900-1-3; 99B-7900-1-4; 99B-7900-1-5; 99B-7900-1-6;  
99B-7900-1-7; 99B-7900-2; 99B-7910-1-1; 99B-7910-1-2; 99B-7925-2-1;  
99B-7925-2-2; 99B-7925-2-3; 99B-7925-2-4; 99B-7925-2-5; 99B-7925-3;  
99B-7950-2; 99B-7975-1; 99B-7980-1; 99B-7985-1-3; 99B-7985-1-4;  
99B-7985-1-5; 99B-7985-1-6; 99B-8050-1; and 99B-8100-1-1.

In the event that larger, 4.2 MW turbines are available to and selected by the project proponent at the time suited for ordering turbines to be delivered, the proponent shall reduce the total number of turbines to nineteen (19) turbines only. Final site location and capacity shall be subject to Planning Director approval and recommendations of the County's avian protection Technical Advisory Committee (TAC; see Condition 95).

2. **Compliance and Conditions.** Permittee agrees to comply with all applicable laws, regulations, rules and requirements of the County of Alameda and its Agencies, all subdivisions and departments of such agencies, and applicable local districts, and to comply with specific conditions of approval described herein by the representatives of said agencies, including but not limited to:
  - a. Community Development Agency, Planning Department

- b. Public Works Agency, Building Inspection Department
- c. Public Works Agency, Land Development Department
- d. Public Works Agency, Grading Division
- e. Alameda County Fire Department
- f. County Sheriff
- g. Health Services Agency, Environmental Health Department

Failure to act in compliance with the conditions herein will be construed as a violation of Zoning and enforcement proceedings shall commence as provided for by Section 17.58 of the Alameda County Zoning Ordinance.

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

- h. California Public Utilities Commission
  - i. California State Department of Fish and Wildlife
  - j. California State Water Quality and Control Board - San Francisco and Central Valley
  - k. California Energy Commission
  - l. Bay Area Air Quality Management District
  - m. United States Fish and Wildlife Service
  - n. Federal Aviation Administration
3. **Insurance:** A Comprehensive General Liability insurance policy in the minimum amount of \$1,000,000 and in the form prescribed in the document "INSURANCE REQUIREMENTS, ALAMEDA COUNTY PLANNING DEPARTMENT, November 12, 2014," in addition to insurance requirements of other agencies listed in Condition 2 shall be provided to the County within 20 business days following approval of this Conditional Use Permit and provided again within 20 business days of each annual anniversary thereof.
4. **Utility Tax Compliance.** Within 60 days of this approval, the Permittee shall submit to the Alameda County Planning Department evidence of business registration with the Alameda County Business Tax Unit in the form of a valid business certificate to ensure compliance with the County's utility tax regulations.
5. **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.

6. **Indemnification.** The Permittee shall defend, indemnify, and hold harmless the County of Alameda and its agents, officers, and employees from any claim, action, or proceeding against the County of Alameda or its agents, officers or employees to attack, set aside, void, or annul Conditional Use Permit, PLN2019-00226, the associated Subsequent Environmental Impact Report (SEIR), California Environmental Quality Act findings, determination of significant impacts, statement of overriding considerations, 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.
7. **Planning Review and Permit Administration Costs.** The Permittee shall be responsible for payment of all additional Planning Department and Public Works Agency staff and material costs for completing these agencies' reviews up to the time of this approval, including costs billed against the original application deposit, costs which exceeded the deposit and for a deposit of an additional \$2,000.00 for similar costs associated with administration and enforcement of the conditions herein, independently of Inspection Costs as required below (Condition 8). If all or any part of said cash deposit is depleted by such administration activities, the Permittee shall restore the balance of the deposit to the original \$2,000.00.

The Permittee shall compensate the County for expenditures to retain a biological and avian resource consultant necessary to monitor implementation of these conditions and the Project MMRP during Planning Department review of the building permit, during construction, not to exceed \$15,000 for the Project plus \$100.00 per proposed MW.

The Permittee shall compensate the County for expenditures to retain a County technical representative to the Technical Advisory Committee, as necessary to review monitoring reports and advise the County regarding implementation of these conditions and the Project MMRP during each year of post-construction monitoring as specified in Conditions 92, 93 and 94 (Mitigation Measures BIO-11g, BIO-14b and BIO-14c). Such compensation shall be paid annually in proportion to the installed or rated MW capacity of the facility (as a proportional percentage of all wind Alameda County APWRA repowering projects, which may be prorated on a monthly basis), not to exceed \$15,000 for all repowering projects (adjusted annually for inflation).

8. **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. Discovery of noncompliance may be cause for commencement of proceedings to revoke this Conditional Use Permit, and for payment of applicable bonds. Public Works Agency staff is also authorized to inspect structural and pavement conditions of County roads serving the construction site prior to and after construction to

identify needed repairs and to assess cost recovery requirements.

The Permittee or its successors shall be responsible for payment of all reasonable costs associated with necessary inspections of the facility, including costs incurred by the Planning Department, the County Fire Department, the Building Inspection Division, the Public Works Agency or any other applicable Federal, State or County department or agency. Each County Agency shall have the authority to require deposits of \$4,000.00 prior to plan review, for plan review, inspections or other necessary costs. State and federal agencies shall be responsible for collecting established fees and related compensation where required by statute.

9. **Bonds.** Application for Building Permits to implement any portion of this Conditional Use Permit shall be accompanied by the following bonds:
  - a. A \$2,000.00 cash bond shall be deposited to be used in the investigation and evaluation of a noise complaint as provided in Condition 88 herein below. If all or any part of said cash bond is depleted by such activities, the Permittee shall restore the balance of the bond to the original \$2,000.00.
  - b. A security bond or other acceptable instrument shall be recorded with the Director of Public Works to guarantee repair and restoration of roads serving the Project area that may be damaged in the course of construction of the Project, consistent with the requirements of the Traffic Control Plan as set forth in Condition 48 below.
  - c. A surety bond or other acceptable security instrument shall be recorded with the Director of Public Works to guarantee implementation of the restoration and reclamation plan as required by Conditions 11 and 12 below.
  
10. **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 B, and as specified individually herein. These conditions of approval incorporate the individual mitigation measures and present them either in summarized form or by reference only, and in certain cases provide additional clarification and guidance on the manner, timing and responsibility for implementation of the mitigation measures. The incorporation of the mitigation measures into the conditions of approval (i.e., their replication and representation herein) is not intended to revise, modify or add to any mitigation measure, or add any new obligation to the Permittee under CEQA, but only to augment the understanding of how each mitigation measure shall be implemented. Each mitigation measure is presented within the applicable phase of Project development used herein, beginning with design, and continuing through permit applications, pre-construction tasks, obligations during construction, performance during operation, and for periodic review through the life of the permit.

These conditions of approval are intended to and shall be interpreted by reading Exhibit B and the enumerated conditions together, as a whole, in a manner that gives the maximum effect to both and, to the extent necessary, harmonizes them to avoid any inconsistencies or superfluous terms. If the Permittee, the County or other public agency responsible for implementation of a mitigation measure finds any discrepancy between



Exhibit B and these conditions, Exhibit B shall be relied upon unless the conditions herein provide greater clarification of the time or performance or the manner of implementation of the MMRP, when determined to be necessary for the effective implementation of the MMRP. Any remaining questions of interpretation shall be resolved by the Planning Director.

11. **Restoration and Reclamation Plan:** Prior to issuance of building permits the Permittee shall submit for review and approval by the County Planning Director and the Director of Public Works, a reclamation plan for removal at the end of this permit term (or by project cessation as described below) of all wind turbines, foundations and ground equipment to a depth of three feet below finished grade. Roads and above-ground facilities installed pursuant to this permit shall also be removed unless the property owner has requested in writing as part of the reclamation plan that they be left in place, subject to approval of the Planning Director. The reclamation plan shall include provisions for:
- a. Removal of roads and staging areas within the subject property or properties not needed for maintenance and operations or for other allowed property uses by the property owner;
  - b. Re-grading and re-vegetation to return the subject property or properties to rangeland or pre-windfarm use conditions, with site-specific characteristics of topography, vegetation, drainage and other unique environmental features, subject to approval of the California Department of Fish and Wildlife;
  - c. Repair of County roadways from damage that may result from off-haul of materials, movement of oversized loading or heavy-haul vehicle, traffic management and a substantial increase in volume of vehicle trips;
  - d. A traffic control plan for conveyance of oversize turbine components.

The reclamation plan shall include a cost estimate of labor and material costs, prepared by a licensed contractor to implement the proposed reclamation plan, and the Planning Director shall have the authority to request additional details of specific cost elements. The reclamation plan shall include a guarantee by the Permittee to carry out the reclamation plan upon determination by the Planning Director and Director of Public Works that the permitted wind farm operations have been abandoned or have produced less than 5 percent of the rated output of the wind farm in one year (considered project cessation).

The Planning Director and Director of Public Works may instead make a determination that more than 50% of the turbines are in disrepair and there is no other demonstrated plan, satisfactory to the Planning Director, to restore the equipment to a productive operating condition (considered project cessation). Under such circumstances the Planning Director may order the Permittee or property owners to execute the reclamation plan.

12. **Restoration and Reclamation Bond.** Prior to issuance of building permits, and based on County approval of the reclamation plan as above, the Permittee shall post a security in the form of a surety bond. The security shall remain with the County for the life of the Project, except upon replacement as provided below and upon replacement shall be

adjusted for inflation using the appropriate construction price index, as determined by the Director of the Public Works Agency. In the event ownership of the turbines changes from the current Permittee to another person or entity, the new owner shall replace the surety bond of the original Permittee with a surety bond in the name of the new owner within 30 days of the change of ownership.

13. **Changes to Power Purchase Agreements.** Permittee agrees that, at least six (6) months prior to the expiration, renewal or extension of any Power Purchase Agreements (PPA) made by the Permittee, the Permittee shall inform the Planning Director of such changes and provide the County of Alameda and any Community Choice Aggregation joint powers authority or equivalent program (CCA) in which the County participates, a right of first offer to establish a PPA between the Permittee and the County or the CCA.
14. **Ten Year Review.** No more than ninety (90) calendar days after the tenth anniversary of the initial approval and within ninety (90) days of the subsequent twentieth anniversary, the Planning Director shall, after notice as provided for in the initial hearing and except as provided for under Conditions 88 and 101 below, set this matter for public hearing by the East County Board of Zoning Adjustments for the purpose of reviewing and verifying compliance with the conditions of approval so as to validate the findings of this conditional use permit.
15. **Post-Construction Monitoring Review.** Upon completion of the post-construction avian fatality monitoring program required by Mitigation Measures 11g, the post-construction bat fatality monitoring program required by Mitigation Measures 14b, and if required, after implementation of adaptive management program review required by Mitigation Measure BIO-11i, this matter may be set by the Planning Director for a public hearing, after notice as provided for in the initial hearing, for the purpose of assessing the effectiveness of avian protection plans, adaptive management measures, conservation or other strategies to improve or mitigate avian species safety concerns raised in the Program Environmental Impact Report (PEIR). This review may allow the Planning Director to modify conditions previously imposed or add conditions directly related to the results of the post-construction avian fatality monitoring program (Mitigation Measure BIO-11g) and the recommendations of the Technical Advisory Committee.
16. **Commencement Date.** Pursuant to Section 17.52.050, building permits shall be obtained and construction activity commenced within 3 years of approval or this permit shall be of no force or effect.

#### **PRIOR TO DESIGN SUBMITTAL**

17. **Preconstruction Surveys for Special-Status Plant Species (MM BIO-1a).** As required by Mitigation Measure BIO-1a in the MMRP, no more than 3 years prior to ground-disturbing repowering activities, and during the appropriate identification periods for special-status plants as specified in the MMRP and the PEIR, the Permittee shall have a qualified biologist (as determined by the Alameda County Planning Director) conduct field surveys to identify special-status plant species within and adjacent to the Project site. The Permittee shall submit a report documenting the survey results to the Planning Director for review and approval, meeting the requirements of Mitigation Measure BIO-1a, prior to

ground disturbing activities and before issuance of building permits.

18. Preconstruction Surveys for Habitat for Special-Status Wildlife Species (MM BIO-3a). As required by Mitigation Measure BIO-3a in the MMRP, no more than 3 years prior to ground-disturbing repowering activities, the Permittee shall have a qualified biologist (as determined by Alameda County) conduct field surveys within decommissioning, repowering, and restoration work areas and their immediate surroundings to determine the presence of habitat for special-status wildlife species. The Permittee shall submit a report documenting the survey results and meeting the requirements of Mitigation Measure BIO-3a to the Planning Director for review and approval, prior to conducting any ground-disturbing repowering activities and before issuance of building permits.
19. Preconstruction Bat Roost Surveys (MM BIO-12a). As required by Mitigation Measure BIO-12a in the MMRP, prior to any ground-disturbing activity the Permittee shall have a roost habitat assessment prepared by a qualified bat biologist to identify potential colonial roost sites of special-status and common bat species within 750 feet of the construction area. If suitable roost sites are to be removed or otherwise significantly affected by the proposed Project, the bat biologist will conduct targeted roost surveys of all identified sites that would be affected. Surveys shall conform to the protocols and guidelines set forth in Mitigation Measure BIO-12a in the MMRP, and a report shall be submitted to the Planning Director following such surveys as specified by Mitigation Measure BIO-12a of the MMRP and prior to issuance of building permits.
20. Avoid Loss of Historic Resources and Record if Necessary (MMs CUL-1a and -1b). As required by Mitigation Measure CUL-1a in the MMRP, the Permittee shall avoid historic resources in the design and layout of the Project wherever feasible. As required by Mitigation Measure CUL-1b, if avoidance of resources in accordance with Mitigation Measure CUL-1a is determined to be infeasible, the significantly affected historic resource shall be recorded prior to site disturbance and before issuance of building permits, consistent with Mitigation Measure CUL-1b requirements.
21. Preconstruction Survey and Planning for Cultural Resources (MMs CUL-2a and CUL-2b). As required by Mitigation Measure CUL-2a in the MMRP, prior to ground-disturbing activities and issuance of the building permit, the Permittee shall have qualified personnel conduct an archaeological field survey of the Project area to determine whether significant cultural resources exist within the Project area. Documentation of the field survey results shall comply with Mitigation Measure CUL-2a.  
  
As required by Mitigation Measure CUL-2b, if any significant resources are identified through the preconstruction survey, a treatment plan with measures that could include site avoidance, capping, or data recovery will be developed and implemented by the Permittee and approved by the Planning Director subject to applicable requirements.
22. Environmental Site Assessment to Identify Possible Site Contamination (MM HAZ-4). As required by mitigation measure HAZ-4 in the MMRP, the Permittee shall have a Phase I Environmental Site Assessment (ESA) prepared for any Project area proposed for

ground-disturbing activities and submit it to the Alameda County Health Services Agency – Environmental Health Department, as the authorized regulatory oversight agency. The Phase I ESA shall be in conformance with the minimum requirements described in Mitigation Measure HAZ-4 in the MMRP.

If the Phase I ESA indicates likely soil contamination a Phase II ESA shall be prepared by a qualified environmental professional under a work plan approved by the Environmental Health Director, including proposed soil sampling, remediation and disposal of contaminants if necessary. The Phase II ESA shall include the components outlined in Mitigation Measure HAZ-4, and shall be provided to the Planning Director and Environmental Health Director, the latter of which may require remediation of soil or groundwater or disposal of hazardous building materials subject to a work plan approved by the Environmental Health Director. Review of a work plan and Phase II ESA will require a deposit of \$6,000.00 (as of this approval date) with the County Health Services Agency – Environmental Health Department, and may require opening a Site Cleanup Program (SCP) file. Any contaminated soil identified on a Project site must be properly disposed of in accordance with the State Department of Toxic Substance Control (DTSC) regulations in effect at the time the Phase II ESA is submitted to the Environmental Health Director.

23. **Preconstruction Noise Studies (MM NOI-1)**. As required by Mitigation Measure NOI-1 in the MMRP, if any turbine is proposed to be located within 2,000 feet of a noise sensitive receptor, such as a residence, school, church or public recreational trail, the Permittee shall have a qualified acoustic engineering consultant prepare a report to evaluate the Project-specific noise impacts associated with operation of the proposed wind turbine(s). This evaluation shall conform to the requirements of mitigation measure NOI-1. If operation of the turbine(s) is predicted to result in noise level of 55 dBA (Ldn) or greater where noise is currently less than 55 dBA (Ldn) or result in a 5 decibel (dB) increase where noise is currently greater than 55 dBA (Ldn), the Permittee shall modify the Project to select new specific installation sites or turbine designs within the Project boundary to ensure that these performance standards will not be exceeded.

Other methods that can be used to ensure compliance with these performance standards include but are not limited to increasing the distance between proposed turbines and noise sensitive uses, or use of alternative turbine operational modes to reduce noise. Upon completion of the noise study, the Permittee shall submit a report to the Alameda County Planning Director demonstrating how the Project will comply with these performance standards. After review and approval of the report by the Planning Director, the Permittee shall incorporate measures as necessary into the Project design to ensure compliance with these performance standards.

24. **Safety Setbacks.** New wind turbines shall have a minimum setback from other land uses as stated below.
- a. From a parcel boundary on which a separate windfarm operation is proposed or approved: 1.1 times (or 110% of) the rotor length.
  - b. From a parcel boundary on which no windfarm operation is proposed or approved: 1.25 times (or 125% of) the total turbine height.
  - c. From a Dwelling Unit: three times (or 300% of) the total turbine height.
  - d. From a public road, interstate highway, public trail, commercial or residential zoning: 2.5 times (or 250% of) the total turbine height.
  - e. From a recreation area or property approved for an outdoor recreation use: 1.25 times (or 125% of) the total turbine height.
  - f. From a high-tension electrical transmission line: 2 times (or 200% of) the total turbine height.

The setbacks specified above shall be increased by one (1) percent of the total turbine height (to the top of the rotor blade at the 12:00 o'clock position) per ten (10) feet of elevation that the turbine's ground elevation is above the ground elevation of the affected parcel or use, specifically the nearest affected parcel boundary, recreation area or property, dwelling unit, road or highway right-of-way, trail, commercial or residential zone district boundary, or the center of a transmission or conductor line. The setback may be decreased by one (1) percent of such total turbine height per ten (10) feet of elevation that the turbine's ground elevation is below the ground elevation of affected parcels or uses.

Furthermore, the setbacks specified above, as adjusted according to turbine elevation above or below an affected parcel or use, may be reduced by 50% to an alternative minimum (i.e., to one-half the resulting setback), if a notarized agreement or a recorded easement from the affected property owner (except in the case of setbacks from a public road, interstate highway or transmission line) is approved by the Planning Director, with the following exceptions and conditions:

- i. The setback from a parcel on which no windfarm operation is proposed or approved may be reduced to no less than 1.1 times (or 110% of) the rotor length.
- ii. The setback from a recreation area or property approved for an outdoor recreation use shall not be reduced to less than 1.0 times (100% of) the total turbine height.
- iii. The setback from a public road, interstate highway, public trail, commercial or residential zoning, or high-tension transmission line shall only be reduced to such minimum with the submittal of a report by a qualified professional, to be approved by the Planning Director with substantial evidence that public safety will not be compromised, and property owner agreement or easements shall be required only from private properties with commercial or residential zoning.

Adjustments based on the ground elevation of a turbine shall be limited to whole ten-foot increments, disregarding any smaller portion. Total turbine height shall always be measured from ground elevation to the top of the rotor at the 12:00 o'clock position (i.e., at the furthest upward reach of the rotor blade). For adjoining parcels under the same windfarm use permit, no setback is required. Knowledge of existing, proposed or approved windfarm use permits on adjacent parcels shall be based on the best available information at the time of the subject application. The Planning Director shall reserve the right to reject all or part of an alternative minimum setback based on substantial evidence that a wind turbine will have adverse noise, safety or visual impacts on a dwelling unit that have not been previously disclosed publicly, or that a required report requires additional information before such a minimum is approved.

25. Safety Setbacks for Meteorological Towers. New temporary and permanent meteorological towers (met towers) shall have a minimum setback from the exterior Project boundary shown in the permit application, equal to the total height of the met tower plus 25 feet.
26. Undergrounding of Utility Lines. All electrical utility collection and distribution connection lines shall be installed underground, except as required by the utility company for final connections to major substations.
27. Site Development Review for Previously Undeveloped Ridgelines (MM AES- 2a). Site Development Review pursuant to Section 17.54.230 et. seq. of the County Zoning Ordinance shall be required for new turbines proposed on a ridgeline or hilltop which has not previously been developed with commercial-scale wind turbines (over 25 kW rated capacity). Such Site Development Review shall not be approved unless the Planning Director determines that the visual effects will be substantially avoided by distance from public view points (e.g., over 2,000 feet), intervening terrain, screening landscaping, or compensatory improvements to equivalent and nearby (radius of 1 mile) scenic features, as approved by the Planning Director.
28. Analyze Shadow Flicker Distance and Mitigate Effects (MM AES-5). Where shadow flicker could result from the installation of wind turbines near residences (i.e., within 500 meters or about 1,600 feet in a broadly easterly or westerly direction, accounting for all seasons of the year), the Permittee shall prepare a graphic model and study to evaluate the potential for shadow flicker impacts on residences for review and acceptance by the Planning Director. No shadow flicker in excess of 30 minutes in a given day or 30 hours (net or total) in a given year will be permitted unless it has been mitigated subject to the approval of the Planning Director.

If any residence is nonetheless affected by shadow flicker within the 30-minute/30-hour thresholds, the Permittee shall implement one or more measures to avoid or minimize the effect, such as providing opaque window coverings, window awnings, landscape buffers or a combination of these features to reduce flicker to acceptable limits for the affected receptor, or shutting down the turbine during the period shadow flicker would occur.

Such measures shall be undertaken in consultation with the owner of the affected residence, and may be confirmed by preparation of a shadow flicker study at the Permittee's expense. If the shadow flicker study indicates that any given turbine would result in shadow flicker exceeding the 30-minute/30-hour thresholds and the affected property owner is not amenable to window coverings, window awnings, or landscaping and the turbine cannot be shut down during the period of shadow flicker, then the turbine operations would be set back or limited to avoid shadow flicker to the satisfaction of the affected owner of the residence.

29. Color Treatment. All wind turbines, blades, towers and structures shall be treated and maintained with a generally uniform off-white paint scheme in order to blend with the surroundings and minimize adverse visual effect. Exceptions may include experimental measures if recommended by the avian protection Technical Advisory Committee (TAC, as described in Condition 95) and approved by the Planning Director to allow any turbine to be painted as a mitigation for bird collisions.
30. Lighting Guidelines. Lighting design for turbine tower entries, substations and permanent operations and maintenance buildings shall be submitted for review and approval by the Planning Director and included in the building permit application. New lighting shall be downward casting and shielded, utilizing motion detection systems if appropriate and shall not unnecessarily "wash out" into surrounding areas. Lenses and bulbs shall not protrude from light fixtures. Fixtures intended to be lit for long periods of time shall utilize low-pressure sodium lamps or devices with similar properties (i.e., long-lasting and energy efficient). Fixtures shall be mounted at the lowest feasible height. If industrial design standards or Federal Aviation Administration (FAA) safety protocols require lighting designs that conflict with the requirements of this condition, such standards and protocols shall take precedence subject to approval by the Planning Director and Building Official with respect to other applicable conditions and mitigation measures.

Lighting required by FAA shall be shrouded, directed upward, or utilize other technology to minimize lighting at ground level. If FAA safety protocols require lighting designs that conflict with the requirements of this condition, such protocols shall take precedence subject to approval by the Planning Director and Building Official with respect to other applicable conditions and mitigation measures.
31. Tower Access. Each wind turbine tower shall be fully enclosed with interior access controlled by the Permittee with security measures approved by the Building Official, and ladder or lift safety measures.
32. Operational Safety. Each turbine generator shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the overall turbine. Generators shall be designed, installed and operated to prevent emissions of electromagnetic interference that are disruptive to adjacent land uses.

33. **Meteorological Tower Design Standards.** Temporary meteorological towers (met towers) shall be shown on site plans submitted for building permits, and may be guyed (supported by guy-wires) with colored avian marker balls or spirals at appropriate intervals. Met towers installed for operation of more than two years (24 months) shall be free-standing and not supported by guy-wires. Permanent or temporary met towers in excess of 200 feet (or 60 meters) shall be referred to the FAA for consideration of lighting requirements and paint treatment (e.g., aviation orange). Lighting required by FAA shall be shrouded, directed upward, or utilize other technology to minimize lighting at ground level. If FAA safety protocols require lighting designs that conflict with the requirements of this condition, such protocols shall take precedence subject to approval by the Planning Director and Building Official with respect to other applicable conditions and mitigation measures.
34. **Permanent Signage.** Permittee shall provide signage on the entry gates to the subject property(ies) providing basic contact information for use in case of an emergency, including the name of the Project, names, titles, and phone numbers of individuals responsible for operations, non-emergency phone numbers, and the Planning Department general contact information. The turbine towers, rotors, cabinets, or mountings shall not be used for advertising.
- 35a. **Turbine and Infrastructure Design and Siting to Reduce Avian Mortality (MMs BIO-11b, BIO-11c and BIO-11d).** As required by Mitigation Measures BIO-11b, BIO-11c and BIO-11d in the MMRP, the Permittee shall utilize a siting process and prepare a siting analysis, using analyses of landscape features and location-specific bird use and behavior data to determine the specific turbine site locations with the potential to reduce avian collision risk and fatalities and otherwise minimize potential impacts on bird and bat species. Permittee shall utilize existing data as well as collect new site-specific data as part of the siting analysis. Permittee shall implement Mitigation Measure BIO-11b as set forth in the Project MMRP.

Permittee shall use turbines with certain characteristics recognized to reduce the collision risk for avian species. Permittee shall implement the design-related measures set forth by Mitigation Measure BIO-11c as set forth in the Project MMRP. Permittee shall also apply specific measures outlined in Mitigation Measure 11d when designing and siting turbine-related infrastructure in order to reduce the risk of bird electrocution and collision.

Upon determining that the information in the siting analysis is sufficiently detailed for Technical Advisory Committee (TAC) consideration and recommendations, the Planning Director shall schedule a meeting for TAC review of the Project's compliance with mitigation measures BIO-11a and BIO-11b.

- 35b. **Project-Specific Conditions Agreed to by the Permittee.** When the project is scheduled for TAC consideration as outlined in condition 35a, the Permittee shall also provide for the County's review and TAC consideration, confirmation that the project contains the following operational features:
1. Daytime curtailment for eagles (i.e. cut-in speed of 4.5 m/s during the day to reduce daylight operational hours by 50%)



2. Seasonal nighttime curtailment for bats (i.e. cut-in speed of 5.0 m/s from sunset to sunrise from August 1st through October 31<sup>st</sup>)
  3. Regular updates, at minimum once per 6 month period, on Resource Agency Incidental Take Permit process, including any implementation of the “IdentiFlight” technology (or its equivalent), nesting surveys, conservation easements, compensatory mitigation, and other State/Federal requirements related to avian mortality reduction efforts.
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36. Retrofit Existing Infrastructure to Minimize Risk to Raptors (MM BIO-11e). As required by Mitigation Measure BIO-11e, the Permittee shall have any existing power lines in its Project area, that are owned or operated by the Permittee and that are associated with electrocution of an eagle or other raptor retrofitted within 30 days of any recorded electrocution, or prior to the start of commercial operation, to make them raptor-safe according to Avian Power Line Interaction Committee guidelines. All other existing structures to remain in a Project area during repowering will be retrofitted, as feasible, according to specifications of Condition 35 and Mitigation Measure BIO-11c prior to repowered turbine operation.
  37. Site Management to Discourage Prey for Raptors (MM BIO-11f). As required by Mitigation Measure BIO-11f in the MMRP, the Permittee shall prevent the use of rodenticides, allow rock piles only over 500 meters from any new turbine, and use gravel around turbine foundations, when designing and siting turbine-related infrastructure and other site improvements, and operating the wind turbines, in order to minimize opportunities for fossorial mammals to become established and thereby create a prey base that could become an attractant for raptors.
  38. Turbine Siting and Selection to Minimize Potential Bat Mortality (BIO-14a). Permittee shall use the best information available to site turbines and to select from turbine models in such a manner as to reduce bat collision risk. The siting and selection process will take into account bat use of the area and landscape features known to increase collision risk (trees, edge habitats, riparian areas, water bodies, and wetlands). Measures include but are not limited to siting turbines the greatest distance feasible up to 500 meters (1,640 feet) from still or flowing bodies of water, riparian habitat, known roosts, and tree stands. Permittee shall implement Measure BIO-14a as set forth in the Project MMRP.
  39. Design of Circuit Breakers to Minimize Sulfur Hexafluoride (SF<sub>6</sub>) Leakage (MM GHG-2b). The Permittee shall ensure that any new circuit breaker installed at a substation has a guaranteed Sulfur Hexafluoride (SF<sub>6</sub>) leak rate of 0.5% by volume or less. The Permittee shall provide the Building Official with documentation of compliance, such as specification sheets, prior to installation of the circuit breaker. In addition, the Permittee shall monitor SF<sub>6</sub>-containing circuit breakers at the substation consistent with the California Air Resources Board’s Scoping Plan Measure H-6 for the detection and repair of leaks.

#### CONSTRUCTION PERMIT REQUIREMENTS

40. Building Permit Application Requirements (including MM GHG-2d). The Permittee shall apply for and obtain approval for separate building permits for the removal and

**demolition of existing turbines and associated facilities, and the construction of new turbines, and shall conform to the following requirements.**

- a. Soils report and/or geological/geotechnical study will be required.**
- b. Comply with building codes and submittal requirements in effect at the time of submitting for building permits.**
- c. A California licensed architect or engineer shall be designated as the design professional responsible and in charge of the Project submittal. Submittal documents may be signed and sealed by multiple licensed architects or engineers.**

- d. The Permittee's designated California-licensed land surveyor shall be responsible for the property information filed with the Building Permit application.
  - e. The demolition and construction debris diversion plan shall comply with applicable policies of the Public Works Agency's Construction & Demolition Debris Management Program. In particular, the Permittee shall implement Mitigation Measure GHG-2d as set forth in the MMRP, to comply with the County's revised Green Building Ordinance regarding construction and demolition debris to achieve the following minimum standards: 1) 100% of inert waste and 50% wood/vegetative/scrap metal not including Alternative Daily Cover (ADC) and unsalvageable material will be put to other beneficial uses at landfills; and 2) 100% of inert materials (concrete and asphalt) will be recycled or put to beneficial reuse.
  - f. Plans filed for the Building Permit application shall obtain Zoning Approval (i.e., Planning Department approval for consistency determination that the plans are consistent with this permit), and shall be drawn to scale, indicating the location of each wind turbine, the location and function of all structures within 1,000 feet of any wind turbine, as well as all trailers and major ground equipment to be put in place for use during construction.
  - g. Evidence of a proposed interconnection agreement and any technical requirements and specifications required by the interconnection authority.
  - h. Evidence of filing a notice of proposed construction with the FAA and the required referral to the Alameda County Airport Land Use Commission.
41. Use of Recycled Content in New Building Materials (MM GHG-2c). The Permittee shall require the construction of all new substation and other permanent buildings to incorporate materials for which the sum of post-consumer recycled content plus one-half of the post-industrial content constitutes at least 10% of the total value of the materials in the Project.
  42. Fire Department Approval Requirements. Permittee 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. The Permittee shall install a Knox Box at all entry gates, provide an emergency contact to the Department, and maintain a fire extinguisher in each ground equipment area. Water tanks meeting NFPA 1142 standards shall be provided at each construction staging area and shown on Building Permit application site plans. Permittee shall be responsible for compliance with the Altamont Pass Windfarms Fire Requirements dated September 22, 2005 adopted by Alameda County and which were reviewed and re-adopted on November 12, 2014.
  43. Grading Permit Application and Geotechnical Investigation Requirements (MM GEO-1). Prior to any grading, ground-disturbing or construction activities on the Project site, the

Permittee shall submit a preliminary grading plan and a site-specific geotechnical investigation to the County Grading Department. The geotechnical investigation/report shall be prepared by a qualified geotechnical firm in conformance with Chapter 15.36.320 and subsequent applicable sections of the Alameda County Grading Ordinance, for review by the County for the purpose of obtaining a grading permit in accordance with the provisions of the Grading Ordinance and the following requirements.

- a. The site-specific geotechnical/geologic report shall be prepared by a licensed geotechnical engineer or engineering geologist with local expertise in geotechnical investigation and design, based on data collected from subsurface exploration, laboratory testing of samples, and surface mapping. The report shall contain all of the elements listed under the Alameda County Grading Ordinance Chapter 15.36.350, as required, and address the following and any additional issues as required by the Director of Public Works.
  - Potential for surface fault rupture and turbine site location: The geotechnical report will investigate the Greenville, Corral Hollow-Carnegie, and the Midway faults (as appropriate to the location) and determine whether they pose a risk of surface rupture. Turbine foundations and power collection systems will be sited according to recommendations in this report.
  - Strong ground shaking: The geotechnical report will analyze the potential for strong ground shaking at the project site and provide turbine foundation design recommendations, as well as recommendations for power collection systems.
  - Slope failure: The geotechnical report will investigate the potential for slope failure (both seismically and nonseismically induced) and develop site-specific turbine foundation and power collection system plans engineered for the terrain, rock and soil types, and other conditions present at the project site in order to provide long-term stability.
  - Expansive soils: The geotechnical report will assess the soil types at the project site and determine the best engineering designs to accommodate the soil conditions.
- b. Unstable cut or fill slopes: The geotechnical report will address geologic hazards related to the potential for grading to create unstable cut or fill slopes and make site-specific recommendations related to design and engineering. The geotechnical/geologic report may be subject to a professional review by the County's consulting geotechnical engineer/geologist. It shall be the Permittee's responsibility to provide sufficient funds to the County for this professional review service if required.
- c. Permittee shall implement the design recommendations in the geotechnical report, including revised recommendations resulting from the professional review, if such a review is required.
- d. No grading work will be allowed during the rainy season, from October 1 to April 30, except upon a clear demonstration, to the satisfaction of the Director of the Public

Works Agency, that at no stage of the work will there be any substantial risk of increased sediment discharge from the site.

- e. Any proposal for grading work associated with fire access roads must be reviewed and approved by the Alameda County Fire Department prior to issuance of a grading permit.
- f. The grading permit shall be subject to approval of the Alameda County Flood Control and Water Conservation District.

44. **Stormwater Control Plan.** Permittee shall prepare a Stormwater Control Plan (SCP) in compliance with the technical requirements of Provisions C.3 and C.6 of the Municipal Regional Stormwater National Pollutant Discharge Elimination System (NPDES) Permit (Municipal Regional Permit, or MRP) and the County Building and Stormwater Management and Discharge Control Ordinances for the purpose of long-term (post-construction) stormwater control. The SCP shall be submitted to the Director of Public Works for approval prior to issuance of a County Stormwater Permit. The SCP shall include:

- a. Plan drawings showing the locations, sizing and Drainage Management Areas discharging to the proposed stormwater treatment system(s), the planned site design and source control measures, and any required hydromodification management (HM) facilities or devices.
- b. A preliminary written plan that describes the operation and maintenance (O&M) (including inspection) of all installed stormwater treatment systems and HM controls both during construction and following construction.
- c. A draft of a statement from the Permittee and property owner accepting long-term responsibility for the O&M of the installed stormwater treatment systems and HM controls, along with continuing upkeep of any required source control and site design measures, until such responsibility is legally transferred to another entity.
- d. A draft of an agreement to include written conditions in any sales or lease agreements or deed for the Project that requires a buyer or lessee to assume long-term responsibility for the O&M of the installed stormwater treatment systems and HM controls, and the upkeep of the source control and site design measures, until such responsibility is legally transferred to another entity.
- e. A signed statement from the Permittee and property owner(s) granting site access to all representatives of the County, local mosquito and vector control agency staff, and Water Board staff, for the sole purpose of performing O&M inspections of the installed stormwater protection systems (treatment systems, HM controls, source controls and site design measures).
- f. A written statement from the Permittee and property owner(s) and successors acknowledging that the County may conduct annual inspections of all installed stormwater protection systems and that the Permittee agrees to pay for those inspection costs on a time and materials basis.

- g. The plan shall specify that all new or modified drainage facilities shall be designed to ensure no net increase in stormwater discharge rates, flow velocities, or sediment transport would result from Project implementation.
- h. Discharges from these facilities shall be designed so as to avoid concentration of flow and subsequent downstream scouring or sedimentation in natural creek beds.
- i. Proposed roadways shall be designed so as to ensure that potential for slope failure and erosion is minimized.
- j. The Stormwater Control Plan shall be incorporated into all design drawings and specifications as appropriate, and shall meet the following standards:

  - i. The Permittee shall design and construct all storm drainage facilities in compliance with the County Public Works Design Standards.
  - ii. The Permittee shall prevent storm drainage from draining across driveway(s) or onto adjacent properties in a concentrated manner.
  - iii. The Permittee shall obtain a drainage permit under applicable County Ordinances for the installation of new drainage culverts.

A Stormwater Control Plan, Waste Discharge Identification (WDID) Number, Notice of Intent (NOI) and a Storm Water Pollution Prevention Plan (SWPPP) must be submitted to the Public Works Agency prior to issuance of the County Grading and Stormwater Permits.

45. NPDES Permit Requirements to Prevent Stormwater Pollution During Construction (MM WQ-1). As required by Mitigation Measure WQ-1 in the MMRP, the Permittee shall submit a Notice of Intent (NOI) and obtain coverage under the Construction General Permit (CGP) authority of the National Pollutant Discharge Elimination System (NPDES) for both the Central Valley and San Francisco Bay Regional Water Boards, before the onset of any construction activities for the purpose of preventing stormwater pollution during construction. The Permittee shall have a specific Project Storm Water Pollution Prevention Plan (SWPPP) prepared by a Qualified SWPPP Developer and ready for implementation prior to construction. This SWPPP shall be kept onsite during construction activity and provided upon request to representatives of the County and Water Board staffs.

Permittee shall apply for a County Stormwater Permit prior to the start of any construction; this application shall include proof of coverage under the CGP and a copy of the Project SWPPP. This SWPPP must provide for the implementation of pollutant discharge controls that utilize Best Management Practices (BMPs) and technology to reduce erosion, sedimentation, and other discharges to the water quality standards of the CGP and the County Stormwater Permit. BMPs may consist of a wide variety of protective measures taken to reduce pollutants in stormwater and other nonpoint-source runoff, including but not limited to, the following practices:

- a. Installation of temporary erosion control measures (such as silt fences, staked straw bales/wattles, silt/sediment basins and traps, check dams, geofabric, sandbag dikes, and temporary revegetation or other ground cover) to control erosion and sedimentation from disturbed areas.
- b. Construction of dry detention basins (typically dry except after a major rainstorm, when it will temporarily fill with stormwater), designed to decrease runoff from the work site during storm events and to prevent flooding of the construction areas. Basin BMPs must include maintenance schedules for the periodic removal of sediments, excessive vegetation, and debris that may clog basin inlets and outlets.
- c. The application of covers or nontoxic soil stabilizers to inactive construction areas (previously graded areas inactive for 10 days or more) that could contribute sediment to waterways.
- d. The enclosure and coverage of exposed stockpiles of dirt or other loose, granular construction materials that could contribute sediment to waterways.
- e. The control of run-on that could deposit sediment or other materials from areas adjacent to the work site.
- f. The assurance that no earth or organic material will be deposited or placed where it may be directly carried into a stream, marsh, slough, lagoon, or body of standing water.
- g. The application of controls that would preclude the following types of materials from being rinsed or washed into the County stormdrain system, the “waters of the United States,” or adjacent properties: concrete, concrete wash, solvents and adhesives, thinners, paints, fuels, sawdust, dirt, gasoline, asphalt and concrete saw slurry, and heavily chlorinated water.
- h. The establishment of grass or other vegetative cover on the construction site as soon as possible after disturbance.

The Permittee (and the selected contractor) shall select a combination of appropriate BMPs, consistent with the above and with the requirements of the CGP and the County Stormwater Permit, which is expected to minimize runoff and remove contaminants from stormwater discharges. The final selection of BMPs will be subject to approval by the County and by the San Francisco Bay Regional Water Board or the Central Valley Water Board.

The Permittee (and the selected contractor) shall verify that a Notice of Intent (NOI) has been filed with the appropriate State Water Board having jurisdiction, that the said Water Board has issued a Waste Discharge Identification (WDID) Number, that a project SWPPP has been prepared, and that a County Stormwater Permit has been issued before allowing construction to begin. The selected contractor shall perform regular inspections of the construction area, to verify that the BMPs specified in the SWPPP are properly implemented and maintained. The contractor will notify the appropriate Regional Water

Board and the County immediately if there is a noncompliance issue. If necessary, the contractor shall require that additional BMPs be designed and implemented if those originally constructed do not achieve the identified performance standard of the CGP or the County Permit.

46. **Roadway Encroachment Permit.** Permittee shall apply to the Public Works Agency for separate roadway encroachment permits for temporary and permanent access and facilities. Improvement plans shall be prepared by a registered Civil Engineer for approval by the Director of Public Works, accompanied by the required review and inspection fees, as well as insurance and security deposits if required by the Public Works Agency.
47. **Gate Entries.** The Permittee shall provide designs to the Director of Public Works for roadway widening, pavement transitions, shoulder widening, necessary longitudinal and transverse drainage, and any driveway profile adjustments in conformance with County Roadway Standards. The new pavement section shall match, at a minimum, the full roadway section of each affected County roadway. No gates or fences shall be located within any County road right-of-way, and gates shall not swing out towards the public road.
48. **Construction Traffic Control Plan (MM TRA-1).** Prior to starting construction-related activities, the Permittee shall prepare and implement a Traffic Control Plan (TCP) that will reduce or eliminate impacts associated with the proposed project. The TCP shall adhere to Alameda County, San Joaquin County, and Caltrans requirements, and must be submitted for review and approval of the County Public Works Department prior to implementation. The TCP shall include the following elements. The County and Caltrans may require additional elements to be identified during their review and approval of the TCP.
  - Schedule construction hours to minimize concentrations of construction workers commuting to/from the project site during typical peak commute hours (7 a.m. to 9 a.m. and 4 p.m. to 6 p.m.).
  - Limit truck access to the project site during typical peak commute hours (7 a.m. to 9 a.m. and 4 p.m. to 6 p.m.).
  - Require that written notification be provided to contractors regarding appropriate haul routes to and from the project site, as well as the weight and speed limits on local county roads used to access the project site.
  - Provide access for emergency vehicles to and through the project site at all times.
  - When lane/road closures occur during delivery of oversized loads, provide advance notice to local fire, police, and emergency service providers to ensure that alternative evacuation and emergency routes are designated to maintain service response times.
  - Provide adequate onsite parking for construction trucks and worker vehicles.
  - Require suitable public safety measures in the project site and at the entrance roads, including fences, barriers, lights, flagging, guards, and signs, to give adequate



warning to the public of the construction and of any dangerous conditions that could be encountered as a result thereof.

- Complete road repairs on local public roads as needed during construction to prevent excessive deterioration. This work may include construction of temporary roadway shoulders to support any necessary detour lanes.
- Repair or restore the road right-of-way to its original condition or better upon completion of the work.

Coordinate project-related construction activities, including schedule, truck traffic, haul routes, and the delivery of oversized or overweight materials, with Alameda County, Caltrans, and affected cities and counties to identify and minimize overlap with other area construction projects.

49. Watercourse Protection Ordinance. If any ground disturbing work is proposed within or near a watercourse, a watercourse encroachment permit or a grading permit shall be secured from the Public Works Agency in accordance with the Alameda County Watercourse Protection Ordinance. Watercourse setbacks shall be delineated on the exhibit plan per the provisions of Article V of the Watercourse Ordinance. The Ordinance establishes a setback of 20 feet from the top of the creek bank. However, for existing bank slopes at 2 horizontal to 1 vertical, or steeper, establish the setback by drawing a line on a cross-section at a 2 horizontal to 1 vertical slope from the toe of the existing bank to a point where it intercepts the ground surface and then add 20 feet. As provided by the Watercourse Protection Ordinance (Section 13.12.310, item G), the Director of Public Works shall make the determination as to setback limits and any permitted development within a setback.
50. Other Watercourse Requirements. The Permittee shall be responsible, prior to any work near or within a recognized watercourse, for securing other permits (e.g., Streambed Alteration Agreement) or other approvals required for work which is regulated by any other public agency (i.e., the California Department of Fish and Wildlife, Army Corp of Engineers, etc.).
51. Project-Specific Avian Protection Plan (BIO-11a). The Permittee shall prepare a Project-specific Avian Protection Plan (APP) as required by Mitigation Measure BIO-11a in the MMRP to specify measures and protocols consistent with the program-level mitigation measures that address avian mortality. The Project-specific APP will include, at a minimum, the following components.
  - a. Information and methods used to site turbines to minimize risk.
  - b. Documentation that appropriate turbine designs are being used.
  - c. Documentation that avian-safe practices are being implemented on Project infrastructure.
  - d. Methods used to discourage prey for raptors.

- e. A detailed description of the postconstruction avian fatality monitoring methods to be used (consistent with the minimum requirements outlined in Mitigation Measure BIO-11g).
- f. Methods used to compensate for the loss of raptors (consistent with the requirements of Mitigation Measure BIO-11h).

The Permittee shall prepare and submit a draft Project-specific APP to the County within 10 days of submitting the Building Permit application. The draft APP will be reviewed by the TAC for consistency and the inclusion of appropriate mitigation measures that are consistent with the PEIR and recommended for approval by the County. The Permittee must obtain approval from the Planning Director of the draft APP prior to commercial operation, and obtain recommendations from the TAC for preparation of the Final APP within six months of commercial operations. The Final APP shall be subject to approval by the Planning Director.

52. Stop Work Procedures for Encounters With Cultural Resources, Human Remains and Paleontological Resources During Ground-Disturbing Activities (MMs CUL-2d, CUL-3 and GEO-7c). Permittee shall ensure that construction specifications include a stop-work order if paleontological, prehistoric, or historic-era cultural resources, or human remains are unearthed during ground-disturbing activities. Specific procedures are set forth in Conditions 69, 70 and 71.

**PRIOR TO ISSUING BUILDING PERMIT**

53. Implement Best Management Practices (BMPs) to Avoid and Minimize Impacts on Special-Status Plant and Animal Species (MMs BIO-1b, BIO-5a and BIO-7a). The Permittee shall ensure that the BMPs described in Mitigation Measures BIO-1b, BIO-5a, and BIO-7a, in accordance with practices established in the East Alameda County Conservation Strategy (EACCS), will be incorporated into the Project design and construction documents.
54. Measures to Avoid, Minimize and Mitigate Impacts On Special-Status Wildlife Species (MMs BIO-3b, BIO-4a, BIO-5a, BIO-6, BIO-7a, BIO-8a, BIO-8b, BIO-9 and BIO-10a). The Permittee shall implement Mitigation Measures BIO-3b, BIO-4a, BIO-5a, BIO-6, BIO-7a, BIO-8a, BIO-9 and BIO-10a, as identified in the Project MMRP to address special-status invertebrates, amphibians, reptiles, nesting birds and mammals, which are based on the EACCS and which have been modified and supplemented in the Project MMRP. The MMRP measures shall address the following species:

a. Vernal pool branchiopods (invertebrates, including longhorn fairy shrimp, vernal pool fairy shrimp and vernal pool tadpole shrimp)	
b. Curved-footed hygrotus diving beetle	c. Valley elderberry longhorn beetle
d. California tiger salamander	e. Western spadefoot
f. California red-legged frog	g. Foothill yellow-legged frog
h. Western pond turtle	i. Blainville’s horned lizard
j. Alameda whipsnake	k. San Joaquin coachwhip
l. Western burrowing owl	m. Tri-colored blackbird Other non-

	special-status migratory birds
n. San Joaquin kit fox	o. American badger

Where impacts cannot be avoided or minimized, compensatory mitigation will be undertaken in accordance with mitigation ratios and requirements provided in the EACCS (Appendix C2 in the Final PEIR). In the event that an incidental take permit is obtained, compensatory mitigation will be undertaken in accordance with the terms of the permit in consultation with United States Fish and Wildlife Service (USFWS).

Implementation of some Mitigation Measures identified in the MMRP will require that the Permittee obtain incidental take permits from USFWS and CDFW (e.g., Alameda whipsnake) before construction begins. Additional conservation measures may be required in applicable Project permits (i.e., ESA incidental take permit).

55. Implement Best Available Control Technology for Heavy-Duty Vehicles (MM GHG-2a). The Permittee shall require existing trucks/trailers to be retrofitted with the best available technology and/or ARB-approved technology and/or CARB-approved technology consistent with the CARB Truck and Bus Regulation (California Air Resources Board 2019). The CARB Truck and Bus Regulation applies to all diesel-fueled trucks and buses with a gross vehicle weight rating (GVWR) greater than 14,000 pounds. The Permittee shall comply with the specific requirements of Mitigation Measure GHG-2a as set forth in the MMRP to mitigate for potentially significant cumulative construction and operations and maintenance contributions to greenhouse gas emissions.

### PRIOR TO GROUND-DISTURBING ACTIVITIES

56. Establish Activity Exclusion Zones for Special-Status Plant Species (BIO-1c). As required by Mitigation Measure BIO-1c in the MMRP, where pre-construction surveys determine that a special-status plant species is present in or adjacent to a Project area, the Permittee shall establish activity exclusion zones to avoid direct and indirect impacts of the Project on such species. No ground-disturbing activities shall take place within these designated activity exclusion zones, including construction of new facilities, construction staging, or other temporary work areas. Activity exclusion zones for special-status plant species will be established around each occupied habitat site, the boundaries of which will be clearly marked with standard orange plastic construction exclusion fencing or its equivalent. The establishment of activity exclusion zones will not be required if no construction-related disturbances will occur within 250 feet of the occupied habitat. The size of activity exclusion zones may be reduced through consultation with a qualified biologist and with concurrence from CDFW based on site-specific conditions.
57. Best Management Practices to Avoid and Minimize Effects on Special-Status Amphibians (MM BIO-5a). The Permittee shall implement BMPs and other appropriate measures consistent with Mitigation Measure BIO-5a in the Project MMRP to address special-status amphibians and shall ensure that, in accordance with measures developed for the EACCS, such BMPs are incorporated into the appropriate design and construction documents. Implementation of some of these measures will require that the Project proponent obtain incidental take permits from USFWS (e.g., California red-legged frog and California tiger salamander) and from CDFW (California tiger salamander only) before construction begins. Additional conservation measures or conditions of approval

may be required in applicable Project permits (e.g., ESA or CESA incidental take authorization). Permittee shall comply with the specific requirements of Mitigation Measure BIO-5a in the MMRP to mitigate for effects on amphibians, including, but not limited to limits on the season in which ground-disturbing activities may occur, installation of barrier fencing, identifying appropriate relocation areas and preparing a relocation plan.

Permittee shall have a qualified biologist conduct preconstruction surveys immediately prior to ground-disturbing activities (including equipment staging, vegetation removal, grading). The biologist will survey the work area and all suitable habitats within 300 feet of the work area. If individuals (including adults, juveniles, larvae, or eggs) are found, work will not begin until USFWS and/or CDFW is contacted to determine if moving these life-stages is appropriate. If relocation is deemed necessary, it will be conducted in accordance with the relocation plan. Incidental take permits are required for relocation of California tiger salamander (USFWS and CDFW) and California red-legged frog (USFWS). Relocation of western spadefoot and foothill yellow-legged frog normally requires a letter from CDFW authorizing this activity; however, a biologist with a specific authorization (i.e., scientific collecting permit or MOU from CDFW) will be accepted for this purpose.

58. Preconstruction Surveys for Western Pond Turtle and Monitoring of Construction Activities (BIO-6). If determined as a result of pre-construction surveys pursuant to Mitigation Measure BIO-3a, that suitable aquatic or upland habitat for western pond turtle is identified within proposed work areas, Permittee shall implement Mitigation Measure BIO-6 as set forth in the Project MMRP, consistent with measures developed for the EACCS, to ensure that the proposed Project does not have a significant impact on western pond turtle. The mitigation includes but is not limited to surveys conducted both one week before and immediately before (within 24 hours) of work activity, use of a biological monitor if needed, and approval by CDFW for any required relocation of turtles.

59. Plan for Restoration of Disturbed Annual Grasslands (BIO-5c). Within 30 days prior to any ground disturbance, Permittee shall have a qualified biologist prepare a Grassland Restoration Plan in coordination with CDFW and subject to CDFW approval, to ensure that temporarily disturbed annual grasslands and areas planned for the removal of permanent roads and turbine pad areas are restored to pre-Project conditions. The Grassland Restoration Plan shall conform to the requirements of Mitigation Measure BIO-5c in the MMRP.

The Grassland Restoration Plan shall include a requirement to monitor restoration areas annually (between March and October) for up to three years following the year of restoration. The restoration will be considered successful when the percent cover for restored areas is 70% absolute cover of the planted/seeded species compared to the percent absolute cover of nearby reference sites.

The Permittee shall provide evidence to the Planning Director that CDFW has reviewed and approved the Grassland Restoration Plan. Additionally, the Permittee shall provide annual monitoring reports to the County by January 31 for three years or until restoration is deemed successful by the CDFW, summarizing the monitoring results and any remedial measures implemented (if any are necessary) during the previous year.

60. Pre-Construction Worker-Awareness Training for Archaeological Resources (MM CUL-2c). The Permittee shall provide for training overseen by a qualified professional archaeologist prior to the initiation of any site preparation and/or the start of construction. The Permittee shall ensure that all construction workers receive adequate training, and to ensure that forepersons and field supervisors can recognize archaeological resources (e.g., areas of shellfish remains, chipped stone or groundstone, historic debris, building foundations, human bone) in the event that any are discovered during construction.

#### **DURING CONSTRUCTION**

61. Implement Applicable BAAQMD Basic Construction Mitigation Measures (MM AQ-2a). The project proponents shall require all contractors to comply with the following requirements for all areas with active construction activities.
- a. All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) will be watered two times per day.
  - b. All haul trucks transporting soil, sand, or other loose material offsite will be covered.
  - c. All visible mud or dirt tracked out onto adjacent public roads will be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
  - d. All vehicle speeds on unpaved roads will be limited to 15 mph.
  - e. All roadways, driveways, and sidewalks to be paved will be completed as soon as possible. Building pads will be laid as soon as possible after grading unless seeding or soil binders are used.
  - f. Idling times will be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California

airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage will be provided for construction workers at all access points.

- g. All construction equipment will be maintained and properly tuned in accordance with manufacturer's specifications. All equipment will be checked by a certified visible emissions evaluator.
- h. Post a publicly visible sign with the telephone number and person to contact representing the Permittee regarding dust complaints. This person will respond and take corrective action within 48 hours. The Air District and County Building Official's phone numbers will also be visible to ensure compliance with applicable regulations.

62. Implement Applicable BAAQMD's Additional Construction Mitigation Measures (MM AQ-2b). The project proponents shall require all contractors and subcontractors to comply with the following requirements for all areas with active construction activities.

- a. During construction activities, all exposed surfaces will be watered at a frequency adequate to meet and maintain fugitive dust control requirements of the relevant air quality management entities.
- b. All excavation, grading, and/or demolition activities will be suspended when average wind speeds exceed 20 mph, as measured at the Livermore Municipal Airport.
- c. Wind breaks (e.g., trees, fences) will be installed on the windward side(s) of actively disturbed areas of construction. Wind breaks should have at maximum 50% air porosity.
- d. Vegetative ground cover (e.g., fast-germinating native grass seed) will be planted in disturbed areas as soon as possible and watered appropriately until vegetation is established.
- e. If feasible and practicable, the simultaneous occurrence of excavation, grading, and ground-disturbing construction activities on the same area at any one time will be limited.
- f. Construction vehicles and machinery, including their tires, will be cleaned prior to leaving the construction area to remove vegetation and soil. Cleaning stations will be established at the perimeter of the construction area.
- g. Site accesses to a distance of 100 feet from the paved road will be treated with a 6 to 12-inch compacted layer of wood chips, mulch, or gravel.

- h. Sandbags or other erosion control measures will be installed to prevent silt runoff to public roadways from sites with a slope greater than 1%.
- i. The idling time of diesel-powered construction equipment will be minimized to 2 minutes.
- j. The project will develop a plan demonstrating that the offroad equipment (more than 50 horsepower) to be used in the construction project (i.e., owned, leased, and subcontractor vehicles) would achieve a project wide fleet-average 20% NOX reduction and 45% PM reduction compared to the most recent ARB fleet average. Acceptable options for reducing emissions include the use of late model engines, low-emission diesel products, alternative fuels, engine retrofit technology, after-treatment products, add-on devices such as particulate filters, and/or other options as such become available.
- k. Use low VOC (i.e., ROG) coatings beyond the local requirements (i.e., BAAQMD Regulation 8, Rule 3: Architectural Coatings).
- l. All construction equipment, diesel trucks, and generators will be equipped with BACT for emission reductions of NOX and PM.
- m. All construction equipment shall meet ARB's most recent certification standard for offroad heavy duty diesel engines.

63. Reduce construction-related air pollutant emissions to below BAAQMD NOx thresholds (MM AQ-2c). The project proponents will ensure construction-related emissions do not exceed BAAQMD's construction NOX threshold of 54 pounds per day. In addition to implementing PEIR Mitigation Measures AQ-2a and AQ-2b, the project proponents will coordinate with BAAQMD (or the Clean Air Foundation) to purchase NOX credits to offset remaining NOX construction and operations emissions exceeding BAAQMD thresholds.

The project proponents will track construction activity, estimate emissions, and enter into a construction mitigation contract with BAAQMD to offset NOX emissions that exceed BAAQMD NOX maximum daily threshold of 54 pounds per day.

The maximum daily emissions will be calculated on a daily basis by determining total construction-related NOX emissions for each calendar day. BAAQMD will use the mitigation fees provided by the project proponents to implement emissions reduction efforts that offset project NOX emissions that exceed the BAAQMD threshold.

This mitigation includes the following specific requirements:

- a. The project proponents will require construction contractors to provide daily construction activity monitoring data for all construction activities associated with the project to estimate actual construction emissions, including the effect of equipment emissions reduction measures. The project proponents will submit the daily construction activity monitoring data and an estimate of actual daily construction emissions to the lead agency and BAAQMD for review by the 15th day of each

month for the prior construction month. The lead agency will examine the construction and operational activity monitoring to ensure it is representative, and BAAQMD will examine the emissions estimate to ensure it is calculated properly.



- b. After acceptance of the emissions estimates by BAAQMD for the prior month, the project proponents will submit mitigation fees to BAAQMD to fund offsets for the portion of daily emissions that exceed the maximum daily NOX threshold. The mitigation fees will be based on the mitigation contract with BAAQMD (see discussion below) but will not exceed the emissions-reduction project cost-effectiveness limit set for the Carl Moyer Program for the year in which mitigation fees are paid. The current Carl Moyer Program cost-effectiveness limit is \$30,000 per weighted ton of criteria pollutants (NOX + ROG + [20\*PM]). An administrative fee of 5% will be paid by the project proponents to BAAQMD to implement the program.
  - c. The mitigation fees will be used by BAAQMD to fund projects that are eligible for funding under the Carl Moyer Program guidelines or other BAAQMD emissions-reduction incentive programs that meet the Carl Moyer Program cost-effectiveness threshold and are real, surplus, quantifiable, and enforceable.
  - d. The project proponents will enter into a mitigation contract with BAAQMD for the emissions-reduction incentive program. The mitigation contract will include the following:
    - a. Identification of appropriate offsite mitigation fees required for the project.
    - b. Timing for submission of mitigation fees.
    - c. Processing of mitigation fees paid by the project proponents.
    - d. Verification of emissions estimates submitted by the project proponents.
    - e. Verification that offsite fees are applied to appropriate mitigation programs within the San Francisco Bay Area Air Basin (SFBAAB).
  - e. The mitigation fees will be submitted within 4 weeks of BAAQMD acceptance of an emissions estimate provided by the project proponents showing that the maximum daily NOX threshold was exceeded (when measured on a daily basis).
64. Compliance with NPDES Storm Water Requirements (MM WQ-1). Permittee shall implement the Storm Water Pollution Prevention Plan (SWPPP) required by Condition 45 and as required by Mitigation Measure WQ-1 in the MMRP, maintain compliance with the other requirements of the CGP and the County C.6 Stormwater Permit (inspection, sampling, reporting, etc.) and construct the stormwater treatment system(s) per the Stormwater Control Plan (SCP). The SCP, SWPPP, and the CGP and County Stormwater Permit inspection, sampling and reporting documentation shall be kept onsite during construction activity and shall be made available upon request to representatives of the County and Water Board staff.
65. Prevent Introduction, Spread, and Establishment of Invasive Plant Species (MM BIO-2). The Permittee shall implement Mitigation Measure BIO-2 as set forth in the MMRP, in order to avoid and minimize the introduction and spread of invasive nonnative plant species, including the following BMPs, and the other requirements of Mitigation Measure BIO-2.

- a. Construction vehicles and machinery will be cleaned prior to entering the construction area. Cleaning stations will be established at the perimeter of the construction area along all construction routes or immediately offsite.
- b. Vehicles will be cleaned only at approved areas. No cleaning of vehicles will occur at job sites.
- c. To discourage the introduction and establishment of invasive plant species, seed mixtures and straw used within natural vegetation will be either rice straw or weed-free straw, as allowed by state and federal regulation of stormwater runoff.

In addition, the project proponent will prepare and implement erosion and sediment control plans to control short-term and long-term erosion and sedimentation effects and to restore soils and vegetation in areas affected by construction activities (2020 Updated PEIR Mitigation Measure BIO-1b). Prior to initiating any construction activities that will result in temporary impacts on natural communities, a restoration and monitoring plan will be developed for temporarily affected habitats in each project area (PEIR Mitigation Measure BIO-5c). Restoration and monitoring plans will be submitted to the County and CDFW for approval. These plans will include methods for restoring soil conditions and revegetating disturbed areas, seed mixes, monitoring and maintenance schedules, adaptive management strategies, reporting requirements, and success criteria. Following completion of project construction, the project proponents will implement the revegetation plans to restore areas disturbed by project activities to a condition of equal or greater habitat function than occurred prior to the disturbance.

66. **Retain a Biological Monitor During Ground-Disturbing Activities in Environmentally-Sensitive Areas (BIO-1e).** As required by Mitigation Measure BIO-1e, the Permittee shall have a qualified biologist (as determined by the Alameda County Planning Director) conduct periodic monitoring of decommissioning, repowering, and reclamation activities that occur adjacent to sensitive biological resources (e.g., special-status species, sensitive vegetation communities, wetlands, etc.). Monitoring shall occur during initial ground disturbance where sensitive biological resources are present and weekly thereafter or as determined by the County in coordination with a qualified biologist. The biologist will assist the crew, as needed, to comply with all Project implementation restrictions and guidelines. In addition, the biologist will be responsible for ensuring that the Permittee or its contractors maintain exclusion areas adjacent to sensitive biological resources, and for documenting compliance with all biological resources-related mitigation measures.
67. **Protection of Valley Elderberry Longhorn Beetle Habitat (MM BIO-4a).** Where pre-construction surveys completed pursuant to Condition 18 (Mitigation Measure BIO-3a) indicate valley elderberry longhorn beetle habitat is present within proposed work areas or within 100 feet of these areas, the Permittee shall implement Mitigation Measure BIO-4a in the MMRP related to avoiding removal of elderberry shrubs, protecting elderberry

shrubs/clusters near construction areas, providing buffer areas approved by USFWS, fencing and monitoring.

Biological inspection reports on the presence and protective actions taken regarding valley elderberry longhorn beetle habitat will be provided to the Permittee, the County and USFWS.

68. Stop Work Procedures for Encounters With Hazardous Materials or Soil or Groundwater Contamination (MM HAZ-4). As required in part by Mitigation Measure HAZ-4 as set forth in the MMRP, the Permittee shall initiate stop-work procedures upon encounters with hazardous materials or soil or groundwater contamination during construction, demolition or reclamation activities, and implement appropriate health and safety procedures, including the use of appropriate personal protective equipment (e.g., respiratory protection, protective clothing, helmets and goggles). Any such discovery shall be reported immediately to the Alameda County Health Services Agency – Environmental Health Department, and complete procedures outlined in Mitigation Measure HAZ-4 in the MMRP and as described in Condition 22.
69. Stop Work Procedures for Encounters With Cultural Resources During Ground-Disturbing Activities (MM CUL-2d). As required by Mitigation Measure CUL-2d as set forth in the MMRP, the Permittee shall, in addition to providing construction specifications requiring stop-work procedures upon encounters with cultural resources during grading or other ground-disturbing activity (as required by Condition 52), the Permittee and any related contractor shall immediately halt all activity within 100 feet of the find until a qualified archaeologist can assess the significance of the find. Prehistoric materials might include obsidian and chert flaked-stone tools (e.g., projectile points, knives, scrapers) or tool-making debris; culturally darkened soil (“midden”) containing heat-affected rocks and artifacts; stone milling equipment (e.g., mortars, pestles, handstones, or milling slabs); and battered-stone tools, such as hammerstones and pitted stones. Historic-period materials might include stone, concrete, or adobe footings and walls; filled wells or privies; and deposits of metal, glass, and/or ceramic refuse. If the find is determined to be potentially significant, the archaeologist, in consultation with the Native American representative (if appropriate), will develop a treatment plan that could include site avoidance, capping, or data recovery.
70. Stop Work Procedures for Encounters With Human Remains During Ground-Disturbing Activities (MM CUL-3). In addition to providing construction specifications requiring stop-work procedures upon encounters with cultural resources during grading or other ground-disturbing activity, the Permittee shall ensure the construction specifications include a stop-work order if human remains are discovered during construction or demolition. There will be no further excavation or disturbance of the site within a 100-foot radius of the location of such discovery, or any nearby area reasonably suspected to overlie adjacent remains. The Alameda County Coroner will be notified and will make a determination as to whether the remains are Native American. If the Coroner determines

that the remains are not subject to his authority, he will notify the Native American Heritage Commission, who will attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this state law, then the landowner will re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance. A final report will be submitted to Alameda County. This report will contain a description of the mitigation program and its results, including a description of the monitoring and testing resources analysis methodology and conclusions and a description of the disposition/curation of the resources.

71. Procedures and Preparation for Encounters with Paleontological Resources During Major Excavation (MMs GEO-7a, GEO-7b and GEO-7c). As required by Mitigation Measures GEO-7a, GEO-7b and GEO-7c in the MMRP, the Permittee shall retain a qualified professional paleontologist to monitor activities with the potential to disturb sensitive paleontological resources, and to determine if, on the basis of data gathered during detailed project design, where monitoring by a paleontologist during ground-disturbing activities will require monitoring. The Permittee shall implement Mitigation Measures GEO-7a, GEO-7b and GEO-7c as set forth in the MMRP related to paleontological resources.

The Permittee will ensure that all construction workers receive adequate training provided by a qualified professional paleontologist, and to ensure that forepersons and field supervisors can recognize fossil materials in the event any are discovered during construction.

If substantial fossil remains (particularly vertebrate remains) are discovered during earth disturbing activities, activities within 100 feet of the find will stop immediately until a state-registered professional geologist or qualified professional paleontologist can assess the nature and importance of the find and a qualified professional paleontologist can recommend appropriate treatment. Subsequent procedures are described in detail in the MMRP for Mitigation Measures GEO-7c.

72. Construction Signage. Permittee shall provide signage as required by the permitting authority (e.g. Fire Department, Building Department) including phone numbers of the facility operator for use in case of an emergency. The name of the Project and the names, titles, and phone numbers of individuals responsible for control of construction-related noise, dust, and traffic shall be maintained on all signage during construction. A 24-hour emergency number shall also be provided on all signage. The sign shall be kept up-to-date at all times.
73. Limit Construction to Daylight Hours (MM AES-1). As required by Mitigation Measure AES-1, major construction activities shall not be undertaken between sunset and sunrise or on weekends. Construction activity is specifically prohibited from using high-wattage lighting sources to illuminate work sites after sunset or before sunrise, with the exception

of nighttime deliveries under the approved traffic control plan or other construction activities that require nighttime work for safety considerations. For the purpose of this condition and Mitigation Measure AES-1, major construction activities shall be defined as those which are visibly obtrusive from residences and public recreational trails, based on the finding of significant impacts in the PEIR.

74. Noise-Reduction Practices During Construction (MM NOI-2). The Permittee shall employ noise-reducing practices during decommissioning and new turbine construction so that resulting noise does not exceed Alameda County noise ordinance standards. Measures to limit noise may include the following:
- a. Prohibit noise-generating activities before 7 a.m. and after 7 p.m. on any day except Saturday or Sunday, and before 8 a.m. and after 5 p.m. on Saturday or Sunday.
  - b. Locate equipment as far as practical from noise sensitive uses.
  - c. Require that all construction equipment powered by gasoline or diesel engines have sound-control devices that are at least as effective as those originally provided by the manufacturer and that all equipment be operated and maintained to minimize noise generation.
  - d. Use noise-reducing enclosures around noise-generating equipment where practicable.
  - e. Implement other measures with demonstrated practicability in reducing equipment noise upon prior approval by the County.

In no case will the Permittee be allowed to use gasoline or diesel engines without muffled exhausts.

#### **PRIOR TO DATE OF COMMERCIAL OPERATION**

75. Remove Derelict Facilities and Restore Abandoned Roadways (MM AES- 2b). As required by Mitigation Measure AES-2b as set forth in the MMRP, the Permittee shall clear the Project site of all derelict equipment, wind turbine components not required for the Project, and litter and debris from old turbine operations. Such litter and debris may include derelict turbines, obsolete anemometers, unused electrical poles and broken turbine blades. In addition, abandoned roads that are no longer in use on such parcels shall be restored and hydroseeded to reclaim the sites and remove visual traces from the viewscape, except in cases where state or federal resource agencies (i.e., USFWS and/or CDFW) recommend that the features be left in place for habitat purposes, or as specified by local landowners to facilitate continued ranching operations. All parcels with new turbines will be maintained in such a manner through the life of Project operations and until the parcels are reclaimed in accordance with the approved reclamation plan.
76. Compensate for Impacts on Special-Status Plant Species (BIO-1d). The project proponent will avoid or minimize temporary and permanent impacts on special-status plants that occur on the project site and will compensate for impacts on special-status plant species.

Although all impacts on large-flowered fiddleneck, diamond-petaled California poppy, and caper-fruited tropidocarpum will be avoided, impacts on other special-status plant species will be avoided to the extent feasible, and any unavoidable impacts will be addressed through compensatory mitigation.

Where avoidance of impacts on a special-status plant species is infeasible, loss of individuals or occupied habitat of a special-status plant species occurrence will be compensated for through the acquisition, protection, and subsequent management in perpetuity of other existing occurrences at a minimum 2:1 ratio (occurrences preserved:occurrences impacted). For focal species identified in the EACCS (San Joaquin spearscale, big tarplant, Congdon's tarplant, palmate-bracted bird's-beak, Livermore Valley tarplant, and recurved larkspur), loss of individuals and occupied habitat will be compensated at 5:1, consistent with the EACCS. The project proponent will provide detailed information to the County and CDFW on the location of the preserved occurrences, quality of the preserved habitat, feasibility of protecting and managing the areas in-perpetuity, responsible parties, and other pertinent information. The preserved habitat will be confirmed to support populations of the impacted species and will be preserved in perpetuity via deed restriction, establishment of a conservation easement, or similar preservation mechanism. A qualified botanist or plant ecologist will prepare a preservation plan or long-term management plan for the site containing at a minimum: a monitoring plan and performance criteria for the preserved plant population; a description of remedial measures to be performed in the event that performance criteria are not met; a description of maintenance activities to be conducted on the site, including weed control, trash removal, irrigation, and control of herbivory by livestock and wildlife; and an adequate funding mechanism to ensure long-term management of the preserved habitat. If suitable occurrences of a special-status plant species are not available for preservation, then the project will be redesigned to remove features that would result in impacts on that species.

77. Conservation Measures to Compensate for Avian Mortality (BIO-11h). The Permittee shall provide a plan for compensation for impacts on avian species, including raptors as well as smaller birds, employing one or more of the options set forth in Mitigation Measure BIO-11h in the MMRP. The objective is to provide or improve habitat for raptors and avian species within the APWRA on a long-term basis, or in ten-year increments, to be adjusted on the basis of avian monitoring results only every ten years or once within each ten-year period. An avian conservation strategy, to be outlined in the draft APP required by Mitigation Measure 11a, shall be implemented within one year of the commercial operations date (or of 75 percent of the turbine capacity if construction is staged), unless compliance with the conservation strategy includes complying with compensatory mitigation measures in an Eagle Take Permit (ETP) from the USFWS, in which case compensation shall be provided according to terms of the eagle permit. Strategic measures may include retrofitting of high-risk electrical infrastructure; measures outlined in an approved Eagle Conservation Plan and Bird and Bat Conservation Strategy; contributions to avian conservation efforts such as

those undertaken by the California Raptor Center or the East Bay Regional Park District; contributions to regional conservation of avian habitat; contribution to efforts benefitting eagles and other raptors; and other conservation measures to be identified in the future by USFWS and non-governmental organizations. If the ETP results in retrofitting of high-risk power poles outside of the APWRA, it will be accepted as compensatory mitigation only if required by an ETP from the USFWS, or if other compensatory mitigation measures causes a delay to the Project or results in a greater cost than would be incurred by high-risk power pole retrofits.

78. Compensate for Direct and Indirect Effects on Valley Elderberry Longhorn Beetle (BIO-4b). If elderberry shrubs cannot be avoided and protected as outlined in Mitigation Measure BIO-4a, the Permittee shall obtain an incidental take permit from USFWS and compensate for the loss of any elderberry shrubs. Surveys of elderberry shrubs to be transplanted will be conducted by a qualified biologist prior to transplantation. Surveys will be conducted in accordance with the *Conservation Guidelines for the Valley Elderberry Longhorn Beetle* (U.S. Fish and Wildlife Service 1999). Permittee shall comply with the specific requirements of Mitigation Measure BIO-4b of the MMRP to mitigate for effects on valley elderberry longhorn beetle.

The Project proponent will be responsible for funding and providing monitoring reports to USFWS in each of the years in which a monitoring report is required. As specified in the *Conservation Guidelines*, the report will include information on timing and rate of irrigation, growth rates, and survival rates and mortality.

79. Compensate for Loss of Habitat for Special-Status Amphibians, Reptiles, Western Burrowing Owl, San Joaquin Kit Fox and American Badger (MMs BIO-5b, BIO-7b, BIO-9 and BIO-10b). Where impacts on aquatic and upland habitat for special-status amphibians, reptiles special-status and non-special-status tree/shrub- and ground-nesting birds and burrowing owls, cannot be avoided or minimized, Permittee shall provide compensatory mitigation in accordance with mitigation ratios and requirements developed under the EACCS (Appendix C). In the event that take authorization is required, compensatory mitigation will be undertaken in accordance with the terms of the authorization in consultation with USFWS and/or CDFW.

80. Compensate for the Loss of Riparian Habitat, Wetlands and Streams (MMs BIO-15, BIO-16 and BIO-18: *if applicable*). If wetlands or streams are filled or disturbed as part of the repowering Project, the Permittee shall compensate for the loss of this habitat to ensure no net loss of habitat functions and values. Compensation ratios will be based on site-specific information and determined through coordination with state and federal agencies (CDFW, USFWS, United States Army Corps of Engineers, or USACE). Unless specified otherwise by a resource agency, the compensation will be at a minimum 1:1 ratio (1 acre restored or created for every 1 acre filled) and may be a combination of onsite restoration/ creation, offsite restoration, and mitigation credits. A restoration and

monitoring plan will be developed and implemented. The plan will describe how alkali meadow habitat, riparian habitat or wetlands will be created and monitored.

81. Conduct Preconstruction Surveys and Implement Protection Measures for Western Bumble Bee (MMs BIO-22a and BIO-22b). As required by MM BIO-22a, prior to the start of construction, qualified biologist(s) will conduct botanical surveys in late spring/early summer to identify and map concentrations of flowering plants that provide food resources for western bumble bee. If moderate to high quality foraging habitat for western bumble bee is identified in the project area based on the habitat assessment, these areas will be surveyed by qualified invertebrate biologist(s) (with experience conducting bumble bee surveys) within 1 year prior to the start of construction. If western bumble bee is determined not to be present at the project site or a qualified invertebrate biologist (experienced with bumble bees) concludes that there is a very low likelihood that the species is present, then no additional mitigation is required. If western bumble bees are determined to be present at the project site, then the project proponent will implement MM BIO-22b.

As required by MM BIO-22b, the following is required if western bumble bees are present on the Project site:

- The project biologist would conduct additional preconstruction surveys within the project disturbance footprint for active bee nest colonies and associated floral resources (i.e., flowering vegetation on which bees from the colony are observed foraging) no more than 30 days prior to any ground disturbance between March and September.
- To minimize temporary disturbance of suitable foraging and nesting habitat for western bumble bee, ground disturbance within suitable annual grassland habitat will be restricted to the minimum area necessary to perform construction activities.
- To encourage growth of additional nectar and pollen producing plants at the project site, disturbed grasslands that are revegetated in accordance with PEIR Mitigation Measure BIO-5c will use a seed mix combination that includes nectar and pollen producing plants commonly used as a food source by western bumble bee.
- To minimize impacts on bees from herbicide drift, herbicide application around tower foundations will be performed using handheld equipment and will be restricted to a 20- foot radius buffer area around the tower foundations.

Additional conservation measures or conditions of approval may be required in applicable project permits.

82. Evidence of Compliance with the Federal Aviation Administration (FAA). Prior to the date of commercial operation, the Permittee shall provide a copy of the FAA Determination of No Hazard to the Alameda County Planning Director for a hearing by the Alameda County Airport Land Use Commission.



## PERFORMANCE STANDARDS

83. **Windfarm Fire Requirements.** To provide a reasonable level of fire protection and safety for ongoing windfarm operations, the Permittee shall be responsible for compliance with the Altamont Pass Windfarms Fire Requirements dated September 22, 2005 adopted by Alameda County and which were reviewed and re-adopted on November 12, 2014. In addition, the Permittee shall make a reasonable attempt to maintain the telephone numbers of the inhabitants of all adjacent properties and give timely notification to same in the event of an on-site fire.
84. **Safety Reporting.** Permittee shall notify the County Building Official and Planning Director of any tower collapse, blade throw, fire, or injury to worker within five (5) days of any such occurrence.
85. **Screen Surplus Parts and Materials (MM AES-2c).** As required by Mitigation Measure AES-2c, the Permittee shall have surplus parts and materials that are kept onsite maintained in a neat and orderly fashion and screened from view, which may be accomplished by using a weatherproof camouflage material that can be draped over surplus parts and materials stockpiles. Draping materials shall be changed at least twice per year from green to brown and back again according to the season so that stockpiles are effectively camouflaged to match the predominant color of surrounding grass areas.
86. **Site Maintenance.** Litter and debris shall be contained in appropriate receptacles and shall be disposed of promptly. All construction trailers, construction materials and construction-related debris shall be removed following cessation of construction activity, or within 30 days of authorization of commercial operation.
87. **Removal of Inoperative Equipment.** Any inoperative turbine, windfarm or windfarm site that is determined by the Planning Director to be substantially inoperative shall be restored or reclaimed consistent with the approved *Restoration and Reclamation Plan* (Condition 11), under the following procedures:
  - a) The Planning Director and Director of Public Works make a determination that the permitted wind farm operations have been abandoned or have produced less than 5 percent of the rated output of the wind farm in one year, verified by the annual status reports and there is no demonstrated plan provided by the Permittee or property owner, satisfactory to the Planning Director, to restore the equipment to a productive operating condition.
  - b) The Planning Director and Director of Public Works may instead make a determination that more than 50% of the turbines are actively being replaced or are in disrepair and there is no demonstrated plan, satisfactory to the Planning Director, to restore the equipment to a productive operating condition.

Upon determination by the Planning Director that either of the above criteria is present on the property, the Planning Director shall give notice to the property owner/wind operator of the following requirements:

- a. Within 30 days from the date of the notice by the Planning Director, the Permittee shall secure a building permit to inspect all inoperable or abandoned wind turbines; and
- b. The application for a building permit shall be accompanied by a cash performance deposit to restore the site subject to the approved *Restoration and Reclamation Plan*.

88. **Noise Standards.** In the event a reasonable complaint is received by the Environmental Health Director alleging the presence of sound levels from one or more wind turbines exceeding the levels described in the application, or exceeding 55 dBA (Ldn) as measured at the exterior of any dwelling unit:

- a. The Environmental Health Director shall report this matter to the Permittee and to the Planning Director and upon receipt of such report, this matter shall be brought to hearing pursuant to Section 17.54.030.
- b. Upon receipt of the report from the Environmental Health Director, the Planning Director shall require the Permittee to have a qualified firm furnish a site specific study with recommendations on the circumstances, if any, which would render the Project in conformance with all applicable noise conditions; the report shall also include a recommendation to the Planning Director who will make the final determination as to whether subsection (d) shall be imposed.
- c. For a minimum 30 day period from the date of notification from the Environmental Health Director, at the time and place as may be agreed upon by the parties involved, Permittee shall attempt in good faith to negotiate a resolution of this matter with the party making the allegation; the results of such negotiation shall be reported to the Planning Director in a timely manner.
- d. Following the review period as provided under subsection (c) and until the conclusion of the revocation procedures as provided by Section 17.54.030, one or more wind turbines authorized by this permit to be constructed or maintained that are in closest proximity to the dwelling or building site of the party making the allegation, may be required to be made inoperative.

The measurement standard for the A-weighted scale shall be adjusted by the Planning Director to allow any sound device that is installed on or around the turbine as a mitigation for bird collisions.

Methods for measuring and reporting acoustic emissions from wind turbines and wind-farms shall be equal to or exceed the minimum standards for precision described by the International Electrotechnical Commission (IEC) in its 61400 series – Standards and Technical Specifications – *IEC 61400-11: Acoustic Noise Measurement Techniques*.

The Planning Director, in consultation with the Alameda County Environmental Health Services, shall establish criterion for noise samples and measurement parameters such as the duration of data collection, time of day, wind speed, atmospheric conditions and direction as set forth in the Wyle Research Report.

89. Electromagnetic Interference. If it has been demonstrated to the Planning Director that the turbine is causing disruptive electromagnetic interference, the Permittee shall promptly mitigate the disruptive interference, which may include discontinued operation of one or more turbines.

### MONITORING AND SUBSEQUENT REVIEW

90. Initial Status Report. Six months from the issuance of grading and/or building permits, the Permittee shall submit to the Planning Director a status report describing compliance with conditions of the permit.
91. Annual Status Report. Following commercial operation date (COD), and on each annual anniversary of said commencement, Permittee shall submit to the Planning Director a brief status report containing the following information: description and rated capacity of all equipment installed, relevant meteorological data collected, and actual MW electric power generated to date broken down into appropriate time categories.
92. Post-Construction Avian Fatality Monitoring (MM BIO-11g). As required by Mitigation Measure BIO-11g as set forth in the MMRP, the Permittee shall provide for a post-construction monitoring program to be conducted for the Project for a minimum of three (3) years beginning on the COD. Monitoring may continue beyond 3 years if construction is completed in phases. Moreover, if the results of the first 2 years indicate that baseline fatality rates (i.e., non-repowered fatality rates) are exceeded, monitoring will be extended beyond 3 years for at least an additional 2 years (5 monitoring years) and continuing until the average annual fatality rate has dropped below baseline fatality rates for 2 years, and to assess the effectiveness of adaptive management measures specified in Mitigation Measure BIO-11i. An additional 2 years of monitoring will be implemented at year 10 (i.e., the tenth anniversary of the COD). Project proponents will provide access to qualified third parties authorized by the County to conduct any additional monitoring after the initial 3-year monitoring period has expired and before and after the additional 2-year monitoring period, provided that such additional monitoring utilizes scientifically valid monitoring protocols. Monitoring shall be in conformance with the protocols and specifications of Mitigation Measure BIO-11g, including the formation of a technical advisory committee (TAC) to oversee the monitoring program and to advise the County on implementation of adaptive management measures.
93. Post-Construction Bat Fatality Monitoring (MM BIO-14b). As required by Mitigation Measure 14b in the MMRP, the Permittee shall implement a scientifically defensible, post-construction bat fatality monitoring program that is consistent with the protocols and sample size established and recognized by bat biologists in the APWRA, to estimate actual bat fatalities and determine if additional mitigation is required. Such monitoring shall take place concurrent with the 3-year post-construction monitoring program requir-

ed by Mitigation Measure BIO-11g, developed in accordance with California Energy Commission and California Department of Fish and Game (2007), and shall incorporate bat-specific components and protocols as specified by Mitigation Measure 14b in the MMRP, including having at least one biologist with significant experience in bat research on the TAC, performing post-construction bat fatality monitoring using trained dogs with handlers, and conducting bat acoustic surveys concurrently with fatality monitoring at the Project site. If recommended by the TAC, such a monitoring program shall recommence for two (2) years beginning on the tenth anniversary of the COD.

94. Annual Monitoring Reports on Bat Use and Fatalities (MM BIO-14c). The Permittee shall have annual reports of bat use results and fatality monitoring prepared by a qualified biologist within 3 months of the end of the last day of each year's fatality monitoring as required by Mitigation Measure BIO-14b, and submit such reports to the TAC and Planning Director. Special-status bat species records will be reported to the California Natural Diversity Data Base (CNDDB).
95. Technical Advisory Committee (MM BIO-11g). The County shall convene a Technical Advisory Committee (TAC) to oversee the post-construction monitoring program as required by Mitigation Measure BIO-11g and Condition 92 and to advise the County on adaptive management measures required by Mitigation Measure BIO-11i and Condition 96. The roles and responsibilities of the TAC membership shall be established by the Planning Director. The TAC shall include representatives from the County (including one or more technical consultants, such as a biostatistician, an avian biologist, and a bat biologist), and wildlife agencies (CDFW, USFWS) and as determined following the above-mentioned consultation. The TAC will have a standing meeting, which shall be open to the public, every 6 months to review monitoring reports produced pursuant to Mitigation Measure BIO-11g and Condition 92. Formation and operation of the TAC shall otherwise be consistent with Mitigation Measure BIO-11g.

The TAC may be the same TAC as may be formed and meeting for the purpose of prior repowering projects, such as Golden Hills—Phase 1; no new TAC is either required or encouraged. An adjunct or auxiliary advisory committee for the TAC composed of landowners, special district representatives, environmental advocacy groups and other stakeholders shall be convened by the Planning Director to confer with the 'core' TAC members on an as-needed basis, particularly on issues of establishing conservation easements and providing for landscape-scale mitigation as required by Condition 76.

The Permittee shall collaborate with the County and the TAC over the twelve-month period following approval to evaluate whether or not additional new technology for active curtailment (e.g., IdentiFlight) to reduce raptor collisions is feasible for the Project, and if there is agreement, can be implemented thereafter in a reasonable period of time.

96. Implement an Avian Adaptive Management Program (MM BIO-11i). If fatality monitoring described in Mitigation Measure BIO-11g results in an estimate that exceeds the preconstruction baseline fatality estimates (i.e., estimates at the non-repowered turbines as described in the PEIR) for any focal species or species group (i.e., individual focal species, all focal species, all raptors, all non-raptors, all birds combined), the Permittee shall prepare a Project-specific adaptive management plan within 2 months following the availability of the fatality monitoring results. The County shall review and approve such plan in consultation with the TAC and it shall be implemented within 2 months of such approval. Follow-up monitoring will be required to determine if specific measures shall be sustained, revised or replaced with other measures. Measures, as outlined in Mitigation Measure BIO-11i, include but are not limited to visual modifications, anti-perching measures, prey-reduction strategies, use of experimental technologies, turbine curtailment (including real-time curtailment), cut-in speed adjustments based on a focused study of such a strategy, or condor evaluation and curtailment strategies.
97. Develop and Implement a Bat Adaptive Management Plan (MM BIO-14d). The Permittee shall develop adaptive management plans to reduce bat mortality, in concert with Mitigation Measure BIO-14b, using appropriate feasible measures, and using both currently available and emerging information. The goals of the adaptive management plans are to ensure that the best available science and emerging technologies are used to assess impacts on bats, and that impacts are minimized to the greatest extent possible while maintaining energy production. Specific bat-related measures shall conform to the guidelines set forth in Mitigation Measure BIO-14d in the MMRP, including identified adaptive management measures.
98. Injured Bat Rehabilitation Compensation (MM BIO-14e): Project proponent shall pay in full the cost of reasonable, licensed rehabilitation efforts for any injured bats taken to wildlife care facilities from the Project area.
99. Stormwater Control Plan: Permittee shall carry out the operation and maintenance (O&M) of all installed stormwater protective system(s) as directed in the approved Stormwater Control Plan (SCP) and in compliance with Provision C.3 of the Municipal Regional Stormwater National Pollutant Discharge Elimination System Permit (MRP) and with the terms and conditions of the County Stormwater Permit, as required by Condition 45.
100. Monitor Substation Circuit Breakers for SF<sub>6</sub> Leakage. (MM GHG-2b). Permittee shall ensure that any new circuit breaker installed at a substation has a guaranteed SF<sub>6</sub> leak rate of 0.5% by volume or less. The Permittee will provide Alameda County with documentation of compliance, such as specification sheets, prior to installation of the circuit breaker. In addition, the Permittee will monitor the SF<sub>6</sub>-containing circuit breakers at the substation consistent with Scoping Plan Measure H-6 for the detection and repair of leaks.
101. Optional Review/Revocation/Revision. At any time during the term of this permit and after notice as provided for in the initial hearing, this matter may be set for rehearing if the Planning Director has made an initial determination based on substantial evidence that the use of the site for generation of electrical energy from wind turbine operations has ceased for a period of six months, or has produced less than 5 percent of the rated

output of the wind farm in one year, and if therefore the permit should be revoked. In addition, pursuant to Section 17.54.030, the permit may be revoked if the permit has otherwise been exercised unlawfully or contrary to any condition or limitation of its issuance. As part of such rehearing, and/or reconsideration for the permit, the Board may determine that conditions previously imposed should be modified or new conditions should be added to assure continued affirmative findings for this permit. This reconsideration may include imposition of other requirements, treatments and measures to ensure public safety and compliance with applicable policies of the East County Area Plan. Any condition modified or added shall have the same force and effect as if originally imposed.

102. Transfer of Operations. Any entity that has acquired the facilities as authorized under this permit may maintain the benefits of the existing use permit provided that a letter of notification is submitted to the Planning Department within six months after such transaction, and all conditions of approval for the subject facility are carried out by the new operator/Permittee.
103. Site Restoration. Permittee shall provide written notification to the Planning Director upon cessation of operations on the site by the Permittee. During operation of the Project, no abandoned turbine tower, rotor, ground or other equipment components shall be stored onsite outside designated storage areas. A wind turbine shall be deemed abandoned for the purposes of this Resolution if it has not produced electricity for one year or has produced less than 5 percent of the rated output of the wind farm in one year.

If all operations have been terminated, the Permittee and/or property owner shall be required to remove all improvements authorized under this permit from the site and the property shall be returned within twelve months of cessation to a condition with no wind facilities, subject to the requirements of the County.

104. Termination. Said Conditional Use Permit shall terminate after 30 years, on the 30<sup>th</sup> anniversary of the date of approval of this application, and shall remain revocable for cause in accordance with Section 17.54.030 of the Alameda County Zoning Ordinance. Permittee shall either remove the turbines and improvements approved herein in accordance with the approved reclamation plan or shall obtain a new use conditional permit in accordance with Section 17.54.130 of the Zoning Ordinance.

THE FOREGOING was PASSED and ADOPTED by a majority vote of the Board of Supervisors of the County of Alameda this 7th day of October, 2021, pursuant to the following vote:

AYES: Supervisors Valle, Haubert, Brown, Miley and President Carson

NOES: N/A

EXCUSED: N/A

ABSTAINED: N/A



PRESIDENT, BOARD OF SUPERVISORS

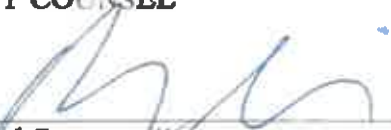
**ATTEST:**  
**Anika Campbell-Belton, Clerk**  
**Board of Supervisors**



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Approved as to form  
**DONNA R. ZIEGLER,**  
**COUNTY COUNSEL**

By:



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Rachel Sommo  
Assistant County Counsel