

**RESOLUTION NO. Z-03-117 OF
THE EAST COUNTY BOARD OF ZONING ADJUSTMENTS
ADOPTED AT THE HEARING OF SEPTEMBER 25, 2003, CONCERNING C-8199
(CORRECTED PARCEL NUMBER, JUNE 2, 2004)**

WHEREAS ALTAMONT POWER, LLC – ELWORTHY have filed for CONDITIONAL USE PERMIT, C-8199, to allow repowering of a wind power plant facility consisting of the removal of 169 FloWind turbines and towers, reclamation activities, and the installation and operation of a maximum 36-Mw windfarm using either 45, 800-Kw NEG-Micon turbines with 54-meter rotors on 180'-high towers (270' to top of rotor), or 45, 660-Kw Vesta Wind Systems turbines with 47-meter rotors on 163'-high towers (241' to top of rotor), respectively, on several sites containing approximately 1,782 acres, in an "A" (Agricultural) District, located between the north County line and Interstate I-580, in the unincorporated Altamont Pass area of Alameda County, bearing Assessor's Parcel Numbers: 099B-6125-001-00; 099B-6175-002-03; 099B-6200-001-00; 099B-6300-001-01; 099B-6325-003-00; 099B-7375-001-01; 099B-7375-001-04; 099A-1780-001-05; 099A-1785-001-07; 099B-5650-001-03; 099B-5650-001-03; 099B-6010-001-03; 099B-6500-002-01; and 099B-6425-002-04; and

WHEREAS the Board did hold a public hearing on said application at the hour of 1:30 p.m. on the 25th day of September, 2003, in the Alameda County Public Works Operations Building, 4825 Gleason Drive, Dublin, California; and

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

WHEREAS this application has been reviewed in accordance with the provisions of the California Environmental Quality Act and an Environmental Impact Report (EIR) pursuant to CEQA for both this project and a general repowering program in the Altamont Pass Wind Resource Area (APWRA) was completed and certified in 1998 (*Repowering a Portion of the Altamont Pass Wind Resource Area*, State Clearinghouse #98022024, Final EIR dated October, 1998). The EIR determined that the project, as revised and with the implementation of the identified mitigation measures and other conditions of approval, would not have significant adverse environmental impacts on land use/planning, visual resources, noise, other environmental resources, and biological resources except for avian wildlife resources.

WHEREAS a Pre-Hearing Analysis was submitted recommending the application be conditionally approved; and

WHEREAS representatives appeared at said public hearing and presented testimony in support of the application; and

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

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BE IT RESOLVED that the Board finds that:

- a) The use is required by the public need as wind-generated electric power continues to provide renewable, non-polluting electrical power with direct public benefits. The opportunity to construct and observe the effects of the latest generation of wind turbines on avian habitat and mortality is needed to assess the long-term viability of wind farm operations, and may provide support for other operators to implement repowering proposals and thereby increased energy production from alternative energy sources such as wind plants.
- b) The use will be properly related to other land uses and transportation and service facilities in the vicinity. The use continues to occupy a small portion of the agricultural land and the balance remains in agricultural use. Windfarms continue to be a common land use in the Altamont Pass area, and specific land use compatibility issues have been addressed in the EIR and the resulting mitigation measures and conditions of approval. These issues relate primarily to less-than-significant construction-period traffic, visual impacts, electromagnetic interference, and noise.

The project is located in a land use area that serves as habitat to common, rare, threatened and endangered species, including avian species that have been subject to mortality due to collision with wind turbines and electrocution along power lines. The project includes all feasible measures to address this impact, as specified in the Repowering Program, Biological Resources Management Plan, and EIR. Although the impact on these species may remain significant and unavoidable, the County has made findings of overriding significance that. The County will require permittee participation in on-going research, monitoring, Technical Advisory Committee meetings, and mitigation, as appropriate and necessary.

All necessary transportation and services are available. Road impacts will be addressed by funding from the developers. Fire protection service enhancements also are required, including confined space rescue equipment and training. PG&E power lines and substation facilities are located in proximity to the project.

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- c) The use, if permitted, under all the circumstances and conditions of this particular case, will not materially affect adversely the health or safety of persons residing or working in the vicinity, or be materially detrimental to the public welfare or injuries to property or improvements in the neighborhood as conditions of approval will adequately mitigate all known health, safety, public welfare, or property improvement impacts. These include noise reduction from fewer, better engineered turbines; noise dispute resolution mechanisms; safety setbacks from other properties, residences, development areas, and roadways/trails; electromagnetic interference mitigation; dispute resolution mechanisms for noise, engineered foundation, tower and turbine structures to resist high wind and earthquake loads; visual screening of construction areas; road maintenance funding; fire suppression training and notification; abandoned turbine removal procedures; and liability insurance requirements.

- d) The use will not be contrary to the specific intent clauses or performance standards established for the District in which it is to be considered as it is consistent with the Agricultural District, which is established “conserve and protect existing agricultural uses, and to provide space for and encourage such uses in places where more intensive development is not desirable or necessary for the general welfare.”

BE IT FURTHER RESOLVED that the Board does hereby approve the said application as shown by materials labeled “Exhibit A” on file with the Alameda County Planning Department

Construction Activities

1. Visual Screening: Any staging areas used by the Permittee shall be visually protected, where feasible, either by the terrain or another form of screening, from local residential areas, local roads, and recreation areas subject to approval by the Planning Director.

2. Coordination With CDFFP: The Permittee shall coordinate with the California Department of Forestry and Fire Protection in conjunction with the County Fire Department to implement monitoring of the project site during construction and maintenance as determined necessary by those agencies and in compliance with the Fire Safety Requirements.

3. Public Works Improvement Plan: A grading, drainage, sedimentation and erosion control plan shall be submitted for review and approval by Alameda County Flood Control and Water Conservation District or the Alameda County Public Works Agency as appropriate in accordance with standard engineering practice.

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4. Road and Erosion Control Plan for CCWD Lease Area: To the extent the project is on land leased from the Contra Costa Water District (CCWD), the Permittee shall submit fire, road and erosion control plans for the CCWD-owned lease area to the CCWD for its review concurrent with Alameda County review.
5. Road Maintenance Fee: Construction plans shall be submitted to the County indicating the precise route of access to the property and the term of construction, for the purpose of establishing road maintenance fees for mitigation of construction-period impacts. Permittee shall be responsible for the cost of maintaining the structural integrity of the County road(s) on the access route during the period of construction:
 - a. For the purposes of this condition, the cost of maintaining the structural integrity of the access road(s) shall be determined as follows:
 - i. a rate per turbine-to-be-installed, per mile of County access road(s) on the route, to be determined by the Public Works Agency prior to approval of the building permit.
 - ii. a rate per turbine-to-be-removed, per mile of County access road(s) on the route, to be determined by the Public Works Agency prior to approval of the building permit.
 - b. Prior to commencement of any construction activities, including grading and site preparation, the Permittee shall give written notice to the Planning Director with a copy to the Director of Public Works of the commencement date, proposed access route and estimated duration in months of any construction activities.
 - c. Prior to commencement of any construction activities, including grading and site preparation, Permittee shall deposit funds with the County Road Fund in an amount equal to the costs determined by the Public Works Agency as specified in Section (a) of these conditions.
 - d. Prior to final inspection, or January 1 of the following year, whichever occurs first, where the actual duration and extent of construction differs from the estimate used to compute and deposit funds, the computation shall be adjusted and additional funds deposited, or refunded to Permittee, accordingly.
 - e. This condition shall apply to all county routes except Vasco Road and Altamont Pass Road subject to final acceptance of all county routes by the Planning Director.
 - f. If the proposed construction access route includes the I-580/I-680 interchange, Permittee may be assessed a mitigation fee based on operational impacts of the construction trucks. The amount of mitigation fees will be determined by the Public Works Agency and deposited by the Permittee with the County Road Fund prior to the approval of the building permit.

Archaeology

6. Archaeological Resources: Recommendations contained in the project-specific archaeological study, or any prior studies applicable to the project site shall be adhered to, and cultural resource conditions of approval applicable from prior conditional use permits shall remain in effect. In addition, the applicant shall inform all personnel connected with the project of the possibility of finding archaeological resources (e.g., human remains, artifacts, bedrock, bone or shell). If during construction such resources are encountered, all work shall be halted within a 30 meter radius of the findings and a qualified archaeologist retained to ascertain the nature of the discovery. Mitigation measures recommended by the archaeologist and approved by the Planning Director shall be implemented.

Design and Operations

7. Design: Design of the turbines and all ancillary facilities shall conform at all times and in all respects with the requirements of the Alameda County Repowering Program, BRMP, and Permit Application Requirements in effect at the time of permit issuance, except that a variation from any such requirements may be approved by the Planning Director at a noticed public hearing based on substantial evidence that the variation is warranted and would not cause significant impacts other than those identified in the Program EIR.
8. Color Treatment: All wind turbines, blades, towers and structures shall be treated so as to blend with the surroundings to the degree feasible by using neutral colors (white or gray). No symbols or writing indicating manufacturer, operator, etc. shall be allowed on the turbine. Experimental or mitigation treatments may be approved by the Board of Zoning Adjustments at a noticed public hearing.
9. Electromagnetic Interference: Wind turbines shall be designed, installed and operated so that no significant disruptive electromagnetic interference is created. If it is demonstrated to the Planning Director that a wind turbine is causing significant disruptive interference, the operator shall promptly mitigate the interference, which may include discontinued operation of one or more of the wind turbines, and/or bypass of the local communication system being affected.

Fire and Safety Requirements

10. Windfarm Fire Requirements: The Permittee shall be responsible for continual compliance with the Altamont Pass Windfarm Fire Safety Requirements.
11. Safety Setback: New wind turbines shall have a minimum setback from other land uses as stated below:

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- a. From a Building Site upon which a windfarm has not been approved: three times the total height of the wind turbine (to top of blade), or four times the total height of the wind turbine if the ground elevation of the wind turbine is two or more times the height of the wind turbine above the Building Site at the closest point, but in no case less than 300 feet unless a written, notarized and recorded concurrence of the affected property owner is filed with the Planning Director, and provided that in no event shall the wind turbine placement violate applicable yard setback requirements.

From a Dwelling Unit: three times the total height of the wind turbine (to top of blade), or four times the total height of the wind turbine if the ground elevation of the wind turbine is two or more times the height of the wind turbine above the Dwelling Unit. The setback may be reduced by a maximum of 50% where a written, notarized and recorded concurrence of the affected property owner is filed with the Planning Director, but in no case shall the setback be less than 500 feet.

- b. From a public road, trail, recreation area, commercial or residential zoning existing at the time of the issuance of this permit: three times the total height of the wind turbine (to top of blade), or four times the total height of the wind turbine if the ground elevation of the wind turbine is two or more times the height of the wind turbine above the feature being protected, but in no case less than 500 feet unless it is shown in a report prepared by a qualified professional that a lesser minimum setback is adequate, in which case the Planning Director may reduce the safety setback to as little as 300 feet.
 - c. From a public road, trail or recreation area, or commercial or residential zoning established within the boundary of the windfarm subject to this permit, and subsequent to the issuance of the permit: the Planning Director shall set the appropriate safety setback from such new use for the additional turbines remaining to be installed pursuant to this permit.
 - d. From the traveled way of I-580: six times the total height of the wind turbine (to top of blade), or eight times the total height of the wind turbine if the ground elevation of the wind turbine is 2 or more times the height of the wind turbine above the traveled way of I-580 unless it is shown in a report prepared by a qualified professional, that a lesser minimum setback is adequate, in which case the Planning Director may reduce the safety setback to as little as 500 feet.
12. Notification of Occurrence: The Permittee shall notify the County Building Official of any tower collapse, blade throw, fire, or injury to a worker within the wind farm within five (5) days of such occurrence.

Noise Standards, Complaints and Deposits

13. Noise Standards: Wind turbines shall be sited and operated so as to not exceed the County's noise standard of 55 dBA (Ldn) or 70 dBC (Ldn) as measured in both cases at the exterior of any dwelling unit except:
- a. If the dwelling unit is on land under lease from the Permittee, the applicable standard shall be 65 dBA (Ldn) and 70 dbC (Ldn), and
 - b. If the dwelling unit was built subsequent to the wind energy land use in question, the wind turbines shall be exempt from noise standards otherwise applicable, to the extent the repowering will not result in an increase in sound at the dwelling unit above the level with existing or previously installed turbines.
14. Noise Complaints: In the event a reasonable complaint is received by the Building Official alleging the presence of sound levels from a wind turbine or windfarm exceeding 55 dBA (Ldn) at a dwelling that was existing at the time this permit was issued (or 65 dBA (Ldn) if the dwelling is on land under lease for a windfarm), or 70 dBC (Ldn) as measured at the exterior of the dwelling:
- a. The Building Official 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 17.54.650 and may be considered as provided by Section 17.54.030 of the Alameda County Ordinance Code; and
 - b. Upon receipt of the report of the Building Official, the Planning Director shall commission a qualified firm to make a site specific study and furnish a report and recommendation 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 Board of Zoning Adjustments 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, 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; any such resolution shall be reported to the Planning Director in a timely manner; and
 - 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, up to one fourth of the wind turbines authorized by this permit to be constructed or maintained that are in closest proximity to the dwelling of the party making the allegation, shall be made inoperative.

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The measurement standard for the A and C-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 windfarms shall be equal to or exceed the minimum standards for precision described in AWEA Standard, AWEA 2.1 - 1989 titled Procedures for the Measurement and Reporting of Acoustic Emissions from Wind Turbine Generation Systems (WTGS) Volume I: First Tier.

The Planning Director, in consultation with the Alameda County Environmental Health Services Agency, shall establish criteria 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.

15. Deposits: An application for a building permit to implement any portion of this Conditional Use Permit or continued operation of the existing windfarm shall be accompanied by the following deposits, or proof that such deposit has been previously paid by the Permittee:
- a. A \$2,000.00 cash deposit shall be made for use in the investigation and evaluation of a noise complaint as provided in Condition 14 herein. If all or any part of said cash deposit is depleted by such activities, the Permittee shall restore the balance of the deposit to the original \$2,000.00. In the course of the review of this permit on the fifth anniversary of its issuance, if warranted by the record, the requirement of this \$2,000.00 deposit may be deleted and funds returned to the Permittee.
 - b. A \$10,000.00 deposit shall be made which may inure to the benefit of property owners or residents residing within one half mile of this windfarm if they suffer damage as a result of a violation of the noise standards contained herein. In the course of the review of this permit on the fifth anniversary of its issuance, if warranted by the record, the requirement of a \$10,000.00 deposit may be deleted and funds returned to the Permittee.

Aviation

16. FAA Requirements: Where turbine heights exceed 200 feet or turbines are proposed to be located in protected airspace, the Permittee shall comply with FAA project requirements, if any, and notify the Planning Director of such requirements within 30 days following final notification from the FAA to the Permittee.

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Insurance

17. **Insurance**: A Comprehensive General Liability insurance policy in the minimum amount of \$1,000,000 and in the form prescribed in the document "STANDARD WINDFARM INSURANCE REQUIREMENTS, ALAMEDA COUNTY PLANNING DEPARTMENT, MARCH 30, 1983," shall be maintained during the term of this permit. Evidence of such coverage shall be provided to the County prior to issuance of any permit implementing this Conditional Use Permit.

Indemnity

18. **Hold Harmless Agreement**: 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 assigns for any and all liability caused by negligent or wrongful acts of the Permittee arising out of the exercise of this Conditional Use Permit, and to pay all claims, damages, judgements, legal costs, adjuster fees, and attorney fees incurred by the County related thereto.

Non-Functioning Turbines

19. **Deposit for Removal of Non-Functioning Turbines**: The Permittee shall post a deposit in accordance with the Alameda County General Ordinance Code, as modified, for the removal by the County of wind turbines that are no longer functioning, provided such removal becomes necessary. The deposit amount shall be established at the time of permit issuance and may be revised within 90 days of issuance and at each five year review.
20. **Inoperative Equipment**: Any windfarm not in compliance with the criteria below will be subject to Section 15.04.370 et seq. of the Alameda County Ordinance Code relating to abandoned wind turbines, except as modified herein.
- a. A wind turbine or windfarm shall be deemed abandoned for the purposes of this condition if either of the following occurs:
 - i. The windfarm has not produced electricity in one year as stated and verified by the annual status reports and there is no demonstrated plan, satisfactory to the Planning Director, to restore the equipment to a productive operating condition; or
 - ii. It can be established that more than 50% of the turbines are actively being removed or are in disrepair and there is no demonstrated plan, satisfactory to the Planning Director, to restore the equipment to a productive operating condition.
 - b. 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 Permittee.

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- c. Within 30 days from the date of the notice by the Planning Director, the Permittee shall either (1) restore any inoperable or abandoned wind turbine to operating condition; or (2) restore the site of such turbine to its preconstruction condition. However, in the event a building permit is required for either action described above, the Permittee shall satisfy this subsection by applying for such building permit within 30 days from the date of the notice, and completing the activities which are the subject of the building permit within 30 days of the issuance of said permit.
- d. If the Permittee does not comply with subsection (c), the County shall, in its discretion, take any legal steps necessary, including the use of deposit funds that have been collected, to restore the turbine site to its preconstruction condition.

Modification of Conditions

21. Five-Year Review: Ninety (90) calendar days after the fifth annual anniversary of the initial approval and within ninety (90) days of subsequent fifth annual anniversaries, the Board of Zoning Adjustments may, after notice as provided for in the initial hearing, set this matter for hearing for the purpose of modifying any conditions previously imposed, or addition of conditions that may be required to guarantee the continuance of the affirmative findings contained herein. This consideration may include the imposition of new requirements regarding wind turbine operations and equipment on the premises affected by this permit or appropriate guarantees be filed to ensure compliance with conditions herein. Any condition modified or added shall be of the same force and effect as if originally imposed. Review costs shall be borne by the applicant. If the Board of Zoning Adjustments declines to set this matter for rehearing, then the Board of Zoning Adjustments may not set this matter for rehearing until the ninety (90) day period following the next fifth annual anniversary. Permittee shall bear all costs associated with the five year reviews.

Recordation of Use

22. Recordation of Use: The Permittee shall reference wind power or associated development on all leases or easements entered into in the APWRA subsequent to the issuance of this permit, and, wherever possible, shall record such leases and easements and provide proof of such recordation to the County.

Annual Status Report

23. Annual Status Report: Following commencement of operation (initial sale of power), Permittee shall submit to the Planning Director, by April 30 of each succeeding calendar year, a brief status report containing at least the following information:
 - a. description and rated capacity for all equipment installed,
 - b. relevant meteorological data collected,

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- c. actual electric power generated to date broken down into appropriate time categories, and
- d. compliance with the terms and conditions of this permit.

Termination

24. Termination: This Conditional Use Permit shall not expire but conditions may be considered for revision subject to Condition 21, and shall remain revocable for cause in accordance with Section 17.54.030 of the Alameda County Ordinance Code.

Compliance With BRMP

25. Compliance With BRMP: The Permittee shall comply with all of the applicable terms of the BRMP.

Technical Advisory Committee for Avian Issues

26. Technical Advisory Committee: The Permittee will cooperate with the County in resolving avian issues and mitigating potential avian impacts through the Technical Advisory Committee (TAC) process described in section (I)(B)(4) of the BRMP.

Monitoring

27. Monitoring Program: The Permittee shall be required to implement both the short-term and long term monitoring programs and submit the associated reports described in section (I)(B)(3) of the BRMP.
28. Avian Research Studies: The Permittee shall facilitate and otherwise participate in research studies recommended by the Technical Advisory Committee to the County, or in other studies recommended by the County, for the area covered by the Permittee's project.

Remedial Measures for Avian Collisions

29. Remedial Measures for Avian Collisions: In the event that a turbine is determined through the TAC process to be responsible for a disproportionate number of collision incidents, the Permittee shall comply with remedial action initiated by the County for that turbine in accordance with section (I)(B)(5) of the BRMP. If the United States Fish & Wildlife Service files a complaint seeking preliminary injunctive relief under the Endangered Species Act or other applicable federal laws and regulations for which it is responsible, the County will require the owner of the turbine(s) in question to shut down the turbine(s) pending resolution of the request for preliminary injunctive relief. If a final determination is made that there has been a violation of one or more applicable federal laws or regulations, the County will make a finding that the project in question is out of compliance with the permit and will require that the subject turbine(s) be removed or relocated.

Management of Special-Status Species -- Birds

30. Bald Eagle: In order to minimize potential impacts on the bald eagle to the extent feasible, the Permittee shall implement the design, operational, and siting standards described in section (I)(B)(2) of the BRMP.
31. Peregrine Falcon: In order to minimize potential impacts on the peregrine falcon to the extent feasible, the Permittee shall implement the standards described in section (I)(B)(2) of the BRMP.
32. Golden Eagle: In order to minimize potential impacts on the golden eagle to the extent feasible, the Permittee shall implement the design, operational, and siting standards described in section (I)(B)(2) of the BRMP. In addition, in order to avoid or mitigate potential construction-related impacts on the golden eagle, the Permittee shall implement the measures described in section (II)(C)(1)(e) of the BRMP.
33. Prairie Falcon: In order to minimize potential impacts on the prairie falcon to the extent feasible, the Permittee shall implement the design, operational, and siting standards described in section (I)(B)(2) of the BRMP.
34. Ferruginous Hawk: In order to minimize potential impacts on the ferruginous hawk to the extent feasible, the Permittee shall implement the design, operational, and siting standards described in section (I)(B)(2) of the BRMP.
35. Northern Harrier: In order to minimize potential impacts on the northern harrier to the extent feasible, the Permittee shall implement the design, operational, and siting standards described in section (I)(B)(2) of the BRMP.
36. White-Tailed Kite: In order to minimize potential impacts on the white-tailed kite to the extent feasible, the Permittee shall implement the design, operational, and siting standards described in section (I)(B)(2) of the BRMP.
37. Burrowing Owl: In order to minimize potential impacts on the burrowing owl to the extent feasible, the Permittee shall implement the design, operational, and siting standards described in section (I)(B)(2) of the BRMP. In addition, in order to avoid or mitigate potential construction-related impacts on the burrowing owl, the Permittee shall implement the measures described in section (II)(C)(6)(e), paragraphs (1) through (3) of the BRMP.

Management of Special-Status Species -- Other

38. San Joaquin Kit Fox: In order to avoid take of San Joaquin kit fox, during all ground disturbance activities, including the removal of existing towers and ancillary facilities, installation of new towers and ancillary facilities, and road construction activities, the Permittee shall implement the measures described in section (II)(B)(1)(e), subsections (1) through (4) of the BRMP.
39. California Red-Legged Frog: In order to avoid, to the extent feasible, impacts on the California red-legged frog by avoiding habitat for this species, the Permittee shall implement the measures described in section (II)(B)(4)(e) of the BRMP.
40. California Alameda Whipsnake: In order to avoid potential impacts to the Alameda whipsnake, the Permittee shall implement the measures described in section (II)(B)(5)(e) of the BRMP.
41. Vernal Pool Fairy Shrimp and Longhorn Fairy Shrimp: In order to avoid potential direct and indirect impacts to the vernal pool fairy shrimp and longhorn fairy shrimp, the Permittee shall implement the measures described in section (II)(B)(6)(e) of the BRMP.
42. California Tiger Salamander: In order to avoid, to the extent feasible, impacts on the California tiger salamander by avoiding habitat for this species, the Permittee shall implement the measures described in section (II)(C)(7)(e) of the BRMP.
43. Southwestern Pond Turtle: In order to avoid, to the extent feasible, impacts on the Southwestern Pond Turtle, the Permittee shall implement the measures described in section (II)(C)(8)(e) of the BRMP.
44. Special Status Plants: In order to avoid or minimize potential impacts on special status plants, the Permittee shall implement the measures described in section (II)(D)(1) of the BRMP.

Management of Biologically Unique Habitats

45. Biologically Unique Habitats: The Permittee shall avoid direct impacts on biologically unique habitats (i.e., riparian, emergent marsh, alkali meadow, or rock outcrop habitats, as defined in sections (III)(A)-(D) of the BRMP). To avoid impacts on such habitats, no ground-disturbance activity is permitted within 200 feet of such habitats unless no other feasible alternative exists. If no other feasible alternatives exist, then a qualified biologist will assist with siting, conducting clearance surveys, and developing other avoidance strategies as needed.

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46. Monitoring Fee. Prior to obtaining a building permit for new wind turbines (or in the event no permit is required, prior to electricity production into the grid), and at the time of each annual report required under the conditional use permit (or, in the absence of a report, on the anniversary date of issuance of this conditional use permit), Permittee shall deposit with the Alameda County Planning Department a fee equal to four hundred and fifty dollars (\$450.00) times the rated capacity in megawatts (MW) or pro-rated portion thereof for each turbine installed pursuant to this conditional use permit for direct and indirect departmental costs associated with monitoring windpower projects and maintaining expertise in wind energy development. This fee may be revised by the Planning Director within the first year and thereafter at each five year review based on the actual cost of staff time, consultants, TAC activities, and anticipated needs for the coming five years.

Permit Expiration for Failure to Implement

47. Permit Expiration: Pursuant to Section 17.52.050 of the Alameda County Ordinance Code, this use permit shall be implemented within 3 years of approval or this permit shall be of no force or effect.
48. Should an interest develop to promote wind energy education to public general, the Permittee shall participate in the creation of working relationships with local school districts and government offices and coordinate education support for wind energy-related issues and research studies as approved by the Planning Director.

If implemented, said Conditional Use Permit shall remain revocable for cause in accordance with Section 17-54.030 of the Alameda County Zoning Ordinance.

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