



City of San Leandro

Meeting Date: April 1, 2013

Staff Report

File Number: 13-138

Agenda Section: PUBLIC HEARINGS – CITY COUNCIL

Agenda Number: 3.B.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: Not Applicable

TITLE: Staff Report for Matter of PLN2013-00009, an Appeal by the Heron Bay Homeowners Association c/o A. Alan Berger of the Board of Zoning Adjustments' Approval on February 7, 2013 of PLN2012-00006, a Variance to Construct an 80-Foot Tall Single Wind Turbine Where the Blades Will Extend an Additional 20 Feet from the Structure for a Maximum Height of 100 Feet and the Adoption of the Related Mitigated Negative Declaration and Mitigation Monitoring Program per the California Environmental Quality Act (CEQA). Structures up to Sixty (60) Feet in Height Are Permitted in the IG Zoning District and a Variance to Height Is Required for Exceeding 60 Feet. The Proposed Turbine Would Be an Accessory Use to the Primary Manufacturing/Research and Development Use of the Site; 2539 Grant Avenue; Alameda County Assessor's Parcel Numbers 80G-910-15; L. Rigaud, Halus Power Systems (Applicant and Property Owner)

SUMMARY AND RECOMMENDATIONS

The Board of Zoning Adjustments (BZA) at its February 7 meeting approved this project, PLN2012-00006, by acting on two resolutions: one adopted the Mitigated Negative Declaration and the Mitigation Monitoring Program; and the other approved the Variance to exceed the 60 foot maximum allowable height, to a maximum of 100 feet, subject to the recommended findings and recommended conditions of approval. Actions by the BZA are final unless appealed to the City Council within 15 days of the action (Zoning Code Section 5-2804 A.).

On February 21 the Heron Bay Homeowners Association filed an appeal to the BZA's approval (see Attachment 1). The appeal was given case number PLN2013-00009. The matter was scheduled for April 1, 2013 (39 days) as an appeal, which will be a public hearing before the City Council acting as the appellate body. An appeal must be heard within 45 days of the City's receipt of the appeal (Zoning Code Section 5-2808 A.).

Recommendation:

The Board of Zoning Adjustments and staff recommend that the City Council adopt and approve the attached Resolution to deny the appeal and affirm the BZA's actions :

1. To adopt the Mitigated Negative Declaration and the Mitigation Monitoring Program ;
2. To approve the Variance to exceed the 60 foot maximum allowable height, to a maximum of 100 feet, subject to the recommended findings and recommended conditions of approval; and
3. To determine there was no prejudice to the Board of Zoning Adjustments' actions on the application.

BACKGROUND

The applicant proposed to construct an 80-foot tall, single wind turbine where the blades will extend an additional 20 feet from the structure for a maximum height of 100 feet.

An avian study was performed and due to various existing and operational conditions, and types of species of birds and bats, the proposed single wind turbine poses a low potential risk to them.

Noise levels for the proposed wind turbine are anticipated to not exceed 55 decibels Adjusted (dBA); the residences to the north are greater than 500 feet from the turbine and at this distance the turbine operation would have no audible tones or impulses.

An evaluation to analyze potential shadows on the homes and residents to the north and northwest of the site was performed. The study determined that the project would cast no shadows on the residences throughout the year.

The proposed wind turbine will be located on a monopole in the interior of the site and in an area that is already developed with industrial buildings and uses. Although the proposed project requires a variance to height, the 100 foot tall turbine with large setbacks from residences and public open spaces would not have any impact on immediate adjacent properties, persons and avian species.

The Heron Bay Homeowners Association c/o A. Alan Berger, attorney, are the appellants. They have listed three reasons for the appeal: 1) The appellant argues that the BZA improperly and illegally granted a variance to Halus for the 100 foot tall wind turbine based on a Mitigated Negative Declaration; 2) That the approval of the height variance by the BZA was not and is not supported by Required Findings; and 3) That there was possible prejudice to the BZA as a result of the statements of one BZA member prior to the public hearing, to wit: Ms. Janet Palma. (See Attachment2).

BZA Resolution No. 01-13 that adopted the Mitigated Negative Declaration (MND) and the Mitigation Monitoring Program (MMP) for the Halus wind turbine cites the chronology of the various facts and the review process for the MND (see Attachment 3). Staff carefully reviewed and addressed the extensive comments about the project. In the end, the BZA found that the Project, as mitigated, would avoid or reduce the potentially significant biological, geological and airport hazard impacts to a point where clearly no significant effects would occur , and there is no substantial evidence that the Project as mitigated may have a significant effect on the environment.

The BZA Findings (see Attachment 3) included that a lower height is not a viable option in operating the turbine and that the intention of the variance to gain height is to resolve a practical difficulty to effectively operate the turbine. These statements are based on the fact that wind speeds increase with height, thus the turbine needs to be mounted on a pole. In general, the higher the pole, the more efficient the turbine can operate and the more power the wind system can produce. Further analysis of existing site conditions in the vicinity and site visits to the project area showed that there are existing obstructions in the southwesterly direction from the turbine on property owned by PG&E. Approximately 280 to 400 feet from the turbine are various groupings of tall trees (i.e., acacias and eucalyptuses). These are broadleaf evergreen trees that are approximately 40 to 65 feet tall with large canopies. Their canopies will continue to grow in height and width. The existing trees create a special circumstance in that their physical location and size would obstruct the southwesterly on-shore winds without the height variance for the turbine.

The City disagrees with the claim that Board member Janet Palma biased the Board of Zoning Adjustments' actions regarding this matter. As provided in Ms. Palma's letter dated February 6, 2013 (see Attachment 2) which was in reply to Mr. Berger's letter of February 5, 2013, she disputed all accusations that were stated in his letter. Ms. Palma did not attend the BZA meeting either as a member of the BZA or as a member of the public in the audience; thus it is the City's opinion that she had no influence over the BZA members that attended the meeting, and who deliberated and acted on the matter.

The proposed facility is not anticipated to produce low-frequency sound effects. At the Board of Zoning Adjustments hearing on February 7, 2013, the City received a letter from Howard Beckman commenting on the Project Variance application. Although the letter did not mention the revised MND and was submitted more than two months after the close of the public review period, it included comments on noise issues. Since noise was an important feature of the revised MND, the City reviewed the comments carefully. Review of the research cited in the letter showed that the research paper Mr. Beckman submitted with the letter limits its discussion to wind turbines taller than 50 meters (164 feet tall) or from 0.75MW (megawatt) to 2MW. The Halus facility is 100 feet tall and projected to generate 0.05MW, which are below these specifications. Thus it is not anticipated that the project will pose low-frequency sound effects. Also, the letter does not show how the referenced Denmark regulations are relevant to the project circumstances. And although asserting that low-frequency noise is a regulatory concern, the comments cite to no applicable regulations. By contrast, the revised MND and Project information show compliance with all applicable General Plan noise element requirements. In addition, there were no comments of concern received about low-frequency air pressure or sound effects from the Federal Aviation Administration (FAA) or any other State or local agency. Based on its review, the City has determined that the letter does not meet any of the triggers for recirculating the revised MND per CEQA Guidelines section 15073.5. Further, the comments in the letter are not based on facts as related to the Project and are not substantial evidence of the potential for a significant noise impact. The letter provides no grounds for changing the revised MND conclusion that the Project will have a less than significant noise impact.

Current Agency Policies

Zoning Code Section 5-2808 Procedures for Appeals provides that at an appeal hearing, the appellate body shall consider only the same application, plans, and related project materials that were the subject of the original decision and only the issue(s) raised by the appeal or the

call for review. However, applicants may modify plans to respond to issues raised, and such modification shall be considered at the hearing.

At the hearing, the appellate body shall review the record of the decision and hear testimony of the appellant, the applicant, and any other interested party.

After the hearing, the appellate body shall affirm, modify, or reverse the original decision. When a decision is modified or reversed, the appellate body shall state the specific reasons for modification or reversal. Decisions on appeals shall be rendered within 21 days of the close of the hearing.

Applicable General Plan Policies

The proposed use conforms to the General Plan, which designates the property for General Industrial uses which are characterized by distribution facilities, research and development, and manufacturing operations which produce minimal off-site impacts. The following General Plan policies are applicable to the proposed project:

7.01 Industrial Assets - Build on the strengths of the City's existing industrial base, transportation infrastructure, and proximity to Oakland International Airport in the City's business development efforts.

7.02 Economic Diversity - Promote economic diversity and the growth of new and emerging industries. Target businesses that will provide higher-paying jobs for San Leandro residents.

7.03 Sustainable Manufacturing - Promote environmentally sustainable manufacturing practices by San Leandro businesses and focus business attraction efforts on clean, environmentally-friendly businesses.

7.06 Adaptive Reuse - Encourage private reinvestment in vacant or underutilized industrial and commercial real estate to adapt such property to changing economic needs, including the creation of flex/office space.

10.02 Off-Site Impacts - Consider the setting and context of each site when evaluating proposals for development in industrial areas. The potential for impacts on adjacent uses, including the potential for land use conflicts and increased parking demand and truck traffic, should be a key consideration.

In addition to conforming to the General Plan, the proposal also satisfies a goal under the San Leandro Climate Action Plan.

Section 3.3 Goal: Increase residential, commercial and industrial renewable energy use. "On-site renewable energy systems offer another important lever for reducing emissions... To encourage on-site renewable energy, one common strategy employed by other local governments is to offer expedited permitting procedures for renewable generation and green buildings."

There are a number of significant public benefits that would result from the proposed project.

They include local green/high tech jobs, research and development investment that has the potential to increase sales of new products, which would translate into increased City sales tax revenues, and compliance with state and local mandated policies which promote green/wind energy projects to reduce greenhouse gas emissions, reduce dependence on foreign energy sources and reduce the overall consumption of fossil fuels.

Variance Granted

Structures covering not more than 10 percent of the ground area covered by the structure may exceed the maximum permitted height in the district where the site is located by no more than 10 feet (Zoning Code Section 4-1658). In the IG District, the maximum permitted height is 50 feet (Zoning Code Section 2-734 C.); thus the maximum permitted height is 60 feet tall. The proposed structure exceeds the 60 foot maximum height limit that the Zoning Code permits in the IG Industrial District. The maximum height for the proposed turbine is 100 feet; the variance that was granted by the BZA exceeds the maximum height limit by 40 feet.

Environmental Review

The City prepared an Initial Study consistent with CEQA Guidelines section 15063 and determined that a Mitigated Negative Declaration was required for the Project. Based on the Initial Study, the City prepared a Mitigated Negative Declaration (MND) dated May 22, 2012, which was circulated for public review for the required 30-day period. Following a meeting between the applicant and the Heron Bay Homeowners Association on June 20, 2012, the City, with the applicant's approval, extended the public review period for an additional 40 days, to July 31, 2012.

Based on the feedback from the June 20, 2012 meeting and written public comments that were submitted on the MND, the City determined that additional information was needed for the Project. The City prepared a revised MND, dated October 11, 2012, that provided further analysis on the potential for environmental impacts from implementation of the Project including avian and shadow analysis by ESA, an environmental consulting firm. The revised MND superseded the first MND and was circulated for public review for the required 30-day period, ending November 13, 2012.

The City received extensive comments on the revised MND from the Heron Bay Homeowners Association through its attorney, including a report from Paul Taylor, as well as comments from the President of the Association. Mr. Taylor was identified by the attorney as an environmental expert. Comments were also received from individuals, including residents of Heron Bay. No comments were received from any public agency during the comment period.

Although not required by CEQA, the City prepared written responses to all of the comments on the revised MND in the Responses to Comments document (included in Attachment 3) posted on the City's website on January 29, 2013. These responses reflect the City's good faith analysis of the issues raised by the comments. The Responses to Comments do not address any of the comments on the first MND as that MND was superseded and is no longer under consideration. The Responses to Comments includes all of the comment letters received during the public review period and the City's responses to them.

The City carefully reviewed the comments, provided written responses and determined that the comments did not constitute or require substantial revisions to the revised Mitigated Negative Declaration. On these bases, the City determined that no recirculation of the revised

MND was required pursuant to CEQA Guidelines.

The Board of Zoning Adjustments reviewed the draft revised MND, including the comments and responses, at a noticed public hearing on February 7, 2013 at which time all interested parties had the opportunity to be heard. Following the public hearing, the Board of Zoning Adjustments adopted Resolution No. 01-13, adopting the revised MND and Mitigation Monitoring Program, and Resolution No.02-13, approving the height variance subject to conditions.

The Heron Bay Homeowners Association (HOA) filed a timely appeal of the Board of Zoning Adjustments' approvals on February 21, 2013. The appeal repeats the HOA's position that an Environmental Impact Report (EIR) should be prepared for the Project and references the HOA's prior comments on the draft revised MND. At the April 1, 2013 meeting, the appeal will be heard by the City Council.

Board Review and Actions

The Board of Zoning Adjustments reviewed this application at its meeting on February 7, 2013. At the conclusion of the public hearing, the Board approved the variance, and MND and MMP. The Findings of Fact for approval is attached to this report and included in Resolution No. 02-13 as Exhibit B. The BZA motion to approve the MND and the MMP included a revision to Mitigation Monitoring Measure # 1a for a qualified Wildlife Biologist to conduct a pre-construction survey of raptors and nesting birds one week before initiation of construction and it added Mitigation Monitoring Measure # 1i where the turbine may not operate in heavy or dense fog. The MND, MMP and conditions of approval have been amended accordingly.

In addition, this report mentioned earlier that further review of existing site conditions in the surrounding vicinity showed that there are existing large trees on property owned by PG&E adjacent to the Project site that pose as an obstruction to wind coming from the southwesterly direction toward the turbine. The variance is also necessary so that the turbine is constructed taller than the existing trees in order to have access to greater wind speeds so that the turbine can operate properly and efficiently.

Summary of Public Outreach Efforts

On June 20, 2012 the applicant, City staff and City Councilperson Joyce Starosciak, attended a Heron Bay HOA meeting. A majority of the comments from that meeting were in opposition to the project and requested more information about the project. As a result of that meeting, CEQA documents for the applicant's Project were posted and maintained on the City's website.

Prior to the Board of Zoning Adjustments public hearing, the Notice of Availability and Intent to Adopt a Mitigated Negative Declaration received a 30-day noticing period due to the Initial Study and Mitigated Negative Declaration that was prepared. The methods used for providing notice of the BZA public hearing for approval of the Variance and the Mitigated Negative Declaration were the same methods used for the City Council public hearing regarding the Appeal including a legal advertisement in the Daily Review Newspaper, the posting of placards near the subject property on nearby utility poles, a mailed notification to property owners and business owners within a 300-foot radius of the subject property, a mailed notification to all of the property owners in the Heron Bay subdivision, and the property owners within a 300-foot radius of the subject property in the unincorporated area.

On March 12, 2013, subsequent to the Board of Zoning Adjustments' approval of the MND, MMP and Variance to height for the Project, the applicant and City staff attended a Golden State Mobilehome Owners League meeting at Mission Bay Mobilehome Park (15333 Wicks Boulevard). At the meeting, the Owners Association submitted a petition to the City that an EIR should be completed for the Project. The petition was in support of the Heron Bay HOA's comments, which were comprehensively addressed by the City in the Responses to Comments (see attached).

Legal Analysis

The City Attorney's Office has reviewed and approved the staff report, resolution, and attachments.

ATTACHMENTS

1. Application for Appeal and Attached Statement Listing Reasons for the Appeal
2. Board Member J. Palma letter to Mr. Berger, dated February 6, 2013, and Mr. Berger letter to the City dated February 5, 2013.
3. BZA Resolution 02-13 Approving Variance to Height Subject to Findings and Conditions of Approval, including BZA Resolution 01-13 Adopting Mitigated Negative Declaration and Mitigation Monitoring Program, Responses to Comments, BZA Staff Report, Findings and Conditions of Approval
4. Excerpts of the Board of Zoning Adjustments Meeting of February 7, 2013
5. Vicinity Map
6. Applicant's Supporting Statement
7. Additional Correspondence Received: EBRPD, January 31, 2013; P. Tong, January 28, 2013; H. Beckman, February 7, 2013; Mission Bay Residents Petition, March 12, 2013; J. Zhao, March 23, 2013.
8. Exhibit A - Site Plan
9. Exhibit B - Aerial Photograph of Existing Site Conditions
10. Exhibit C - Elevations

PREPARED BY: Elmer Penaranda, Senior Planner, Community Development Department



CITY OF SAN LEANDRO
 City Clerk's Office
 835 East 14th Street, San Leandro, CA 94577
 Telephone: (510) 577-3366 Fax: (510) 577-3340

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CITY CLERK'S OFFICE

APPLICATION FOR APPEAL TO CITY COUNCIL

GENERAL INFORMATION

This appeal application must be submitted within fifteen (15) calendar days of the decision, and within ten (10) calendar days of a Tentative Map approval. If the appeal period ends on a weekend or holiday, the time limit shall be extended to the next business day.

Please note that decisions of the Zoning Enforcement Official (ZEO) or the Community Development Director are appealed to the Board of Zoning Adjustments or the Planning Commission, depending on the specific project or issue. An Appeal Application to the Planning Commission/Board of Zoning Adjustments must be used for these appeals and is available at the Community Development Department.

APPELLANT INFORMATION (Please print)

Name: Heron Bay Homeowners Association

Relationship to Project:
 Applicant Concerned Resident Other _____

Daytime Telephone Number: (408) 536-0500

Email Address: aabtwo@aol.com

Mailing Address: c/o A. Alan Berger, 95 S. Market Street, #545, San Jose, CA 95113

An appeal is hereby submitted on the decision of:
 Board of Zoning Adjustments Planning Commission Site Development Sub-Commission Other _____

For the Approval or Denial of:

Planning (PLN) Permit Number: PLN 2012-00006

Date of Action: February 7, 2013

Project Address: 2539 Grant Avenue, San Leandro, CA

Reasons for Appeal (List all grounds relied upon in making this appeal. Attach additional sheets if more space is needed):
The Appeal is presented on three grounds. See attached Exhibit "A"

Signature: *Alan Berger*

Date: February 20, 2013

Please return the completed form with a fee for \$500 (payable to the City of San Leandro) to the City Clerk's Office at the address shown above. If the appellant is the applicant, direct costs for processing the appeal, which may include but are not limited to preparation of staff reports and meeting attendance, are charged in addition to the appeal fee.

Office Use Only

APPEAL APPLICATION

Filed timely Yes No
 Received by Marianttanda
 Appeal fee \$ 500.00 (attach copy of receipt)

CITY COUNCIL HEARING

Scheduled for _____
 Checklist due on _____ to City Clerk's Office
 cc: Planner

**LAW OFFICES OF
A. ALAN BERGER
95 South Market Street
Suite 545
San Jose, CA 95113
Telephone: 408-536-0500
Facsimile: 408-536-0504**

EXHIBIT A TO THE APPLICATION FOR APPEAL TO THE CITY COUNCIL

Reasons for Appeal:

The appeal of Heron Bay Homeowners Association to the decision of the Board of Zoning Adjustments (hereinafter referred to as BZA) rendered February 7, 2013 in the matter of the Halus Power Systems Application for a Variance is presented on three distinct grounds. Those grounds and the supporting argument are as follows:

1. That the BZA improperly and illegally granted a variance to Halus Power Systems for a one hundred foot (100') tall wind turbine based on a Mitigated Negative Declaration.

Appellant argues that both statutory and case law in the State of California demand that an Environmental Impact Report be prepared and considered before any variance may be granted based on the clear and fair argument presented by appellant that the granting of said variance will have significant environmental impact on the surrounding area and in particular, but not limited to, the residents of Heron Bay Homeowners Association and the protected bay area marshlands. This argument is presented in the document entitled "Amended Public Comments of Heron Bay Homeowners Association and Individual Owners/Members of Heron Bay Homeowners Association In Opposition of the City of San Leandro's Intent to Adopt a Mitigated Negative Declaration for Halus Power Systems Wind Turbine Located at 2539 Grant Avenue, Within the City of San Leandro." This document and attachments were presented to the BZA in a timely fashion. A true copy of that filing is marked as Exhibit 1 to this Appeal and made a part hereof by reference.

2. That the Approval of the Height Variance by the BZA was not and is not supported by Required Findings.

Appellant argues that the BZA's approval of the height variance was not based on findings mandated by the City's own zoning ordinance. This argument, in summary, is as follows:

The Board of Zoning Adjustment's approval of a height variance for Halus Power Systems is not based on findings mandated by the City's zoning ordinance (sec. 5-2202(A) and 5-2212(B)).

A variance is intended to provide equitable relief from the application of zoning standards in the form of a minor variation of a standard. Under the well-established law of variances in California, as throughout the United States, a variance is proper when strict application of a standard would create an inequitable burden on a parcel because of unique features of the parcel. The City does not have the power under the guise of a variance to effectively waive a zoning standard.

The applicant is asking the city to give it a major exception to the height standard, allowing it to erect a structure of 100 feet (80 foot tower plus 20 foot rotating propeller), which would exceed the zoning standard by 67 percent. The magnitude of the variation is contrary to the well- established purpose of variances.

More important, the variance approved by the BZA is not predicated on any features of the applicant's parcel that would deprive him of parity with owners of other parcels subject to the height standard. Absent this, the BZA could not lawfully make the first finding required by the city zoning ordinance (sec. 5-2212(A)):

"1. That because of special circumstances or conditions applicable to the subject property, including narrowness and shallowness or shape, exceptional topography, or the extraordinary or exceptional situations or conditions, strict application of the requirements of this article would result in peculiar and exceptional difficulties to, or exceptional and/or unique hardships upon, the owner of the property."

In granting a variance, the City is required to make all of several findings stated in the ordinance. Failure to make any one finding is fatal to approval of the variance. ("Failure to make all the required findings under subsections A, B, or C shall require denial of the application for a use permit." Sec. 5-2212(D).)

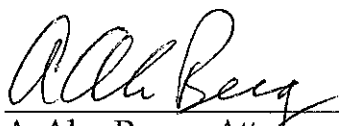
None of the "special circumstances" cited by City planning staff in its recommended findings of fact for the variance, and adopted by the BZA, are circumstances or conditions of the applicant's parcel that put him at a disadvantage compared to owners of all other parcels subject to the height limit. The staff report does not even discuss the application of Halus in terms of hardship, special circumstances of the property or extraordinary or exceptional situations or conditions. Instead, staff cites five reasons why the applicant's parcel is an ideal location for installation of a wind turbine generator. Such reasons are completely irrelevant to the rationale for a variance mandated by the city zoning ordinance and by well-established California law.

The City Council must reverse the BZA's approval of the variance because the approval was a capricious action, contrary to the law, and if left standing will leave San Leandro citizens with the perception that the City does not treat all property owners equally.

3. That there was possible prejudice to the BZA board as the results of the actions of one BZA board member prior to the public hearing, to wit: Ms. Janet Palma.

Attached as Exhibit 2 to this appeal, and incorporated herein by reference, is a copy of a letter and attachment sent to the Chairperson of the BZA and the City Attorney for the City of San Leandro immediately prior to the hearing of February 7, 2013. Appellant notes that while it never received a response from the BZA to this letter, Ms. Janet Palma did not appear at the hearing on February 7, 2013. However as her prejudicial comments regarding appellant and her pre-determined decision to grant the variance were published on or about November 7, 2012, some three months before the actual hearing, it is certainly arguable and possible, that Ms. Palma infected and influenced the remaining Board members and city staff well before the public hearing. Having been presented with clear and convincing evidence of the prejudicial conduct of one of the appointed Board members of the BZA who had three months thereafter before the public hearing of the application to influence staff or the remaining Board members, the City Council must disapprove the decisions of the BZA relative to this application.

Respectfully submitted,



A. Alan Berger, Attorney for Heron
Bay Homeowners Association

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November 13, 2012
[Signature]*

Attorneys for
HERON BAY HOMEOWNERS ASSOCIATION

CITY OF SAN LEANDRO
COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION

IN RE:

THE CITY OF SAN LEANDRO'S
PROPOSED INTENT TO ADOPT A
MITIGATED NEGATIVE DECLARATION
FOR HALUS POWER SYSTEMS WIND
TURBINE AT 2539 GRANT AVENUE, SAN
LEANDRO, CALIFORNIA 94579

**AMENDED PUBLIC COMMENTS OF
HERON BAY HOMEOWNERS
ASSOCIATION AND INDIVIDUAL
OWNERS/MEMBERS OF HERON BAY
HOMEOWNERS ASSOCIATION IN
OPPOSITION OF THE CITY OF SAN
LEANDRO'S INTENT TO ADOPT A
MITIGATED NEGATIVE
DECLARATION FOR HALUS POWER
SYSTEMS WIND TURBINE LOCATED
AT 2539 GRANT AVENUE, WITHIN
THE CITY OF SAN LEANDRO.**

BZA Hearing Date: Dec. 6, 2012

The following comments and legal argument is being submitted on behalf of the Heron Bay Homeowners Association and individual owners/members of the Association in opposition to the City of San Leandro's published Intent to Approve a Mitigated Negative Declaration for a Halus Power Systems Proposed Wind Turbine to be located at 2539 Grant Avenue, San Leandro,

EXHIBIT 1

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3 95 S. Market Street, Suite 545
4 San Jose, California 95113
5 Telephone: (408) 536-0500
6 Fax: (408) 536-0504

7 Attorneys for
8 HERON BAY HOMEOWNERS ASSOCIATION

9 CITY OF SAN LEANDRO
10 COMMUNITY DEVELOPMENT DEPARTMENT
11 PLANNING DIVISION

12
13 IN RE:

14 THE CITY OF SAN LEANDRO'S
15 PROPOSED INTENT TO ADOPT A
16 MITIGATED NEGATIVE DECLARATION
17 FOR HALUS POWER SYSTEMS WIND
18 TURBINE AT 2539 GRANT AVENUE, SAN
19 LEANDRO, CALIFORNIA 94579

**AMENDED PUBLIC COMMENTS OF
HERON BAY HOMEOWNERS
ASSOCIATION AND INDIVIDUAL
OWNERS/MEMBERS OF HERON BAY
HOMEOWNERS ASSOCIATION IN
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MITIGATED NEGATIVE
DECLARATION FOR HALUS POWER
SYSTEMS WIND TURBINE LOCATED
AT 2539 GRANT AVENUE, WITHIN
THE CITY OF SAN LEANDRO.**

BZA Hearing Date: Dec. 6, 2012

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25 The following comments and legal argument is being submitted on behalf of the Heron Bay
26 Homeowners Association and individual owners/members of the Association in opposition to the
27 City of San Leandro's published Intent to Approve a Mitigated Negative Declaration for a Halus
28 Power Systems Proposed Wind Turbine to be located at 2539 Grant Avenue, San Leandro,

1 California. For all future reference in this document, the Heron Bay Homeowners Association
2 and individual owners/members of the Association will be referred to as "the Association," the
3 City of San Leandro will be referred to as "the City" and Halus Power Systems will be referred
4 to as "Halus" unless otherwise stated. The Heron Bay Homeowners Association previously filed
5 on July 31, 2012, a document entitled "Public Comments of Heron Bay Homeowners
6 Association and Individual Owners/Members of Heron Bay Homeowners Association in
7 Opposition of the City of San Leandro's Intent to Adopt a Mitigated Negative Declaration for
8 Halus Power Systems Wind Turbine Located at 2539 Grant Avenue within the City of San
9 Leandro." Attached to that submittal and made a part thereof by reference was an expert report
10 and opinion by Mr. Paul Taylor of Paul Taylor Consulting. Mr. Taylor is a renowned
11 environmental scientist and CEQA specialist. That document was previously referred to as "the
12 Taylor report."
13

14 Subsequent to the filing of the earlier public comments of the Association, the City
15 continued the then scheduled public BZA hearing several times without stating a reason for the
16 continuances. Said continuances were apparently for the purpose of allowing Halus to file an
17 amended or supplemental filing supporting their argument for approval of the MND proposed by
18 the City. Halus has since filed amended documents and the public hearing by the Board is now
19 scheduled for December 6, 2012. Unfortunately, Halus and the City did not see fit to use the
20 several months granted them by virtue of the unexplained continuances to prepare and file an
21 Environmental Impact Report (EIR) as demanded by California statutes and the Heron Bay
22 Association, but rather used their time to attempt to address the shortcomings in the original City
23 findings and Halus submittals as pointed out by the Taylor report. The amended filings and the
24 City's stated intention to approve the MND are still woefully deficient and fail to satisfy the legal
25 standards demanded by the California Environmental Quality Act and cited case law. The
26 simple fact of the matter is that nothing short of a full EIR will suffice and the residents of Heron
27 Bay and the people of the City of San Leandro deserve no less that full compliance.

28 The Association has again asked Mr. Paul Taylor of Paul Taylor Consulting to review and

1 comment on all of the filings by Halus and the City's response to same. A copy of his report is
2 dated November 9, 2012 and is entitled "Updated Halus Wind Turbine Negative Declaration
3 Analysis Review." A true copy of that report is marked as Exhibit A to these comments and
4 made a part hereof by reference as if fully set forth herein. Heron Bay Homeowners Association
5 submits their Amended Comments and the Amended Paul Taylor report, their original
6 Comments filed on July 31, 2012 and the original Paul Taylor report attached thereto and such
7 oral comments as may be presented at the hearing on December 6, 2012 in support of their
8 opposition to the City's intention to accept a MND. To make it perfectly clear, the Association
9 absolutely objects to any approval of the MND and demands that the BZA and the City of San
10 Leandro order Halus to prepare and submit a full EIR in compliance with California statute and
11 case law.
12

13 **I. Preliminary statement.**

14 The Association is comprised of 629 homes (451 single family homes and 178 shared court
15 homes) located entirely in the City of San Leandro. The Association's homes are the northern
16 neighbors to the industrial complex and storage yard maintained by the Petitioner Halus Power
17 Systems. The proposed wind turbine is proposed to be located at the northern boundary of the
18 Halus Power Systems property and the southern boundary of Association homes. Prior to this
19 period of public comment, the City of San Leandro notified 4-6 homes located closest to the
20 proposed project of the City's intent to allow a mitigated negative declaration. This notice met
21 the minimum requirements of State law but certainly did not meet nor satisfy the needs and
22 interests of the Association and its many members and owners. A public hearing of interested
23 Association members called by the Board of Directors of Heron Bay was held in June 2012. The
24 Board of Directors of the Association attended that open forum meeting along with
25 representatives of the City of San Leandro Department of Development Services, a
26 representative of the City Council and the owner of Halus Power Systems. Subsequent to this
27 meeting, the City notified the Association that the time to file public comments in objection to
28 the intent to adopt a Mitigated Negative Declaration had been extended to July 31, 2012. The

1 Association, and several interested homeowners, filed their opposition comments to the proposed
2 City action in a timely fashion, notwithstanding their objection to the City's denial of their
3 request for a 120-day continuance. Subsequent to July 31st, the City continued the Board
4 hearing several times without stating any reason for that action. Apparently said continuances
5 were at the bequest of Halus in order to allow them to file amended documents responsive to the
6 criticism contained in the Heron Bay HOA opposition. Subsequent to the amended filings by
7 Halus, the City has continued with their intent to allow the MND and has reset the public hearing
8 before the BZA for December 6, 2012. The Association, having once again been denied a
9 request for an additional 30-days to file their opposition comments, notwithstanding that Halus
10 was given more than four months to file additional documentation, files these comments in
11 opposition to the proposed MND. To be perfectly clear, the Association and its owner/members
12 continue to strongly object to the proposed adopted of a mitigated negative declaration and will
13 take this matter to the City Council and the appropriate Courts should this MND be approved.
14 The Association demands that an EIR be required for this project.

15 **II. Procedural Standards of Review.**

16 In its earlier comments, the Association stated the procedural standards for review.
17 However, since Halus has failed to file an EIR and the City has failed to demand an EIR, we
18 restate the very clear legal requirement for the EIR at length herein for the convenience of the
19 Board and the City. The purpose of the Association's comments is to insure that the City does
20 not allow this ill-conceived project to proceed forward on the basis of a Mitigated Negative
21 Declaration. A brief history of the CEQA requirements as it relates to this project are identified
22 in the amended Taylor report at page 1-3 and those statements are incorporated herein. Section
23 21064.5 of the California Public Resources Code (the California Environmental Quality Act) sets
24 the standards for the use of a Mitigated Negative Declaration. That section states: " 'Mitigated
25 negative declaration' means a negative declaration prepared for a project when the initial study
26 has identified potentially significant effects of the environment, but (1) revisions in the project
27 plans or proposals made by, or agreed to by, the applicant before the proposed negative
28

1 declaration and initial study are released for public review would avoid the effects or mitigate the
2 effects to a point where clearly no significant effect on the environment would occur, and (2)
3 there is no substantial evidence in light of the whole record before the public agency that the
4 project, as revised, may have a significant effect on the environment.”

5 The significant language in this section is the following language “... would avoid the
6 effects or mitigate the effects to a point where **clearly no significant effect** on the environment
7 would occur...” (emphasis added), and “there is **no substantial evidence** in light of the whole
8 record before the public agency...” (emphasis added). Based on the language of this operative
9 statute and the uncontroverted case law interpreting it, the comments of the Association and the
10 scientific evidence presented by the Taylor report, it is clear that the Mitigated Negative
11 Declaration should not be adopted by the City of San Leandro.

12
13 The landmark case of Ocean View Estates Homeowners Association, Inc. v. Montecito
14 Water District (2004) 116 Cal.App.4th 396, 10 Cal.Rptr.3d 451 directly dictates the path that the
15 City should follow in the Halus application. In Ocean View a homeowners association filed a
16 petition for a writ of mandate to compel a water district to prepare an environmental impact
17 report for a project to cover a reservoir with an aluminum roof. The district found that there was
18 a potential significance to the environment from flooding but the district found no significant
19 aesthetic impact. The district did not order an EIR based on their “checklist” and findings but
20 rather allowed the project to go forward with a Mitigated Negative Declaration (hereinafter
21 referred to as “a MND” unless otherwise stated). After the district and the trial court denied the
22 HOA petition, the Court of Appeal reversed and ordered the district to order a full EIR.

23 The court stated that an EIR provides detailed information about the likely effect a
24 proposed project may have on the environment, lists ways in which significant effects might be
25 minimized and indicates alternatives to the project (Public Resources Code, section 21061). An
26 EIR is required whenever there is a “fair argument” that significant impacts may occur.” So the
27 standard to be imposed by the City, as defined by the courts, is whether or not a **fair argument**
28 has been presented that would indicate that significant impacts might occur. It is not necessary

1 that interested parties demanding an EIR prove conclusively, beyond a reasonable doubt or even
2 by a preponderance of the evidence that significant impacts may occur. It is only necessary that
3 the interested party make a fair argument that there could be significant impacts. It is then the
4 function of the EIR to determine if whether or not there are significant environmental impacts.
5 (See also Quail Botanical Gardens Foundation, Inc. v. City of Encinitas (1994) 29 Cal.App.4th
6 1597, 1602, 35 Cal.Rptr.2d 470). The comments and facts as stated by the Association and in
7 the original and in the amended Taylor report clearly constitute a fair argument and the City must
8 order the EIR in order to determine the full impact of the environmental impact. The Ocean
9 View case is particularly significant because it argues the danger of granting a MND in cases
10 where a fair argument has been presented. The court stated: **“Because a negative declaration
11 ends environmental review, the fair argument test provides a low threshold for requiring
12 an EIR.”** The City may not conclude that the low threshold has not been attained in the present
13 case. Ocean View also stood for the proposition that evidence may be presented that would
14 suggest that a project might have a **significant negative aesthetic impact**. One of the questions
15 then would be would the project have a substantial adverse affect on a scenic vista. A review of
16 Figure 1 attached to the updated Taylor report, Exhibit A, clearly indicates that the presence of
17 the wind turbine would seriously compromise, if not destroy, the pristine scenic views of the
18 protected east marsh and the San Lorenzo creek. One can stand on the corner of the Southwest
19 corner of Heron Bay, in the closest location to the proposed turbine, and easily view the bay
20 waters and it takes no great imagination to see that the turbine will constitute an eyesore. One
21 that damages the near perfect scenic view of the marsh, the creek and the bay. These
22 considerations alone would dictate the preparation of an EIR. It may be argued by the applicant
23 that opinions of homeowners do not constitute scientific evidence. The Ocean View case
24 eliminated this argument by stating, “ Opinions that the cover will not be aesthetically pleasing is
25 not the special purview of experts. Personal observations on these nontechnical issues can
26 constitute substantial evidence.”
27
28

The case of Bakersfield Citizens for Local Control v. City of Bakersfield (Panama 99

1 Properties) (2004) 124 Cal.App.4th 1184 also confirmed the substantial evidence standard. It
2 stated that “substantial evidence is defined as enough relevant information and reasonable
3 inferences from this information that a fair argument can be made to support a conclusion, even
4 though other conclusions might also be reached.” In other words using the fair argument
5 standard, an EIR should be ordered even if the ultimate conclusion is that there are not
6 significant environmental impacts if substantial evidence is presented that would dictate that an
7 EIR be required. The Bakersfield case also discussed and approved the concept of urban decay
8 in considering whether or not to require an EIR and it also allowed individuals to present
9 evidence obtained from their own personal knowledge.

10 The case of The Pocket Protectors v. City of Sacramento (Regis Homes of Northern Cal.,
11 Inc.) (2004) 124 Cal.App.4th 903 involved a project submitted on a MND. In this case the court
12 discussed the principles and purpose of CEQA. The court stated: “The foremost principle under
13 CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the
14 fullest possible protection to the environment within the reasonable scope of the statutory
15 language... We have repeatedly recognized that the EIR is the heart of CEQA.” The court also
16 affirmed that public participation is an essential part of the CEQA process. The court reaffirmed
17 “With certain limited exceptions, a public agency must prepare an EIR whenever substantial
18 evidence supports a fair argument that a proposed project may have a significant effect on the
19 environment... Significant effect on the environment means a substantial, or potentially
20 substantial, adverse change in the environment.” The Pocket Protector case also affirmed that a
21 “The fair argument standard is a ‘low threshold’ test for requiring the preparation of an EIR.” In
22 the Halus matter, clearly the original and amended Taylor report and the comments and
23 observations of the Association meet any low threshold requirement for requiring an EIR. This
24 court also confirmed “relevant personal observations of area residents on nontechnical subjects
25 may qualify as substantial evidence for a fair argument. So might expert opinion if supported by
26 facts, even if not based on specific observations as to the site under review... Where such expert
27 opinions clash, an EIR should be done.” Under the authority of this case, even if the applicant
28

1 produces evidence of no environmental impact, which Halus has not successfully done, the
2 report of Paul Taylor alone should demand an EIR, even if the expert opinions clash. In this
3 regard the court said: "It is the function of the EIR, not a negative declaration, to resolve
4 conflicting claims, based on substantial evidence, as to the environmental effects of a project."
5 This is another case that confirmed the rule that non-technical, area resident's opinions should be
6 considered on aesthetic issues. The court stated: "As on other CEQA topics, the opinions of area
7 residents, if based on direct observation, may be relevant as to aesthetic impact and may
8 constitute substantial evidence in support of a fair argument; no special expertise is required on
9 this topic." Therefore on the topic of aesthetics, the opinions of the Association and local
10 residents must be considered in addition to the opinions expressed in the original and updated
11 Taylor reports.
12

13 The case of Architectural Heritage Assn. v. County of Monterey (2004) 122 Cal.App.4th
14 1095 was a challenge to the adoption of a MND by the County who wanted to tear down the old
15 Monterey courthouse. The court stood for the proposition that CEQA embodies the state's
16 policy that the long-term protection of the environment shall be the guiding criterion in all public
17 decisions. **The court cited the California Supreme Court in recognizing that the Court has**
18 **repeatedly recognized that the EIR is the heart of the CEQA.** Accomplishment of the high
19 objectives of that act requires the preparation of an EIR whenever it can be fairly argued on the
20 basis of substantial evidence that the project may have significant environmental impact. The
21 Supreme Court stressed the importance of preparing an EIR in cases in which the determination
22 of a project's environmental effect turns upon the resolution of controversial issues of fact and
23 forms the subject of intense public concern. It is hard to imagine more intense public concern
24 than the City's expressed intention to approve a MND has caused.

25 Finally, the case of Sierra Club v. California Dept. of Forestry & Fire Protection (2007)
26 150 Cal.App.4th 370, 59 Cal.Rptr.3d 9 establishes the fact that great weight is to be given to
27 expert testimony in evaluating the fair argument standard to be used. Under the guidelines of
28 this case, therefore, great weight must be given to the opinions of Paul Taylor, one of the

1 recognized experts in the field of environmental protection. In support of Paul Taylor's
2 expertise, the Association marks as Exhibit B to these comments the curriculum vitae of Mr.
3 Taylor, and makes it a part hereof by reference as if set forth at length herein. A review of Mr.
4 Taylor's CV highlights his educational and professional experience and his preeminence in the
5 field of environmental protection.

6 **III. Specific Issues of Environmental Concern.**

7 The Association specifically adopts all of the comments and recommendations contained in
8 the updated Taylor report, Exhibit A to this document. The following represent specific
9 highlights of that report on which the Association would comment.

10 A. Aesthetics. As the Taylor report discusses on page 3, the City finds less than
11 significant impact on scenic vistas because of the existing adjacent industrial uses and zoning.

12 Also because the turbine is similar or less height than existing PG&E high tension wires.

13 Apparently the City is influenced by the additional filings of Halus including 11 photo-shopped
14 views into the project site. Unfortunately, the subject photos simulations are all taken from
15 public trail and bay views. None of them are taken from the home sites of the approximately 25
16 homes that would be directly affected by the proposed wind turbine. As stated in the updated
17 Taylor report, the size, scale, format and perspective of the photo simulations are inadequate to
18 afford any fair or independent analysis of the project impacts to scenic vistas or existing visual
19 character or quality. This analysis completely ignores the obvious scenic visual impact of the
20 turbine on the homes of Heron Bay that are directly across from the turbine, the impact on the
21 protected area of the east marsh and the San Lorenzo creek and its relationship to San Francisco
22 bay. In analyzing the impact on vistas, one cannot picture themselves in the actual projected site,
23 admittedly industrial, and ignore the areas on the immediate and adjacent vicinity. As stated as
24 many as 25 homes in the Association would have a direct and unimpeded view of the turbine
25 from their back yards and rear windows. The approximately 300 acres of marsh and creek have
26 been protected and cherished for a long time. To place the turbine in the proposed location
27 would have it be the centerpiece and the eyesore of the entire area surrounding the east marsh. It
28

1 would be the first thing anyone's eye would travel to as there are no other turbines in the area or,
2 for that matter, surrounding any city or county touching the San Francisco bay. The impact of
3 this 100-foot turbine in the middle of the beautiful, protected areas of the bay and marsh cannot
4 be underemphasized. To ignore that consideration demonstrates the flawed concept of granting
5 the MND. It is unfair to compare the turbine to the existing PG&E power lines as the power
6 lines predated the development of the Association and the protected marsh areas. High power
7 wires are common throughout the bay area and offer no shock or surprise to any resident. One
8 would question, however, if power lines were planned to be installed at this time if they would
9 be approved. It is highly doubtful. But Halus should not be allowed to rely on what is already
10 on site; rather the merits of their proposal must be evaluated on its own environmental impact.

11
12 As the updated Taylor report points out there are no similarities in visual aesthetic
13 impact in the PG&E tower profiles, aerial mechanization, moving member distractions or scenic
14 vista intrusion. The proposed turbine has a 2000 square foot sweep area. As Taylor states, this
15 would have the same effect as a Cessna Citation 500 spinning like a pinwheel at the top of a 100
16 foot tower less than 500 feet from homes in the Association and directly adjacent to the protected
17 marsh areas. The public trails and parks form an integral part of the unique Bay Trail, East Bay
18 recreation system which has provided hiking, jogging, bicycling, skating opportunities and the
19 observation of more than 100 species of migrating birds since 1989. To conclude that the
20 presence of a 100 square foot turbine essentially in the middle of such protected areas would be
21 tragic at best. It is interesting to note that no 100-foot horizontal axis, tubular towers or wind
22 turbines have been previously allowed within any scenic vistas of the Bay Trail. To allow this
23 100-foot aerial advertising tower would be to start a precedent that will not be easily reversed.

24 The City must consider Taylor's conclusion that the turbine may create a potentially
25 significant impact to occupied, off-site structures due to daytime shadow casting effects. It is
26 well established that towers of this height and size may create "shadow flickering" that may
27 substantially affect the use and enjoyment of the owners of the adjacent homes. Certainly under
28 the cases cited, the City must at least order an EIR that would investigate the potential of

1 environmental impact of this variety. The City must conduct a wind project shadow impact
2 assessment as part of an EIR. The City must demand an independent Visual Impact Analysis
3 using computer simulations on current color photos showing the proposed turbine in its location
4 at scale from various points of view among the adjoining Heron Bay homes and the Bay Trails.

5 It is important to note that other jurisdictions have adopted ordinances recognizing the
6 effects of shadowing on the environment. The City of San Francisco has adopted an ordinance
7 prohibiting new structures over 40 feet in height from casting shadows over public open space.
8 Certainly the City of San Leandro should not adopt a de-facto policy that would be less
9 restrictive than that of San Francisco, a city famous for protecting its scenic vistas. The
10 Association urges the City to adopt a "wind turbine siting criteria" rather than approve this
11 particular turbine without sufficient study, thereby setting a dangerous and permanent precedent.
12

13 The Association is aware that Benny Lee, the president of the Heron Bay Homeowners
14 Association, has independently sent written comments listing six separate concerns that he has
15 with the proposed project. The Association hereby incorporates and adopts each and every point
16 raised by Mr. Lee in his comments. On this particular subject, the Association specifically
17 adopts Mr. Lee's points number 3 and 4. As Mr. Lee points out, allowing this installation will
18 single out the community as allowing the first turbine on the bay shoreline. It can only lead to a
19 slippery slope of ugliness and uncontrolled and unwarranted development on some of the most
20 cherished areas of the bay lands. The project will clearly add environmental insult and injury to
21 Heron Bay homeowners, their property values and family enjoyment. The City should and must
22 require an EIR to fully consider all of these potentially damaging areas.

23 B. Biological Resources. The Association adopts the findings of Paul Taylor, Exhibit
24 A, pages 5-6 in reference to biological resources. A project may impact biological resources
25 through the loss or destruction of individual bird species or through the degradation of sensitive
26 habitats. Anyone who has ever walked the public trails or visited the protected area in question
27 has to be aware of the extent and variety of migrating birds and other native birds in the areas of
28 the marshes, in the direct proximity of the proposed project. The City finds that an

1 Environmental Sciences Associates (ESA) memorandum concludes that the risk of bird fatalities
2 from a single wind turbine is not statistically significant. The Association would note that the
3 loss of a single bird habitat due to an unnecessary project that serves no useful purpose other
4 than advertising for the applicant is too many. Taylor notes that the aerial twisting, spinning and
5 noise from a wind turbine will disturb and alter avian flight patterns and nesting habits in
6 proximity to the project. The ESA report makes no mention of the nearly one million birds that
7 rest and nest in the 300 acres of marsh land that would be affected by the presence of the turbine.
8 The ESA report does not mention the in-flight mating patterns of the California Least Tern, a
9 federal and state endangered species. It does not mention the Northern Harrier's in flight
10 exchange of prey with their mates, also a protected species. It does not address impact on the
11 Western Burrowing Owl that flies in circular patterns and engages in in-flight courtship. The
12 ESA report admits that it does not have enough evidence or research on migration or mating
13 patterns to objectively address this issue. There is no explanation how they arrived at the
14 artificially low figure of 1 bird killed every 6 ½ years but such an estimate would strain
15 credibility. The City cannot compare any other area in California to the largest bird wildlife
16 habitat in the East Bay. The bird mortality estimates do not apply to the presence of a wind
17 turbine next to a bird sanctuary. Pictures of all of the above species, which may be dramatically
18 affected by the proposed turbine, are again attached as group Exhibit C to these comments, made
19 a part hereof by reference and incorporated herein. The photos constitute a small percentage of
20 the bird species that may be affected by the proposed turbine.
21

22 The City Mitigation Measures are not fully consistent with the June 29, 2012 California
23 Department of Fish and Game's letter mitigations. It is inconceivable that the City would allow
24 this project without a strict compliance with the clear directives of the Department of Fish and
25 Game. It is further inconceivable that the City would allow this project to move forward without
26 an EIR investigation of the effect of the project at least on these specific species. Remember the
27 legal standard is a fair argument. The Association does not have to prove that these species will
28 be involved, just that there is evidence that they could be affected. This fact alone should

1 generate an order for an EIR.

2 C. Geology/Soils. The Association adopts the comments contained in the updated
3 Taylor report, Exhibit A, pages 6-7, in this section as their own and offers no additional
4 comments.

5 D. Hazards & Hazardous Materials. The Association adopts the comments contained
6 in the updated Taylor report, Exhibit A, pages 7-8, in this section. As contained in the Taylor
7 report, research has demonstrated that wind turbine blades have an extremely large radar
8 signature that can disrupt aircraft navigational radar. As the Heron Bay project lies in close
9 proximity to Oakland International Airport, this finding presents a clear and present danger to the
10 residents and should be investigated and included as part of an EIR. As stated by Mr. Taylor,
11 "the City must acknowledge and address potential added aircraft navigational radar impacts of
12 the proposed Halus Wind Turbine Project where no public benefits are provided." There is little
13 doubt that should an air catastrophe occur, and should disaster be traced back to interference
14 from the proposed wind turbine, that the City would be liable for all resultant damages as the
15 result of their refusal to demand a full EIR pursuant to state law. Can anyone from the City or
16 from Halus name any other wind turbine currently in use or under construction in similar
17 proximity to an active, international airport? We sincerely doubt that they could so demonstrate.
18 There is also no argument to the point that this turbine will provide any public benefit. This
19 project benefits exactly no one in the City of San Leandro other than Halus.

20 E. Noise. The Association adopts the comments contained in the updated Taylor
21 report, Exhibit A, pages 9-10, in this section. The comments in the Taylor report relative to
22 noise intrusion are technical and clearly qualify as fair argument under the standards of the cases
23 cited in this brief. In summary Taylor states that horizontal axis wind turbines generate
24 significant noise and vibration. There is no City acoustical analysis that would show noise or
25 vibration impact levels inside the homes closest in proximity to the turbine. Furthermore there
26 are no City studies that would evaluate the resultant noise impact on the trails or marsh areas.
27 The Halus provided manufacturer's noise specifications dated November 1996, more than 16
28

1 years old, are neither current nor relevant to the Halus-modified wind turbine. The Association
2 demands that as part of an EIR that a computer analysis be performed per Community Noise
3 Equivalent Levels (CNEL) or County noise ordinance compliance standards. The study should
4 provide project noise levels at adjacent residential and recreational receptors from a computer
5 modeling of sound in decibels. Noise contours at 5 dBA levels should be plotted over a scaled
6 site plan or aerial photo capturing the locations of the turbine noise source and proximate
7 residential and recreational receptors. As stated by Mr. Taylor, a common limit, adopted by
8 other jurisdictions, for significant wind turbine noise impacts to adjacent residential land use is
9 an increase of 10 dBA above existing ambient residential noise levels. For the City to proceed
10 with the MND in spite of the criteria and specifications set by other relevant jurisdictions
11 pertaining to noise intrusion, without a scintilla of supporting scientific evidence, flies in the face
12 of the California code.

13
14 F. Property Values and Economic Hardship. All studies of wind turbines as they
15 relate to property values indicate that property values will decline for both permanent and
16 temporary periods. Any individual looking to purchase a home in the Heron Bay area would be
17 immediately impacted by the presence of a ten-story wind turbine in their back yards. Such a
18 presence could only cause further stress and hardship on the residents of San Leandro, both in
19 potential sales and in the refinancing of their homes. The City has the duty and obligation to
20 protect the resident's property values as best they can. It would be unconscionable for the City
21 to ignore potential property value impact on its residents in order to satisfy the advertising needs
22 of one two year old business owner. An EIR must be ordered to include a property value
23 evaluation. Declining property values can lead to the abandonment of homes, decline in upkeep,
24 the presence of squatters and accompanying crime. This type of urban decay has a domino effect
25 on all surrounding properties. The lowering of property values, and the concurrent abandonment
26 of homes, as the result of an unsightly wind turbine, can certainly lead to urban blight and this
27 phenomenon should be studied. The residents of Heron Bay, particularly those 25 homes facing
28 the proposed Halus project, have already accepted that their property values may be affected by

1 the presence of the referred to electrical power lines and the adjacent industrial area. They have
2 accepted those facts and have built that realization into their economic decisions to purchase
3 their homes where located. However, it is abundantly clear that the presence of the 100-foot
4 turbine will significantly, adversely affect those home values. A potential buyer could not help
5 but notice the presence of a singular, large turbine within a few hundred feet of the subject
6 homes. One might look across the channel and not notice the power lines, which are a common
7 occurrence in the bay area, but no potential buyer could fail to notice and comment on the
8 presence of the 100-foot turbine. No one could rationally state that the presence of such a
9 mechanical eyesore would serve to increase the property values. The negative impact is clear to
10 all.

11
12 G. Risk of Failure and Abandonment. As stated succinctly by Mr. Lee in his
13 comments, the City has no specific policy and no experience in evaluating the seismic and wind
14 load risks of a free standing ten story wind turbine in an area of bay fill. Failures could well
15 include fires, explosions and rotating blades breaking loose from the podium structure and falling
16 more than ten stories. Certainly, at the very minimum, an EIR should establish failsafe
17 procedures that would be in effect for all of the above potential disasters. There also appears to
18 be no plan in effect in the event that Halus would abandon the project and the site or file
19 bankruptcy. This risk has certainly become more obvious is recent times as evidenced by the
20 Solyndra disaster. In this event of bankruptcy or abandonment, the site would be burdened with
21 a decaying and unmaintained wind turbine which would pose a direct danger to the residents and
22 the surrounding areas. As a bankrupt corporation would have no incentive to remove or even
23 maintain the turbine, the City should require a deposit or fund from Halus that could be used to
24 remove the turbine in the event of abandonment.

25 IV. Conclusion.

26 The Association urges the City of San Leandro to abandon their intention to grant approval
27 of this project and a code variance based on a Mitigated Negative Declaration. The entire
28 premise of the project, i.e., that it is green, is misplaced. While it is admirable that the City

1 strives to be more "green" and encourages green projects, the proposed wind turbine hardly
2 satisfies that purpose. The amount of power allegedly generated by this one, used, old
3 technology turbine serves only Halus. They would save less than \$1,000 in power usage and yet
4 may cause untold amount of damage to the environment and surrounding areas. The sad fact of
5 the matter is that this project has very little to do with being green. The real purpose of the
6 project is to provide advertising of the Halus product to any interested customers. We are quite
7 sure that it would be advantageous to Halus to be able to take a customer into their back yard and
8 show them a working wind turbine made from used, recycled parts rather than drive them to
9 Suisun City or wherever else they have a similar product in operation. The proposed project is
10 nothing more than aerial advertising. No power generated by this turbine will ever be sold to the
11 electrical grid because the output would be insignificant. The only "green" consideration of this
12 proposed turbine is that Halus is a company marketing a green product. This, in itself, does not
13 make the proposed turbine green. Would the City then allow any other industrial business in the
14 area to erect their own ten-story turbine? Doubtful. Would the City allow a ten-story moving
15 parts billboard for advertisement of a green business? Doubtful. Any yet that is exactly what is
16 being proposed. However, the residents of Heron Bay and the surrounding areas and the
17 residents of greater San Leandro who use and respect the protected marsh and habitat areas
18 should not suffer for the corporate benefit of one business. Any type of risk analysis would
19 clearly demonstrate the folly of such a venture.
20

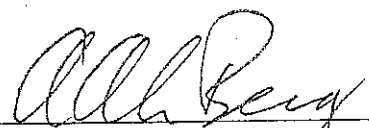
21 Heron Bay has clearly demonstrated a fair argument for an EIR in the above and in the
22 comments of its owner/members. The City already allowed Halus an additional four months,
23 after the opposition filed by Heron Bay and its residents, to file additional documents in support
24 of their application. During that time they could have produced an EIR or at least agreed to
25 prepare an EIR. Instead they manipulated the information previously presented with no new
26 scientific evidence or sustainable support for the variance. For the City to ignore the fair
27 arguments raised, not order an EIR and proceed with a MND will result in an almost sure
28 reversal by the courts and will involve the City in prolonged and expensive litigation. The body

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of California law almost universally calls for action on the side of caution, that is, the insistence on an EIR in all questionable cases. Heron Bay has met the standard set by numerous cases and the City should and must reverse their intent to proceed on a Mitigated Negative Declaration. An EIR must be ordered before the Halus project may continue.

Dated: Nov. 13, 2012

LAW OFFICES OF A. ALAN BERGER



A. ALAN BERGER, Attorney for Heron Bay Homeowners Association

EXHIBIT A

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November 9, 2012 Update

Updated

Halus Wind Turbine Mitigated Negative Declaration Analysis Report

Introduction

Paul Taylor Consulting (PTC) environmental science and regulatory consulting has been engaged by the Heron Bay Homeowners Association (HOA) in San Leandro, California to analyze a revised October 11, 2012 *Mitigated Negative Declaration* (MND) prepared by the City of San Leandro Planning Department (City) as Project PLN2012-00006 pursuant to the California Environmental Quality Act (*Public Resources Code Section 21000 et seq.* and CEQA Guidelines *California Code of Regulations Section 15000 et seq.*). As CEQA Lead Agency, the City supports the revised MND findings with a CEQA *Initial Study Checklist* dated October 11, 2012, Halus and their FSA Consultant's May 10, 2012 *Technical Memorandum* concerning wind turbine impacts to birds, ESA's Sept. 20, 2012 *Technical Memorandum* evaluating wind turbine shadows, Halus' Nov. 28, 1996 Vestas Model V29 wind turbine noise specifications, March 12, 2012 Project site plans and Oct. 10, 2012 photo simulations, a June 21, 2012 Federal Aviation Administration "determination" letter, as well as various Federal, State, County and City environmental regulatory requirements, and City staff determinations.

PTC relies upon current, reputable scientific references and published environmental science research, recent and direct Project site reconnaissance and City CEQA Lead Agency policies, practices and work products. PTC's task is to analyze the technical accuracy, adequacy and specific scientific bases for findings and conclusions in the City's MND and related records for the Project. PTC will report CEQA/MND errors, omissions, inaccuracies, speculation and inconsistencies. PTC will recommend additional scientific investigations, issues resolutions and precedent wind turbine siting criteria. PTC will also amplify HOA and public recreational stakeholder concerns, and rebut City findings where appropriate.

Project Description

Halus Power Systems, a San Leandro supplier of re-manufactured wind turbines, has applied to the City of San Leandro for a Zoning Variance to exceed the 60 foot height limit on their industrial property allowing an 80-foot tall (100 feet to the full blade sweep height), single, 50 kilowatt horizontal axis wind turbine electric power generator to be located on their property at 2539 Grant Avenue in the I-G Zoning District.

Applicant Halus Power Systems states the purpose and justifications for the proposed Project wind turbine to be: 1) research and development purposes as part of the company's ongoing efforts to increase operational and energy efficiencies of the turbines it re-manufactures; and 2) energy generated by the turbine will offset the company's demand for non-renewable energy for their operations. (ESA *Technical Memo*, May 10, 2012) As proposed, the Project requires a discretionary action by the City, which requires environmental review and public disclosures under the California

Environmental Quality Act and Guidelines (CEQA).

The Project wind turbine operating specifications are indicated in Table 1 below. The turbine would be erected atop a tubular tower, with a maximum blade sweep height of approximately 100 feet and a ground clearance under the blade of 51.5 feet. The turbine will achieve full power at wind speeds of 37.6 mph with a turbine rotational speed of approximately 44 rpm. The turbine's operational cut-in wind speed is 7.4 mph, with a cut-off wind speed of 62 mph. An electronic wind vane mechanism allows the turbine to rotate on its horizontal axis to face maximum windward force directions.

Table 1
Halus Project Wind Turbine Specifications

Wind Turbine Model: Vestas V17 90 kilowatt-rated, horizontal turbine axis on tubular tower
Electric Power Output: 50 kilowatt-rated with Halus modifications
Total Wind Turbine Weight: Approx. 4 tons
Total Operating Height: 100 ft.
Tubular Tower Height: 73.82 ft.
Tubular Tower Diameters: Base approx. 12 ft., top approx. 6 ft.
Reinforced Concrete Tower Foundation: Approx. 20 ft. x 20 ft. slab
Turbine Rotor Blades: 3
Turbine Rotor Hub Height: 76 ft.
Rotor Blade Sweep Diameter: 44 ft.
Blade Tip Ground Clearance: 51.5 ft.
Blade Swept Area: 2,000 square ft.

Sources: Halus Power Systems 2012, PIC July 2012, and ESA *Technical Memo*, May 10, 2012.

The final page of this report is Figure 1 depicting the Halus Proposed Wind Turbine Location, and Project vicinity residential, industrial and public recreational land uses in aerial color photo perspective. The ESA-derived Figure 1 annotation data for the Halus wind turbine vary slightly from entries in Table 1 above.

Mitigated Negative Declaration Analysis

The CEQA statute provides that Mitigated Negative Declarations (MNDs) are used "when the Initial Study has identified potentially significant effects on the environment, but 1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and 2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment." (CEQA Section 21064.5)

An Initial Study formalizes the City Lead Agency preliminary analysis to determine whether an Environmental Impact Report or Negative Declaration must be prepared. Most commonly, the Initial Study is based upon a "Checklist" which illuminates the various environmental impacts which may result from the development project. The Checklist, however, is only part of the Initial Study. The Initial Study also must explain the reasons for supporting the Checklist findings and note or reference the source or content of the data relied upon in its preparation and determinations.

Mitigated Negative Declarations are a project applicant's expediting short cut to avoid the time and

six-figure (\$) expense of preparing and processing a full CEQA Environmental Impact Report (EIR) – including Draft EIR and Final EIR with Response to Comments disclosures. The abbreviated MND processing route also avoids the controversies and delays that can result from the requisite EIR analysis of “alternatives to the proposed project” and “cumulative environmental impacts.”

The following is an analysis of the technical accuracy, adequacy and specific scientific bases for findings and conclusions in the revised City’s Initial Study Checklist and resultant MND where five “potentially significant impact” factors are addressed. These Project impact factors are: Aesthetics, Biological Resources, Geology/Soils, Hazards & Hazardous Materials and Noise. Analysis of the five impact factors that follow is presented in the same order and name in which they appear in the City’s Initial Study Checklist dated Oct. 11, 2012. Where appropriate, PTC will provide a point-by-point rebuttal of City findings.

Aesthetics

Aesthetics, views, shading and nighttime illumination issues are related elements in the visual or scenic environment. Aesthetics generally refer to the identification of visual resources and the quality of what can be seen, or overall visual perception of the environment. Views refer to visual access and obstruction, or whether it is possible to see a focal point or panoramic view from an area. Shading issues are concerned with effects of shadows cast by existing or proposed structures on adjacent land uses. Nighttime illumination addresses the effects of a proposed project's exterior lighting upon adjoining uses.

Potentially significant impacts addressed in City’s Initial Study Checklist followed by PTC Rebuttal:

- a. Would the Project have a substantial adverse effect on a scenic vista – **City finds** *Less than Significant Impact* due to existing adjacent industrial uses and zoning, Project wind turbine similar or less than height of existing PG&E high-tension utility towers. Halus provides a “Photo Simulation” depicting 11 views into the Project site before and after wind turbine construction as evidence of no significant Project impacts to existing scenic vistas.

Rebuttal – The Checklist should find the Project a *potentially significant impact* to both private and public Aesthetics -- degrading scenic vistas and the existing visual character where there is no mitigation. Figure 1 herein depicts the Project location adjacent to a large, fully-occupied residential subdivision known as Heron Bay. As many as 25 Heron Bay homes would have direct rear views into the Halus Project property and the proposed 100-ft. high wind turbine. Halus’ selective photo simulations of 11 locations all are taken from public Bay Trail views, without consideration for the direct rear views from Heron Bay residents into the Project site. Moreover, the size, scale, format and perspectives of the photo simulations are inadequate to afford any fair or independent analysis of Project impacts to scenic vistas or existing visual character or quality.

Heron Bay homeowners accept that existing adjacent electric power utility and drainage facilities are necessary for the greater community good. These homeowners also accepted that there are existing, southeasterly-adjacent, low-rise general industrial-zoned land uses. However, all of these facilities and uses negatively affect their home investment values and impair their marketability, neighborhood visual character and lifestyle enjoyment. The new, intrusive, unanticipated adjacent 10-story high Halus wind turbine will add further environmental insult and injury to the Heron Bay private property owners.

Existing PG&E high-tension power line towers are approximately 16 feet higher than the operating height of the proposed Halus Project wind turbine. However, there are no similarities in visual aesthetic impact in their structural tower profiles, aerial mechanization, moving member distractions or scenic vista intrusion. The PG&E towers have static, maximum one-foot profiled, lattice structural steel construction as opposed to the single, modular wind turbine tower with visual profiles varying from a base of approximately 12 foot width, to top 6 foot width, to a ten-story high whirling and twisting turbine blade with a sweep diameter of 44 feet – covering a 2,000 square foot area. This 2,000 square foot area is the visual impact equivalent of seeing a Cessna Citation 500 corporate jet spinning like a pinwheel at the top of 100 foot tower less than 500 feet from homes in the Heron Bay neighborhood and less than 350 feet from the Bay Trail and San Lorenzo Creek waterfowl habitat.

In addition, the Project wind turbine will have *potentially significant impact* to public scenic vista aesthetics for which there is no mitigation. Co-extensive with the Heron Bay homes southeastern and southwestern boundaries are public trails and parks that are an integral part of the unique Bay Trail, East Bay recreation system. Begun in 1989, the Bay Trail provides easy accessible recreational opportunities for outdoor enthusiasts, including hikers, joggers, bicyclists and skaters. It also offers a setting for wildlife viewing and environmental education, and it increases public respect and appreciation for the entire San Francisco Bay ecosystem. The Bay Trail provides important transportation benefits such as commuting alternatives for cyclists and connections to numerous public transportation facilities. The Bay Trail offers access to commercial, industrial and residential neighborhoods; points of historic, natural and cultural interest; recreational areas like beaches, marinas, fishing piers, boat launches, and over 130 parks and wildlife preserves totaling 57,000 acres of open space. The Bay Trail's policies specifically seek to protect sensitive natural habitats such as the estuarine marsh supporting waterfowl in San Lorenzo Creek that separates Heron Bay homes from the Halus Project site with parallel trails on each creek bank. (*Association of Bay Area Governments, Website July 2012*)

The proposed Halus wind turbine Project would be unprecedented in the public Bay Trail system as no 100-ft. horizontal axis, tubular tower, wind turbines have been permitted or constructed in or within scenic vistas of the Bay Trail. The City would be setting perilous land use precedent in approving the Halus Project zoning variance.

Additional Investigation

In order to fully analyze and disclose evidence for City decision makers, the public and Heron Bay homeowners the following additional studies are necessary to satisfy CEQA requirements and limit City liabilities:

Conduct an independent Visual Impact Analysis using computer simulations on current color photos showing the proposed Halus wind turbine in its location at scale from various points of view among the proximate Heron Bay homes and Bay Trails adjacent to the Project site. Presentation exhibits should be no smaller than 11 inches x 17 inches in landscape format.

- b. Would the Project substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway – **City finds No**

Impact due to existing adjacent industrial uses and zoning, the Project wind turbine is similar or less than the height of existing PG&E high-tension utility towers. There would not be a substantial adverse effect on scenic resources. **Finding noted.**

- c. Would the Project substantially degrade the existing visual character or quality of the site and its surroundings – **City finds *Less than Significant Impact*** due to wind turbine located in an area that is already subject to industrial uses. The existing visual character is of industrial uses. Open space to the northwest is already compromised with the PG&E high-tension utility towers. The proposed wind turbine would have a similar impact. Halus provides a “Photo Simulation” depicting 11 views into the Project site before and after wind turbine construction as evidence of no significant Project impacts to existing scenic vistas.

Rebuttal – Refer to Section a. above.

- d. Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area – **City finds *No Impact*** due to wind turbine would not create a new source of light or glare. Halus provides ESA’s Sept. 20, 2012 *Technical Memorandum* evaluating wind turbine shadows.

Rebuttal – While the Proposed Halus Project does not alter illumination or glare in views of the area, the Checklist should find the Project a *potentially significant impact* to public “open space” in the form of Bay Trails northwest from the Project site according to the ESA Sept. 20, 2012 *Technical Memorandum* evaluating wind turbine shadows. ESA’s shadow analysis Figure 2 therein indicates that the existing Bay Trail open space segment between the Project site and Heron Bay homes would receive Halus wind turbine shadowing before, during and after 8:30 a.m. on December 21. The City and community could benefit from “wind turbine siting criteria” precedent of its neighboring jurisdictions. Accordingly, a City of San Francisco ordinance prohibiting new structures over 40 ft. in height from casting shadows over public open space should be applied to the Halus Project in a *potentially significant impact* finding.

Additional Investigation

In order to fully analyze and disclose evidence for City decision makers, the public and Heron Bay homeowners the following additional studies are necessary to satisfy CEQA requirements and limit City liabilities:

City should consider adopting “wind turbine siting criteria” precedent of its neighboring jurisdictions.

Biological Resources

A project may impact biological resources through the loss or destruction of individuals of a sensitive species or through degradation of sensitive habitat. Habitat degradation may occur through grading or excavation, increases in water or air pollutants, increased noise, light or vibration, interruption of fresh or salt water supplies, reduction in food supplies or foraging areas or interference with established wildlife movement patterns on or between habitat areas. Projects that create long-term or episodic impacts to natural areas, such as by generating toxic fumes or fugitive dust, could also result in degradation or destruction of a natural habitat. New development, construction, roadways and agricultural use all have the potential to lower or remove

natural resource values of natural open space systems.

Potentially significant impacts addressed in City's Initial Study Checklist followed by PTC Rebuttal:

- a. Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate sensitive or by special status species in local or regional plans, policies or regulations or by California Dept. of Fish and Game or U.S. Fish and Wildlife Service – **City finds *Potentially Significant Impact Unless Mitigation Incorporated*** due to determinations in an Environmental Science Associates (ESA) Technical Memorandum dated May 10, 2012 that the calculated risk of bird fatalities from a single wind turbine operation were not statistically significant. The City has also required Halus to comply with eight mitigation measures specified in a June 29, 2012 California Department of Fish and Game letter commenting on the Halus Project.

Rebuttal – It should be noted that the aerial twisting, spinning and noise from the Halus wind turbine will disturb and alter avian flight patterns and nesting habits in proximity to the Project. The City "Mitigation Measures" for potential impacts to biological resources are not fully consistent with the June 29, 2012 California Department of Fish and Game letter mitigations.

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- b. **City finding *Less than Significant Impact*.**

Rebuttal -- Refer Section a. above.

- c. **City finding *No Impact*.**

Rebuttal -- Refer Section a. above.

- d. Would the project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native nursery sites – **City finds *Less than Significant Impact*** due to wind turbine site has no resident or migratory fish among industrial land uses.

Rebuttal -- Refer Section a. above.

Geology/Soils

Geologic processes that result in geologic and soil hazards include: surface rupture, ground shaking, ground failure, tsunamis, seiches, landslides, mudflows, and subsidence of the land. Because the region is generally considered to be geologically active, most projects will be exposed to some risk from geologic hazards, such as earthquakes. Thus, significant geologic impacts exceed the typical risk of hazard for the region.

Potentially significant impacts addressed in City's Initial Study Checklist followed by PTC Rebuttal:

- a. **City finding *Potentially Significant Impact Unless Mitigation Incorporated*. Finding noted.**

- b. **City finding** *No Impact*. **Finding noted.**
- c. **City finding** *No Impact*. **Finding noted.**
- d. **City finding** *No Impact*. **Finding noted.**
- e. **City finding** *No Impact* adopting Mitigation Measure #1: The City of San Leandro has incorporated the 2009 International Building Code into its municipal building code (Title 7, Chapter 7-5). The Project Applicant would be required to comply with all applicable State and City regulations to address potential geologic hazards associated with the proposed project, including ground shaking and liquefaction. Geotechnical and seismic design criteria must conform to engineering recommendations in accordance with the seismic requirements of the 2009 California Building Code (Title 24) and any amendments adopted in the San Leandro Municipal Code. Additionally, because the project site is in a liquefaction Seismic Hazard Zone, the Project Applicant will be required to comply with the guidelines. **Finding noted.**

Hazards & Hazardous Materials

Hazardous materials generally are chemicals, which have the capability of causing harm during an accidental release or mishap, and are characterized as being toxic, corrosive, flammable, reactive, an irritant or strong sensitizer. The term "hazardous substances" encompasses every chemical regulated by both the U.S. Dept. of Transportation's (DOT) "hazardous materials" regulations and the U.S. Environmental Protection Agency's (EPA) "hazardous waste" regulations, including emergency response. Hazardous wastes require special handling and disposal because of their potential to damage public health and the environment. Activities and operations that use or manage hazardous or potentially hazardous or explosive substances could create a hazardous situation if an accidental explosion or release of these substances occurred. Individual circumstances, including the type of substance; quantity used or managed, and the nature of the activities and operations, affect the probable frequency and severity of consequences from a hazardous situation. Federal, state, and local laws regulate the use and management of hazardous or potentially hazardous or explosive substances.

Potentially significant impacts addressed in City's Initial Study Checklist followed by PTC Rebuttal:

- a. **City finding** *Less than Significant Impact* as to creating a significant hazard to the public.

Rebuttal – The City should find *Potentially Significant Unless Mitigation Incorporated* due to the known probability of wind turbine structural blade failures and fragmentation – so-called "rotor failure." The risk of wind turbine blade break-ups and projectile fragment hazards is known to be as high as one in one hundred per year. Thus, planning jurisdictions have established land use setbacks to separate people and property from the hazards of rotor failure. (*California Energy Commission*, Nov. 2006)

The Heron Bay homes are less than 500 ft. from the proposed Halus wind turbine, and thus are exposed to the rotor failure risk from the Halus wind turbine. A 500-ft. setback, or separation, of the Halus wind turbine from the adjacent Heron Bay homes must be a minimum mitigating revision in the Project to comply with Mitigated Negative Declarations provisions, i.e. "... 1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for

public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and 2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment." (CEQA Section 21064.5)

Additional Investigation

City should consider adopting "wind turbine siting criteria" precedent of its neighboring jurisdictions. Alameda County has a wind turbine setback requirement of three times the proposed structure height, or 500 ft., whichever is greater from the structure's property line.

- b. **City finding** *Less than Significant Impact*. **Finding noted.**
- c. **City finding** *Less than Significant Impact*. **Finding noted.**
- d. **City finding** *No Impact*. **Finding noted.**
- e. **City finding** *Less than Significant Impact* adopting Mitigation Measure #2: Halus Power Systems shall secure approval of Alameda County Airport Land Use Commission and the Federal Aviation Administration (FAA) prior to building permit approval of the wind turbine. The FAA issued a June 21, 2012 "Determination of No Hazard to Air Navigation" letter concerning the Halus Project with conditions.

Rebuttal – FAA determined "The proposed wind turbine would be in the line of sight for Oakland ASR-9 (radar terminal system) used by the Northern California Terminal Radar Approach Control (NCT), Oakland (OAK) and Hayward (HWD) Air Traffic Control Towers. The wind turbine would cause unwanted primary returns (clutter) and primary target drops in the area of the turbine. ..."

- f. **City finding** *No Impact*. **Finding noted.**
- g. **City finding** *Less than Significant Impact*. **Finding noted.**
- h. **City finding** *No Impact*. **Finding noted.**

Additional Investigation

Concerning the above-referenced FAA and Alameda County Airport Commission permits to approve the Halus wind turbine construction and operation, research has shown that wind turbine blades have an extremely large radar signature which can disrupt aircraft navigational radar. The City must acknowledge and address potential added aircraft navigational radar impacts of the proposed Halus Wind Turbine Project where no public benefits are provided.

Noise

Environmental noise is measured in decibels (dB). To better approximate the range of sensitivity of the human ear to sounds of different frequencies, the A-weighted decibel scale (dBA) was devised. Because the human ear is less sensitive to low frequency sounds, the A-scale deemphasizes these frequencies by incorporating frequency weighting of the sound signal. When the

A-scale is used, the decibel levels are represented by dBA. On this scale, the range of human hearing extends from about 3 dBA to about 140 dBA. A 10-dBA increase is judged by most people as a doubling of the sound level. To account for the fluctuation in noise levels over time, noise impacts are commonly evaluated using time-averaged noise levels. The Community Noise Equivalent Level (CNEL) represents an energy average of the A-weighted noise levels over a 24-hour period with 5 dBA and 10 dBA increases added for nighttime noise between the hours of 7:00 p.m. and 10:00 p.m. and 10:00 p.m. to 7:00 a.m., respectively. The increases were selected to account for reduced ambient noise levels during these time periods and increased human sensitivity to noise during the quieter periods of the day.

Potentially significant impacts addressed in City's Initial Study Checklist followed by PIC Rebuttal:

- a. Would the Project expose people to or generate noise levels in excess of standards established in the local general plan or noise ordinances or applicable standards of other agencies – **City finds *Less than Significant Impacts*** referencing “manufacturer’s noise specifications” consistency with General Plan’s “normally acceptable” residential noise level of 55 dBA.

Rebuttal – The Halus-provided “manufacturer’s noise specifications” dated November 28, 1996 for a Vestas Model V29, 225 kilowatt wind turbine is neither current nor relevant to the proposed Halus-modified Vestas Model V17, 90 kilowatt wind turbine. Horizontal axis wind turbines such as Halus proposes generate significant noise and vibration. The City provides no acoustical analysis to show noise or vibration impact levels at or inside the Heron Bay private homes adjacent to the Halus Project site. No comparative noise standards are provided to disaggregate inside from outdoor residential noise impact levels, nuisance noise compliances at the public use Bay Trails and related park areas, or existing local ambient residential noise levels. PIC understands that Heron Bay homes were built with added acoustical attenuation windows and wall insulation in recognition of their proximity to Oakland International Airport three miles north and the Hayward Executive Airport two miles south from Heron Bay homes. The City MND and Initial Study reference wind turbine noise levels, but do not show substantial evidence of the actual levels off site. Numerical noise standards compliance at residential and recreational noise receptors must be demonstrated.

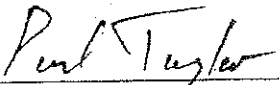
Additional Investigation

In order to fully analyze and disclose evidence for City decision makers, the public and Heron Bay homeowner the following additional studies are necessary to satisfy CEQA requirements and limit City liabilities:

Conduct computer analysis per Community Noise Equivalent Level (CNEL) or County noise ordinance compliance standards. Provide Halus Project noise levels at adjacent residential and recreational receptors from computer modeling of sound in decibels (dBA). Noise contours at 5 dBA intervals should be plotted over a scaled site plan or aerial photo capturing the locations of the Halus wind turbine noise source and proximate residential and recreational noise receptors.

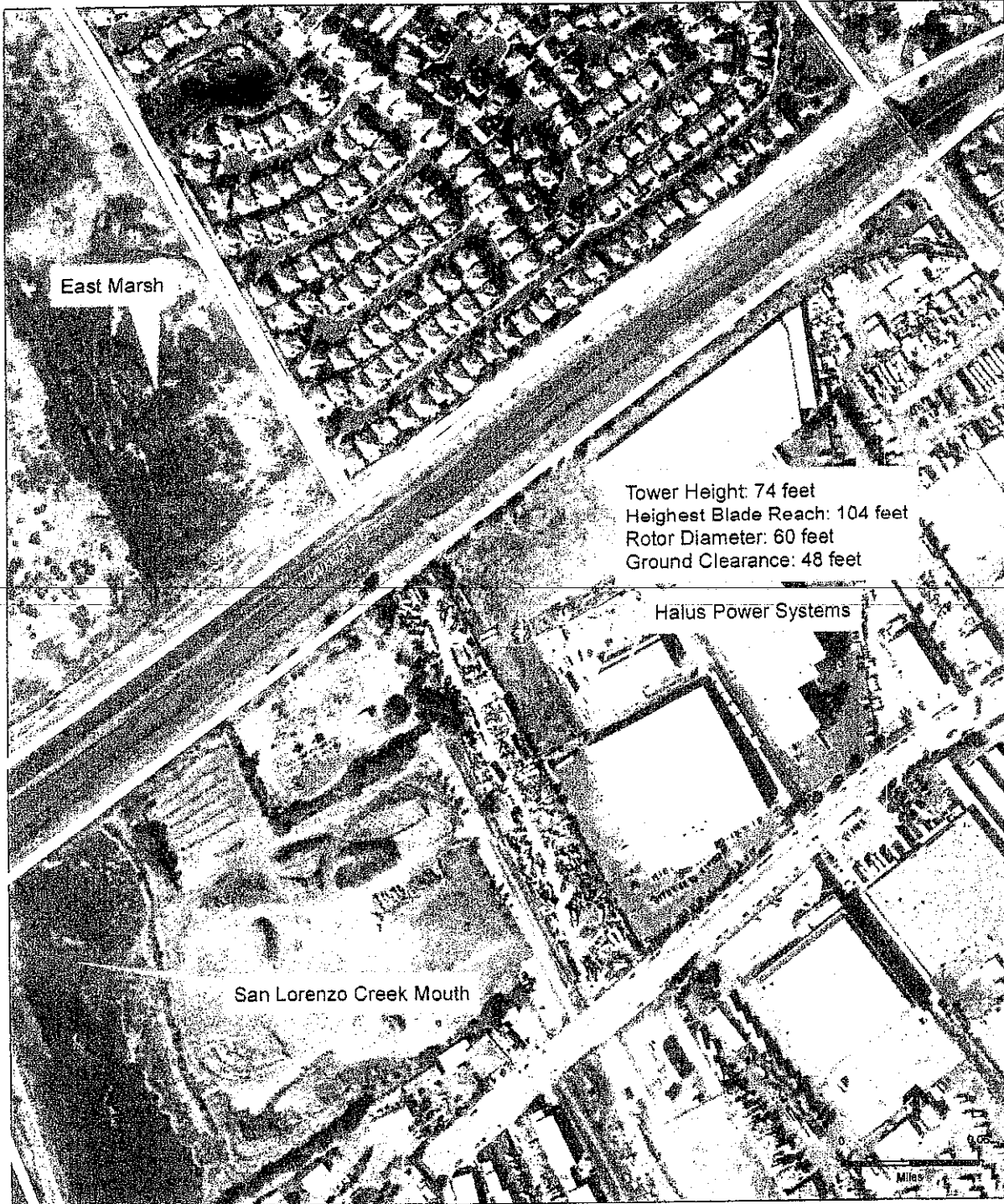
The City and community could benefit from adopting “wind turbine siting criteria” precedent of other jurisdictions. A common limit for significant wind turbine noise impacts to adjacent residential land uses is an increase of 10 dBA above existing ambient residential noise levels.

PTC 07-12 File


Paul Taylor, B.S., M.S.
Principal Environmental Scientist

The following and final page of this Report is Figure 1 depicting the Halus Proposed Wind Turbine Location, and Project vicinity residential, industrial and public recreational land uses in scaled aerial color photo perspective.

↓ Heron Bay Homeowners ↓



SOURCE: Microsoft Virtual Earth

Halus Power Systems
Figure 1
Proposed Turbine Location

Public Trails and Parks

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Paul Taylor, B.S., M.S., R.E.A., Principal RESUME

SUMMARY

Corporate environmental science and regulatory consultant to real estate, commercial, industrial and public clients, and law firms. Expertise and proven success in the following areas:

- Executive Leadership and Diligence in Professional Business Planning and Practice;
- Principal Company Management in Communications, Technology and Production;
- Public Policy, Government and Corporate Regulatory Affairs Compliance and Issues Resolution;
- Strategic Research, Analysis and Planning, and Liability and Litigation Avoidance;
- Multidisciplinary Team Director and Public Policy Editorial.

~~A reputation for technical competence, professional integrity, aggressive advocacy and skillful, effective communications in all media.~~

EXPERIENCE

Present Principal, PAUL TAYLOR CONSULTING, environmental science and regulatory consultants to real estate, commercial, industrial and public clientele, with specialty in EIRs, EISs, wetland and wildlife permitting and mitigation plans, siting analyses, litigation support and expert testimony. Practice experience throughout Southern and Central California.

2004-2005 Principal Planner, PCR Services Corp., Santa Monica and Irvine.
Mr. Taylor was planning and CEQA manager for urban infill and large raw land developments in the fast-paced and complex Southern California market, with particular emphasis on environmental impact reports, mitigation strategies and entitlements processing. Projects located in Los Angeles, Riverside, San Bernardino and Kern Counties. Project Team leadership, consultants management and communications, and regulatory permitting are his strong points.

1991-2004 Founder and Managing Principal, TAYLOR & COMPANY, Los Angeles.
Mr. Taylor's executive experience, academic training, business and professional practice have emphasized a multidisciplinary approach in management and issues resolution. He has over 20 years experience, and provides principal project management with primary responsibilities in regulatory compliance strategy development, project permit programs and expediting, environmental impact report (CEQA EIR) and statement (NEPA EIS)

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preparation and processing, environmental assessments and audits, land use analyses, water and wildlife resource mitigation plans and agreements, wetland and mining permits, recycling/solid waste management, litigation support, and expert testimony. As Principal-in-charge, Mr. Taylor personally represented each client in administrative and judicial

proceedings.

1988-1991 Director of Regulatory Affairs, Meredith/Boli & Associates, Inc.; Los Angeles, Santa Cruz, and Chicago.

Responsible for managing and directing feasibility studies, environmental research, and engineering investigations for industrial, commercial, residential, and waste management projects. Provided regulatory analysis, management and technical support on a variety of projects including site assessments, EISs, EIRs, endangered species habitat conservation plans (Section 10), wetlands permits (Section 404), waste recycling methodologies, regulatory compliance advisement, overall project permitting, forensic ecology, hearing presentations, and litigation support.

1985-1988 Manager of Environmental Services, Engineering Service Corp., Los Angeles, Santa Clarita and Palm Desert.

Responsible for managing and directing multi-disciplinary studies in preparation of EIRs for industrial, residential, and commercial developments. Provided regulatory compliance strategies and expedited agency approval for multi-use, raw land developments in Southern California.

1977-1984 Senior Project Manager, Nelson & Co., Inc. Engineers and Architects, New Orleans.

Responsible for environmental engineering studies for foreign and domestic, industrial and public projects. Responsible for industrial site selection studies in coastal and river systems. Manager of permit acquisition programs, and environmental issues resolution for major industrial facilities in sensitive environments in the US, Africa, South America, and the Pacific Rim.

1975-1977 Environmental Scientist, Burk and Associates, Inc., New Orleans.

Responsible for environmental impact assessments of industrial, commercial and recreational projects involving water pollution, sewerage facilities, noise pollution and aesthetic impacts.

1973-1975 Research Assistant, Tulane University Medical School, New Orleans.

Responsible for designing and conducting medical research laboratory experiments in endocrinology and microbiology. Researchers at this laboratory received the *Nobel Prize in Medicine* in 1977.



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EDUCATION/TRAINING

M.S. Environmental Sciences, Tulane University, New Orleans, Louisiana;
B.S. Biology/Chemistry, Livingston University, Alabama;
Marine and Coastal Sciences Curricula, University of Alabama, Gulf Coast Research Laboratory;
Environmental Law Curriculum, Tulane University Law School;
Communications and Journalism Studies, Loyola University;
Hazardous Waste Management Workshop, University of Maryland;
California Environmental Quality Act Workshop, University of California at Irvine;
Environmental Policy Negotiations and Resolutions, Massachusetts Institute of Technology;
Los Angeles County Bar Assn. Member in Environmental Law Continuing Legal Education
(inactive);
PC Windows, MS Word/Works, and Excel Proficient

PROFESSIONAL CREDENTIALS

California Community College Lifetime Instructor's Credential in Ecology and Water Quality (1985)

PROFESSIONAL REGISTRATIONS

Registered Environmental Assessor in the State of California, R.E.A. No. 00850 (inactive)

ORGANIZATIONS/AFFILIATIONS

Founder and Director of *Land Trust Imprimatur* environmental accreditation program
Past President of West Los Angeles Homeowners Association
Associate Member, Los Angeles County Bar Association (inactive)
Institutional Affiliate of The Ecotourism Society (inactive)
Member of the Screen Actors Guild (inactive)

PUBLICATIONS

Mr. Taylor has authored and contributed to hundreds of scientific and regulatory reports on a variety of environmental matters. Mr. Taylor has supported, and actively participated in, numerous administrative and judicial proceedings, including expert court testimony.

Mr. Taylor has authored dozens of public policy news and analysis articles, and has been published in *The Wall Street Journal*, *Los Angeles Times*, *The Los Angeles Daily News*, *The Los Angeles Business Journal*, *San Francisco Chronicle*, *Investors Business Daily* and *The Washington Times*.

Mr. Taylor has also been published at noted public policy news websites such as "Media Matters" and "Common Conservative."

Mr. Taylor has been an on-air Guest Commentator and an environmental issues advisor with nationally



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syndicated radio talk shows.

PRESENTATIONS

Mr. Taylor has been a Guest Lecturer for the University of California at Los Angeles Environmental Management curriculum.

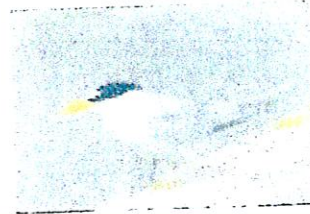
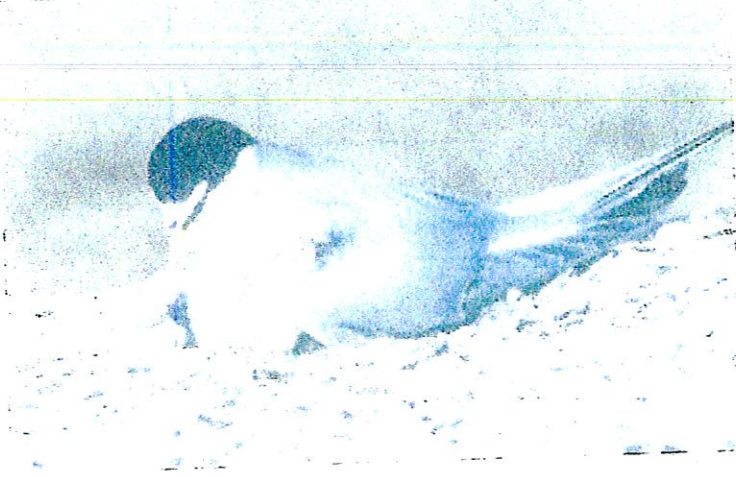
Mr. Taylor conducts a *Speaker Program* on environmental policy for trade groups, business associations, law firms and corporate gatherings.

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EXHIBIT C

California Least Tern

A Federally & State Endangered Species
Living on our San Leandro Shoreline



California Least Terns have been listed as endangered since 1970.

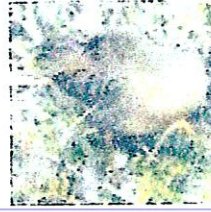
California Least Terns nest on beaches, mudflats, and sand dunes. Adults have short, forked tails and short yellowish legs. They have a distinctive triangular black cap across the eyes to the beak, and a white forehead and underparts. Their backs and tops of their wings are pale gray. The outer edges of their wings are black. Their bills are golden with a black tip.

Primary foraging sites for these opportunistic feeders are shallow estuaries, bays, and lagoons. They hover until they spot prey and then plunge into the water to grab a fish without fully submerging.

Courtship is an elaborate ritual that takes place near an exposed tidal flat or beach. In a ritual called the "fish-flight display," a male flies around with a small fish in his beak, often pursued by a female looking for a fishing mate. The chases are spirited and vocal as the birds weave high in the sky and make paired aerial glides, descending swiftly in close unison.

California Clapper Rail

A Federally Endangered Species
Living on our San Leandro Shoreline



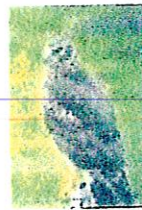
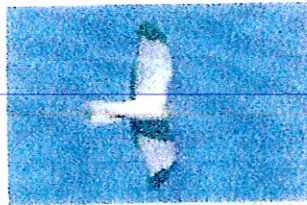
The California Clapper Rail is close to the brink of extinction.

The California Clapper Rail is a squat, short-necked, and long-legged bird with a modest streak. Appearing mostly brownish in color from afar, when seen up-close it becomes apparent that the bird has an intricate beauty: a rust-colored breast, brown streaks along its olive wings, and black-and-white bars on its flanks not only make it a wonderful sight, but also help the species hide in the pickleweed and cordgrass that typify its preferred habitats.

Once common in coastal salt marshes in northern and central California, the California Clapper Rail has declined precipitously in both range and number. Only 15% of the San Francisco Bay's original marshland remains today, and much of it is highly fragmented and altered. Since 1970, the California Clapper Rail has seen population increases but also in some years heartbreaking, somewhat unexplained declines.

Northern Harrier

A Federally Endangered Species
Living on our San Leandro Shoreline



Northern Harrier populations diminished with wetland destruction.

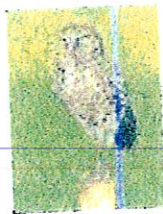
The slender-bodied Northern Harrier has a long tail and wings, yellow legs, owl-like facial discs, a conspicuous white rump patch, and yellow eyes. Adult males have blue-gray and white underparts. The females are more brown and tan. The Northern Harrier is medium-sized, with females typically larger than males.

Northern Harriers hunt for small mammals while flying over open habitats. The species is often called the "marsh hawk" because it inhabits open marshlands. It got the name "harrier" due to its habit of raiding or harrying its prey. A female, after receiving prey in flight from the male, will not return directly to the nest but will make several false landings to confuse predators.

Western Burrowing Owl

A Species of Special Concern

Living on our San Leandro Shoreline



In 2003, due to large declines of Western Burrowing Owls, California conservationists petitioned to list them as Endangered Species. Though unsuccessful, conservationists continue work on behalf of these owls.

The Western Burrowing Owl is small, long-legged, and yellow eyed, without ear tufts. It is white around the eyes and under the cheeks. Its body is mostly brown with white spots. These owls build their nests underground and are active both day and night (diurnal).

Their flight pattern involves rapid ascents (~30 m), hovering for 5-10 seconds, then rapid descents (~15 m). Males also fly in circular patterns. These owls' elaborate courtship involves cooing, bowing, and short flights.

People harm Western Burrowing Owls, destroying the ecosystem around them via wind turbine collisions, burning, and heavy equipment crushing.

EXHIBIT 2

**LAW OFFICES OF
A. ALAN BERGER
95 South Market Street
Suite 545
San Jose, CA 95113
Telephone: 408-536-0500
Facsimile: 408-536-0504**

February 5, 2013

Chairman of the Board of Zoning Adjustments
The Honorable Catherine Vierra Houston
c/o Sally Barros, Secretary to the BZA
835 E. 14th Street
San Leandro, CA 94577

City Attorney of the City of San Leandro
Attn: Jennifer Faught
555 12th Street #1500
Oakland, CA 94607

Re: The Intent of the City of San Leandro to Adopt a Mitigated Negative Declaration
Relative to the Application of Halus Power Systems to Install a Wind Turbine.
PLN2012-00006.

Via Overnight Mail, Facsimile and Email

Gentlepersons,

This is to advise you that I am the attorney for the Heron Bay Homeowners Association. As you are no doubt aware, I have previously filed on behalf of Heron Bay Homeowners Association Opposition and Amended Opposition to the application of Halus Power Systems (hereinafter referred to as "Halus") to install a 100-foot wind turbine on their property located in the City of San Leandro, adjacent to the homes of Heron Bay. I am advised that after several continuances, the above entitled matter is now set for public hearing and comment before the Board of Zoning Adjustments (hereinafter referred to as the "BZA") on Thursday, February 7, 2013.

I am directing this correspondence to your attention because it has recently been brought to my attention that one of the sitting members of the BZA, who apparently intends to rule on the Halus application on Thursday night, is guilty of egregious, unethical and illegal conduct. Board Member Janet Palma has published prejudicial and unethical comments that clearly indicate that she is not fit to hear or decide any issues relative to the Halus application or, frankly, any issues at all relative to Heron Bay Homeowners Association. On behalf of the Association, we hereby demand that Janet Palma recuse herself, or in the event that she refuses recusal, be removed from any hearing, argument

or vote regarding the Halus project. Only the City Council may decide whether or not she is even fit to serve the City and this Board in the future.

I have attached a ten page excerpt from the San Leandro Patch dated November 7, 2012 et.al. for your review. It is obvious that Ms. Palma was very disappointed that Benny Lee, a former President of the Heron Bay Homeowners Association and now an elected City Councilperson, won recent election over Mr. Chris Crow. On page 4, 9:47 pm, Nov.7, Ms. Palma states: "Damn Chris, I really thought you would make it. We need some real change in this city not someone who is going to back one "gated" community that should never and would never now have been built. Next time." Her obvious and stated prejudice against Benny Lee and the Heron Bay Association should be enough to have her removed from any vote involving Heron Bay, but she unfortunately goes much further in her later absurd rants. (I might note that her ignorance is also alarming, to wit: Heron Bay is not a "gated" community).

At page 4, 10:55 am, Nov. 8, in response to a comment by Carlos J. that its time to have the wind mill (sic) approved, she states: "That's right Carlos! Thank you."

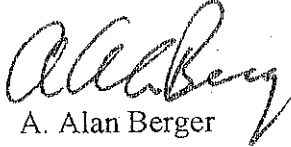
At page 5, 12:01 pm, Nov. 8, Palma states: "... not true that Halus has no local support, in fact just the opposite. And you never know what can happen about those supposed "private streets." Heron Bay are not good neighbors and do not believe in supporting the great San Leandro citizenry." Could there be a more clear statement demonstrating Ms. Palma's inherent prejudice to Heron Bay? Can one regard her comments as anything but a threat to Heron Bay relative to their private streets? She also clearly indicates her support of the Halus project notwithstanding that these comments were made before the final public comments and before the public hearing to be held this Thursday. To allow her to remain on the Board for this hearing is a mockery of fair play and public interest.

I direct your attention to the comments of Mr. Steve Leroux, who I do not know but whom I anticipate is a member of the Heron Bay community, made on page 5-6, 12:28 pm, Nov. 8. Mr. Leroux expresses his opinion as to the conduct of Ms. Palma with justifiable outrage and in a manner that should represent every owner of a home in Heron Bay and frankly every member of the City of San Leandro. Every citizen, at some time, may be a victim of Ms. Palma's predetermined decisions and prejudice. It is hard to imagine how she could have more clearly violated her oath as an appointed representative of the City Council and the People of San Leandro.

In the remainder of the chain of comments, Ms. Palma obviously realizes that she has committed her preformed notions, her prejudices and her unethical conduct to written form. She weakly attempts to soften her position but in this case the damage is done. She is clearly not fit to participate in any manner in the Halus application. Every citizen has the right to rely on the fact that each and every Board member approaches the entire hearing process in an unbiased manner and with no preformed judgments. Should she be allowed to participate, this egregious behavior will definitely be the subject of Court action. Frankly, it remains to be seen if she has already conveyed her poisonous attitude to other members of the BZA or to staff members of the City who have voiced an opinion

on the reasonableness of the Halus application. At a minimum the City must see that she does not participate on Thursday.

Very truly yours,

A handwritten signature in cursive script, appearing to read "A. Alan Berger".

A. Alan Berger

Enclosure
AAB/ceb

Editor [Zoneil Maharaj](#) zoneil.maharaj@patch.com

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Elections

Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?

How many ballots remain uncounted, such as vote-by-mail folks who missed the postal deadline? They could swing 2 races. But Lee joins Jim Proia as a clear council winner.

By [Tom Abate](#) [Email the author](#) November 7, 2012

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1 of 1

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San Leandro: Benny Lee, president of the Heron Bay Homeowner's Association, wins his race for city council district four. Credit [Tom Abate](#)

Benny Lee led his closest challenger, Chris Crow, by a 60-40 margin in a four-way race Wednesday morning after ranked choice votes were counted, earning him a seat on the San Leandro City Council.

Lee will become the representative of council district four which covers Washington Manor. He joins incumbent Jim Prola, who handily beat challenger Hermy Almonte in a head to head race in council district six and the Mulford Gardens area.

But two races remain up for grabs in contests that prove how much each vote counts, especially in local election.

As of 10 am Wednesday, incumbent Councilwoman Ursula Reed led school board president Morgan Mack-Rose by 97 votes in a three-way race for district 2 which covers southeast San Leandro.

And Measure L, the \$39-per-house school parcel tax, was a little over a percent shy of the two-thirds margin it needed to pass.

Local blogger and election strategist Mike Katz said that based on past voter turnouts in San Leandro there are likely more than 5,000 uncounted ballots, such as vote-by-mail packets that were filled out too late to send by postal service and had to be dropped off in person Tuesday.

The Alameda County Registrar of Voters estimates there could be 140,000 late or provisional ballots still uncounted. The county has 28 days to certify elections though final tallies will likely be done much earlier.

In the Reed-versus-Mack-Rose race, the critical dynamic is what happens to the second-place votes of the third candidate, Bal Theater owner Dan Dillman. Reed has lead all along in first place votes. But Mack-Rose has gained on the incumbent by grabbing a larger share of Dillman's second choice votes.

So at this point the outcome hinges on two unknowns: the number of uncounted ballots, and how Dillman's second-choices are split between Reed and Mack-Rose.

A similar dynamic is at play with the Measure L parcel tax, which needed a daunting two-thirds margin to pass.

Measure L had started the night with a yes vote in the low 60s and had slowly climbed as the count progressed to end Tuesday with 65.38 percent of the 14,475 votes tabulated thus far.

But Katz said more than 22,000 ballots were cast in the 2010 San Leandro mayor's race.

Again, the variables are: how many ballots remain uncounted and whether the parcel tax will continue creeping up in the vote count to jump that two-thirds hurdle.

Stick with Patch for continuing election coverage and analysis.

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Leah Hall

10:59 am on Wednesday, November 7, 2012

Fingers and toes crossed!

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Reply



Tom Abate

11:26 am on Wednesday, November 7, 2012

For?

Flag as inappropriate

Reply



Leah Hall

11:39 am on Wednesday, November 7, 2012

Flag as inappropriate

My candidates and ballot measures. :)

It was an energetic election season and this time I had several friends and neighbors ask me how I was voting on local candidates and measures. Perhaps this will be a small but meaningful factor in one of the closer races.

Win or lose, this feels pretty good going forward. :)



Leah Hall

12:02 pm on Wednesday, November 7, 2012

Woot-woot! Here's one of mine....

Flag as inappropriate

"Measure J passed with an amazing 84% of the vote. Great job, Oakland! This means \$475 million to ensure Oakland schools are safe and healthy, and that students and teachers have the technology and resources they need."

-- www.qopublicschools.org



Leah Hall

12:18 pm on Wednesday, November 7, 2012

84% voted "Yes"

Flag as inappropriate

Tip of the Hat, Oakland!



Leah Hall

3:05 pm on Wednesday, November 7, 2012

Forgive me, David. I'll take a pass and we aren't going anywhere soon.

Flag as inappropriate

We have many blessings right here in San Leandro, including all my lovely neighbors.



Chris Crow

4:17 pm on Wednesday, November 7, 2012

My Congratulations to Mr. Lee and his campaign on a strong victory. I wish him much luck and hope he can be the leader this community wants him to be.

Flag as inappropriate

Outside of the sting of defeat I do not feel much different today than I did yesterday. As a competitor you understand defeat is always a possibility, and indeed I am more motivated today to be involved in the community.

The intense and invaluable experience in understanding my own flaws and my real strengths / friends is still a personal victory. Hopefully I can build on the lessons learned and relationships made to propel myself onward and upward.

Thank you to all of the people who voted for me first, second, or third and thank you to all of my supporters who helped me campaign and get my message out. There are still many, endless even, things for a non-city council member to work on to improve the quality of life in San Leandro and I look forward to continuing that work.

[Reply](#)

Whit Magor

6:25 pm on Wednesday, November 7, 2012

Good luck, Chris. Thank you for the effort.

Flag as inappropriate

Justin H.

8:33 pm on Wednesday, November 7, 2012

Congratulations to Benny! It has been a great pleasure becoming friends over the last couple of months!! Your a Great Man and I am proud to have you as the councilman representing my family.

Flag as inappropriate

[Reply](#)

[Janet Palma](#)

Flag as inappropriate

9:47 pm on Wednesday, November 7, 2012

Damn Chris, I really thought you would make it. We need some real change in this city not someone who is going to back one "gated" community that should never and would never now have been built. Next time!

[Reply](#)

[Carlos J](#)

Flag as inappropriate

10:30 am on Thursday, November 8, 2012

Now it's time to get have the wind mill approved and the change the parking at the end of wicks!

[Reply](#)

[Janet Palma](#)

Flag as inappropriate

10:55 am on Thursday, November 8, 2012

That's right Carlos! Thank you.

[anthony](#)

Flag as inappropriate

11:22 am on Thursday, November 8, 2012

Halus backed the losing candidate and has no local support, also the parking is on private property... what's your point?



[Marga Lacabe](#)

Flag as inappropriate

11:55 am on Thursday, November 8, 2012

I am sad that Chris lost. I regret not having able to do more or be better at what we did.

Unlike Chris, however, I'm not going to be gracious.

Political attacks are part of every campaign. I have not shied away from pointing out Benny's duplicity in changing his positions to suit his audience or the ridiculous excuses he's given to try to drive Halus out of town.

But there should not be room for personal attacks.

Benny's campaign team - with his full knowledge - have spent the campaign making extremely offensive and misogynistic comments about me and other opponents, on Tavares' blog. I have a pretty thick skin and I've often been the subject of personal attacks, but never so vile and degrading. Before this campaign, I didn't quite understand the power of hate speech. In that sense it's been a learning experience.

I might still have said nothing, if it wasn't because these vile attacks extended to my 10-year old daughter. I have dealt with many evil people in this world, I've shaken hands with men who've committed genocide, but it takes someone truly sick to degrade a child.

At no point did Benny apologize or disavow those comments. Nor have any of his supporters.

There are no words to express my contempt for Benny. I am definitely unhappy that he won, but I'm even sadder to live in a city with people like him and his acolytes.

[Reply](#)

[Janet Palma](#)

Flag as inappropriate

12:03 pm on Thursday, November 8, 2012

I am very sorry to hear about what happened to you and your daughter. Unconscionable, but not surprising. There are still some rude people in this relatively small city. Whether they won an election or not, doesn't make them good people in my opinion if they do things like that.

Steve Leroux

12:22 pm on Thursday, November 8, 2012

Marga, This "patch" apparently is another word for 'place where people who have lost touch with reality gather'. You didn't really believe Crow would win, did you? He was thrown off the Planning Commission for being a flake (and-worse), he is apparently so spaced out from his pot use that he forgot to pay his pot fine, if one reads his Planning Commission remarks they are boring and uninformed, etc. That you thought he had any chance to win is bizarre. It is great news that he lost as it shows the citizens of San Leandro can see the truth.

Flag as inappropriate

**Marga Lacabe**

12:31 pm on Thursday, November 8, 2012

"Steve",

The race is over, you won. The fact that you feel that you need to continue the personal attacks against Chris - I'm sure the ones against me/my daughter will follow - further confirms the lack of integrity of the Benny team.

Flag as inappropriate

**Chris Crow**

12:49 pm on Thursday, November 8, 2012

Steve, if may help you find a more correct reality.

I was not kicked off the Planning Commission because I was a flake. Yes, someone had been removed in the past because she failed to attend the meetings, but that was not me. The timeline and actions support the conclusion that I was kicked off because I put forth the real reason the city was trying to ban entertainment - as a response to cover themselves in the Faith Fellowship case. The week after I was removed the city called a "special" planning commission meeting to try and re-pass the ban that I lead an effort against. The Planning Commission was unanimous in rejecting the entertainment Ban and the City Council had one heck of a time trying to pass it themselves, until the City Attorney admitted on the record it was needed in response to Faith Fellowship litigation. Although I was removed with a 7 - 0 vote, all commissioners are appointed and removed 7-0. I went on to receive the endorsement in my race of 2 of those 7, so that should be obvious to reality checkers like yourself.

I took my Planning Commission experience seriously, but I'm not sure any comments you read in the minutes will be exciting without the context of the actual meeting.

As for my pot ticket, it was my mistake I did not take care of it when I was suppose to. As soon as I was made aware of it, I pleaded not guilty, the case was dismissed, and I paid no fine.

Flag as inappropriate

**Marga Lacabe**

11:31 pm on Thursday, November 8, 2012

Fred, you don't change anything by running away. You do it by confronting it.

Flag as inappropriate

Janet Palma

12:01 pm on Thursday, November 8, 2012

@anthony - not true that Halus has no local support, in fact just the opposite. And you never know what can happen about those supposed "private streets". Heron Bay are not good neighbors and do not believe in supporting the greater San Leandro citizenry.

Flag as inappropriate

[Reply](#)**Steve Leroux**

12:28 pm on Thursday, November 8, 2012

Janet, as a San Leandro BZA member it is inappropriate to post the things you post. It is also a violation of your AICP code of ethics and proper city ethics. Someone needs to bring your behaviour to the attention of the city attorney and the APA. Can't you 'class' up and do the right thing for the city? So, what is someone who lives in Heron Bay and fwho is seeking a BZA action supposed to think of your statement?

Flag as inappropriate

Are your prejudice prior to the hearing? And to call a whole group of citizens in Heron Bay who you have now labeled "not good neighbors" is unethical and tacky. Grow up or resign your position.



Chris Crow

Flag as inappropriate

12:35 pm on Thursday, November 8, 2012

Steve, Janet has not said anything other than she knows there is community support to move forward with the Halus project.

anthony

Flag as inappropriate

7:28 pm on Thursday, November 8, 2012

Halus "project"... they want to erect a 100+ ft windmill structure for demonstration purposes and cover their PG&E bill, how is that a project ? Zero Net Energy Center/San Leandro is a project, this windmill is an act of convenience that could set harmful precedent.



Chris Crow

Flag as inappropriate

8:24 pm on Thursday, November 8, 2012

Not for just demonstration, or energy production Anthony, indeed the most important function of the turbine is a "testing" platform so that they may expand their product base and grow their business. All of the bad data that Mr. Lee fed to the residents of Heron Bay has to do with large 400 ft Wind Turbine farms. I'm not sure how one 100ft testing platform = 400 ft wind farms. This is only hysteria that Mr. Lee has spread to justify harming a green business in his district.

anthony

Flag as inappropriate

9:33 pm on Thursday, November 8, 2012

Testing platform for what, did that get mentioned? What can't they do now without the tower? Last I heard they were working on controller system research, can't that happen on a "bench" or simulation? I've assumed that prior to shipping units for installation they've done run ups on the ground, can't that be applied for testing as well? Even a green business can act in a non-green way, which I believe is the case here considering the location, so... thanks but no thanks. (BTW) I do my own research, and much more often than not, can recognize hysteria.



Marga Lacabe

Flag as inappropriate

11:30 pm on Thursday, November 8, 2012

Mike wrote a great article about the Halus project, including links to the documents filed with the city and what the research says about the claims the Heron Bay crowd are making. Also, make sure to take a look at the google map for the area.

The article is at: <http://www.sanleandrobytes.com/archives/016511.html>

Mike

Flag as inappropriate

12:39 pm on Thursday, November 8, 2012

Wow, I have never heard of Janet Palma but googled her after reading the comment that she is on the BZA. Once again, wow a member of a San Leandro Board comes on a public website and throws out a threat to a San Leandro community?

Hey Janet, this is America, we have elections, obviously I am assuming the people you supported lost. Who ever supported you for the BZA should ask for your immediate dismissal. But since you are at large I am assuming the current mayor appointed you and doubt he has the moral fortitude to ask for your resignation.

[Reply](#)

Chris Crow



12:57 pm on Thursday, November 8, 2012

Hi Mike, Welcome to America! Free Speech and all. Always a pleasure to see you exercise your rights. I don't see a threat in Janet's remarks.

Flag as inappropriate

Janet Palma

Flag as inappropriate

12:58 pm on Thursday, November 8, 2012

I have not threatened anyone. I have not done anything unethical per AICP, which you clearly know nothing about. I am sad to see that people are using SL Patch to vent their ridiculous ideas and opinions about things and people they know little about. I will not participate again in this forum. Again, as Chris stated, I said nothing except that I do believe that there is support for the Halus wind turbine and that all information needs to be heard before it is considered a dead deal. I am still a citizen of this city and entitled to my opinion whether I serve on the BZA or not. And I do not appreciate the slur against our current Mayor who has tried diligently to represent all people of San Leandro and make this a more equitable place to live for everyone.

[Reply](#)

Mike

Flag as inappropriate

1:02 pm on Thursday, November 8, 2012

." And you never know what can happen about those supposed "private streets".

Sure sounds like an implied threat to me



Chris Crow

Flag as inappropriate

1:04 pm on Thursday, November 8, 2012

That's right Mike, you never know. Heck, supposedly Benny Lee is trying to open the streets up for public parking, so at worst Janet is threatening Benny might follow through and stand by one of his positions. "you never know"

Janet Palma

Flag as inappropriate

1:28 pm on Thursday, November 8, 2012

As my last comment here - and Chris please let's be done for responses on my issue - the implication related to the supposed "private streets" is that there is a question still in some people's mind whether those streets really are or should be private. No threat at all.

[Reply](#)

Kate

Flag as inappropriate

1:54 pm on Thursday, November 8, 2012

Tom, is there any way to limit the number of posts from one author to ten a day, regardless of the story they are commenting on? These posts become tit-for-tat and the negativity sucks the life right out of me.

Go ahead you negative posters, attack my throat for writing the truth. I won't be checking back.

[Reply](#)

Justin H.

Flag as inappropriate

9:01 pm on Thursday, November 8, 2012

Janet, Marga, Carlos how do them sour grapes taste?? I am curious....

[Reply](#)



Marga Lacabe

Flag as inappropriate

11:25 pm on Thursday, November 8, 2012

Justin,

In politics, like in life, you win some and you lose some. You take your losses as learning opportunities, and next time you do better. Being bitter about a defeat is a solid waste of time.

But neither in politics nor in life it's ever OK to degrade a child. You, as a father, should know that. The fact that you tacitly condone the behavior speaks volumes.



Leah Hall

10:29 pm on Thursday, November 8, 2012

Stephen Colbert Exposes Wind Power's Health Hazards

<http://www.colbertnation.com/the-colbert-report-videos/420904/november-07-2012/wind-power-s-health-hazards>

Flag as inappropriate

[Reply](#)



Rob Rich

9:57 am on Friday, November 9, 2012

if you want to control what happens on your neighbor's property, then buy it. That's how you get to decide what legitimate uses go on there.

Halus is a good local business. They play by the rules. They've jumped through every hoop. Yet some want to keep moving the goal posts, dragging this out and driving costs up so that Halus will leave.

I hope Halus sticks it out. And I hope to see their generator spinning in the wind, soon.

Until then we bare witness to the spectacle of a modern day Don Quixote & his trusty sidekick Sancho Panza preparing to slay the lone windmill.

[Reply](#)

Carlos J

7:32 am on Friday, November 9, 2012

Who is playing Don Quixote, who is Quixote riding? Sad that one person generates hundred of lies and continuously changes his position, someone at Heron Bay has the chameleon syndrome. The windmill would allow him to see which way the wind is blowing... Halus has the support of the community and we'll continue to support Halus

Flag as inappropriate

[Reply](#)

xigua

1:04 am on Tuesday, November 13, 2012

When Shaun Rein drives to <http://www.coachoutletonline.com> Coach Factory Outlet Shanghai's Pudong International Airport, about 10 minutes outside the airfield, he begins to notice a line of <http://www.louisvuittonoutlet.com> Louis Vuitton Purses cars including Rolls Royces and Bentleys parked along the side of the highway. Why? It's because <http://www.coachoutletstore.com> Coach Factory Outlet these people, who can spend a million dollars on a car, don't want to spend \$2 on parking at the garage, said <http://www.guccibeltsoutlets.com> Gucci Belts Rein, managing director at China Market Research Group. For Chinese leaders, the nation's newfound wealth represents <http://www.coachfactoryonline.com> Coach Factory Outlet a bumpy road as they try to steer the economy on a new path. The ruling Communist Party continues meetings this <http://www.coachfactoryonline.com> Coach Factory Outlet week for the 18th Party Congress, where it is expected to select and Li Keqiang to become the president <http://www.coachoutlet.com> Coach Factory Online and premier, respectively,

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xiachui123

12:36 am on Wednesday, November 14, 2012

789with which a consensus emerged within hours t <http://www.coachfactoryoutletonline.com> air force, Western governments have shown little appetite for <http://www.coachoutlet.com> new military ventures in such a complex Arab state. nd Russia and China, which have blocked <http://www.coachfactoryoutlet.com> previous moves against Assad in the United Nations <http://www.coachoutlet.com> swiftly to alter positions which call for dialogue with Assad and view opposition groups <http://www.coachfactorystore.com> as being in thrall to the West. regional power Iran, in whose Shi'ite brand of <http://www.coachfactoryoutlet.com> Islam Assad's Alawite minority has its religious roots, remains firmly behind the president <http://www.coachoutletstore.com> in a conflict which pits him against majority Sunni Muslims supported by Iran's <http://www.coachoutletstore.com> Sunni Arab adversaries. After long arguments over whether and how to form the new <http://www.coachoutletonline.com> opposition assembly, the speed with which <http://www.coachoutletonline.com> that Khatib stood unopposed for the post of president was notable and may encourage its <http://www.coachoutletonline.com> supporters. His deputies will be Riad Seif, a veteran dissident who had proposed the U.S.-backed initiative <http://www.coachoutlet.com> to set up an umbrella group uniting

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groups inside and outside Syria, and Suhair al-Atassi, one <http://www.coachfactoryonlinebp.com> of the

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Feb 5	1:32PM	Fax Sent	15105776007	7:54	14	OK

J. Palma & Associates

2103 Twaina Circle
San Leandro, CA 94677

Phone: (510) 390-3984
Fax: (510) 835-8368
janetpalma@comcast.net

February 6, 2013

Law Offices of A. Alan Berger
95 South Market Street, Suite 545
San Jose, CA 95113
Fax: 408.536.0504

San Leandro City Attorney
Attn: Jennifer Faught
555 - 12th Street #1500
Oakland, CA 94607

Sally Barros, Secretary to the BZA
City of San Leandro
835 E. 14th Street
San Leandro, CA 94577

RE: Letter to Chairman of San Leandro BZA and San Leandro City Attorney Regarding Intent of the City of San Leandro to Adopt a Mitigated Negative Declaration on the Application of Halus Power Systems to Install a Wind Turbine. PLN2012-00006.

Dear Mr. Berger:

I am in receipt of a copy of the letter that you sent to the San Leandro BZA Chairperson (who is a woman ergo not a Chairman) and have consulted with a private attorney on this matter. Personally, in my 15+ years as a CEQA practitioner, I have seen some nasty comment letters, but I believe that your letter wins the prize for project comment via character assassination. My attorney advised me that since your letter will be part of the public record for the Halus Project that I compose a point-by-point rebuttal stipulating the errors in your opinions and presumptions along with corrections.

I will direct you to excerpts from Patch from several people from two different comment threads that I was apparently party to before I realized that Patch is a forum for people who like to hear themselves deride and attack liberals and government supporters. Unfortunately, some of the same people show up at every opportunity to provoke other citizens so they can belittle them and makes themselves feel good about their own prejudices.

Comment 1:

Your accusation that I have published prejudicial and unethical comments is without merit. I made a comment that I was disappointed that the candidate I supported did not win the Council election, which seemed to immediately escalate into a free-for-all from the staunch supporters of the winning candidate. No direct disparaging remarks were made about anyone in particular, therefore nothing prejudicial or unethical has been proven.

Comment 2:

You note that I engaged in an "absurd rant" and how alarming my "ignorance" is. So who is engaging in slander here? I made exactly six comments including the one where I asked Chris Crow to stop defending me. In between several people weighed in on my merits or demerits of the Halus project and the fact that the streets at Heron Bay, while not technically gated, prevent non-residents to park anywhere nearby and if they do they are towed. I have a right to voice my displeasure at the fact that these residents have not been very gracious neighbors to other San Leandro residents. That does not constitute a "rant showing ignorance."

Comment 3:

It is a fact that Halus has local support. It is also true that some residents would like to see the "private streets" be public, including it seems the new Councilmember Benny Lee. Mr. Lee in fact wrote letters of opposition to the Halus project prior to winning the election, so apparently his letters should not be part of the staff report showing his personal opinion, but they are. Perhaps he should not have been allowed to serve on the Council given his prejudice against the Halus project.

Comment 4:

You seem to put much stock in a Mr. Steve Leroux, whom you do not even know. This would be the same Steve Leroux who stated that Marga Lacabe was one of those people "who have lost touch with reality" believing that Chris Crow would win the Council election. That type of comment shows me that Mr. Leroux is undeserving of much credibility when he accuses me of being in violation of AICP code of ethics. He clearly shows no understanding of what constitutes an ethics violation in APA, since I committed no such violation. My record to date on the BZA will show that I have listened attentively to every presentation and voted fairly after considering of the whole record.

Comment 5:

I never said anything in a "weak" attempt to soften my viewpoint, I firmly and clearly wanted to clarify my point that I had not threatened anyone, nor was I in violation of any AICP ethic (as being on BZA has nothing to do with being a professional planner), nor could I not still listen to the whole argument on the Halus case before making a decision. In fact, I spent an entire evening reading every word of the staff report packet. And to be very clear, I never conveyed my viewpoint to any other BZA member on the Halus application.

In closing, my attorney recommend that I simply not attend the February 7 BZA meeting. I have been part of some three-ring circuses comprised of both sides of an issue on many projects in my professional career, but I will not be part of a last-ditch effort to win an EIR by defamation of character. Mr. Berger – you should be ashamed of yourself, but I'm sure that you are not.

Sincerely,

Janet Palma, AICP



Feb 05 13 01:33p A A Berger

4085360604

p.2

**LAW OFFICES OF
A. ALAN BERGER
95 South Market Street
Suite 546
San Jose, CA 95113
Telephone: 408-536-0600
Facsimile: 408-536-0504**

February 5, 2013

Chairman of the Board of Zoning Adjustments
The Honorable Catherine Vierra Houston
c/o Sally Barros, Secretary to the BZA
835 E. 14th Street
San Leandro, CA 94577

City Attorney of the City of San Leandro
Attn: Jennifer Faught
555 12th Street #1500
Oakland, CA 94607

Re: The Intent of the City of San Leandro to Adopt a Mitigated Negative Declaration
Relative to the Application of Halus Power Systems to Install a Wind Turbine.
PLN2012-00006.

Via Overnight Mail, Facsimile and Email

Gentlepersons,

This is to advise you that I am the attorney for the Heron Bay Homeowners Association. As you are no doubt aware, I have previously filed on behalf of Heron Bay Homeowners Association Opposition and Amended Opposition to the application of Halus Power Systems (hereinafter referred to as "Halus") to install a 100-foot wind turbine on their property located in the City of San Leandro, adjacent to the homes of Heron Bay. I am advised that after several continuances, the above entitled matter is now set for public hearing and comment before the Board of Zoning Adjustments (hereinafter referred to as the "BZA") on Thursday, February 7, 2013.

1
I am directing this correspondence to your attention because it has recently been brought to my attention that one of the sitting members of the BZA, who apparently intends to rule on the Halus application on Thursday night, is guilty of egregious, unethical and illegal conduct. Board Member Janet Palma has published prejudicial and unethical comments that clearly indicate that she is not fit to hear or decide any issues relative to the Halus application or, frankly, any issues at all relative to Heron Bay Homeowners Association. On behalf of the Association, we hereby demand that Janet Palma recuse herself, or in the event that she refuses recusal, be removed from any hearing, argument

or vote regarding the Halus project. Only the City Council may decide whether or not she is even fit to serve the City and this Board in the future.

2

I have attached a ten page excerpt from the San Leandro Patch dated November 7, 2012 et.al. for your review. It is obvious that Ms. Palma was very disappointed that Benny Lee, a former President of the Heron Bay Homeowners Association and now an elected City Councilperson, won recent election over Mr. Chris Crow. On page 4, 9:47 pm, Nov.7, Ms. Palma states: "Damn Chris, I really thought you would make it. We need some real change in this city not someone who is going to back one "gated" community that should never and would never now have been built. Next time." Her obvious and stated prejudice against Benny Lee and the Heron Bay Association should be enough to have her removed from any vote involving Heron Bay, but she unfortunately goes much further in her later absurd rants. (I might note that her ignorance is also alarming, to wit: Heron Bay is not a "gated" community).

At page 4, 10:55 am, Nov. 8, in response to a comment by Carlos J. that its time to have the wind mill (sic) approved, she states: "That's right Carlos! Thank you."

3

At page 5, 12:01 pm, Nov. 8, Palma states: "...not true that Halus has no local support, in fact just the opposite. And you never know what can happen about those supposed "private streets." Heron Bay are not good neighbors and do not believe in supporting the great San Leandro citizenry." Could there be a more clear statement demonstrating Ms. Palma's inherent prejudice to Heron Bay? Can one regard her comments as anything but a threat to Heron Bay relative to their private streets? She also clearly indicates her support of the Halus project notwithstanding that these comments were made before the final public comments and before the public hearing to be held this Thursday. To allow her to remain on the Board for this hearing is a mockery of fair play and public interest.

4

I direct your attention to the comments of Mr. Steve Leroux, who I do not know but whom I anticipate is a member of the Heron Bay community, made on page 5-6, 12:28 pm, Nov. 8. Mr. Leroux expresses his opinion as to the conduct of Ms. Palma with justifiable outrage and in a manner that should represent every owner of a home in Heron Bay and frankly every member of the City of San Leandro. Every citizen, at some time, may be a victim of Ms. Palma's predetermined decisions and prejudice. It is hard to imagine how she could have more clearly violated her oath as an appointed representative of the City Council and the People of San Leandro.

5

In the remainder of the chain of comments, Ms. Palma obviously realizes that she has committed her preformed notions, her prejudices and her unethical conduct to written form. She weakly attempts to soften her position but in this case the damage is done. She is clearly not fit to participate in any manner in the Halus application. Every citizen has the right to rely on the fact that each and every Board member approaches the entire hearing process in an unbiased manner and with no preformed judgments. Should she be allowed to participate, this egregious behavior will definitely be the subject of Court action. Frankly, it remains to be seen if she has already conveyed her poisonous attitude to other members of the BZA or to staff members of the City who have voiced an opinion

Feb 05 13 01:33p A A Berger

4086360504

p.4

on the reasonableness of the Halus application. At a minimum the City must see that she does not participate on Thursday.

Very truly yours,


A. Alan Berger

Enclosure
AAB/ceb

Janet Palma

From: San Leandro Patch <noreply@patch.com>
Sent: Wednesday, February 06, 2013 6:05 PM
To: janetpalma@comcast.net
Subject: New comment on Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?

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Hi Janet Palma,

Fred Eiger also commented on [Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?](#).

"Everyone at Guido' knew Chris Crow was going to lose. Hey Marga, if you are sad to live in a city with Benny Lee does that mean you'll be doing us a favor by moving?"

To respond [view the comment on Patch](#).

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Janet Palma

From: San Leandro Patch <noreply@patch.com>
Sent: Wednesday, February 06, 2013 6:05 PM
To: janetpalma@comcast.net
Subject: New comment on Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?

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Hi Janet Palma,

Fred Eiger also commented on [Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?](#).

"Hell David, Leah is just a hop skip and a jump from Oakland. She could have had her nirvana by buying on the other side of Durant. I have no idea why she didn't."

To respond [view the comment on Patch.](#)

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Janet Palma

From: San Leandro Patch <noreply@patch.com>
Sent: Wednesday, February 06, 2013 6:05 PM
To: janetpalma@comcast.net
Subject: New comment on Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?

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Hi Janet Palma,

Fred Eiger also commented on [Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?](#).

"Those are private streets. If people want them "public" then the City should be the ones who maintain them. But then they'd just crumbled under the shoddy material the government uses."

To respond [view the comment on Patch](#).

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Janet Palma

From: San Leandro Patch <noreply@patch.com>
Sent: Wednesday, February 06, 2013 6:10 PM
To: janetpalma@comcast.net
Subject: New comment on Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?

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Hi Janet Palma,

David also commented on [Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?](#).

"Chris, The 21st century belongs to fossil fuels, as did the 20th century. There is no reason to "offset" our demand for oil, especially when the "offsets" are *more* expensive than oil. Not only are they more expensive than oil, they are far more expensive than oil "should be" if it weren't regulated out of existence in California, for example. If some innumerate fool wants to waste his money on a windmill, go for it. Problem is that my money is being wasted on this idiot vis a vis my taxes and all the bull*** subsidies thrown at "alternative" energy."

To respond [view the comment on Patch](#).

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Janet Palma

From: San Leandro Patch <noreply@patch.com>
Sent: Wednesday, February 06, 2013 6:10 PM
To: janetpalma@comcast.net
Subject: New comment on Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?

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Hi Janet Palma,

David also commented on [Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?](#)

"Back to the 14th Century, Progressives! Forward to the past! Let's power our cities with windmills and wood just like in the Middle Ages. Or how about we stick a straw in the ground and get some tasty, high-energy oil and natural gas. California has oodles of it just oozing into the ocean and elsewhere. There's a reason people moved on to fossil fuels. I'll leave it to you to try to figure it out. I'll give you a hint, energy density."

To respond [view the comment on Patch](#).

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Janet Palma

From: San Leandro Patch <noreply@patch.com>
Sent: Wednesday, February 06, 2013 6:28 PM
To: janetpalma@comcast.net
Subject: New comment on Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?

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Hi Janet Palma,

David also commented on [Benny Lee Wins District 4; Reed & Mack-Rose In Nail Biter; Slim Hope For Measure L?](#)

"And how much do you want to be that money won't dent OUSD abysmal graduation rate Leah? But hey, good job Oaklanders. Throwing good money after bad is always a brilliant idea. Again, Leah, the border is just a couple blocks away from you. Move. You already send your kid to a private school, so there's no reason not to."

To respond [view the comment on Patch](#).

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Janet Palma

From: San Leandro Patch <noreply@patch.com>
Sent: Wednesday, February 06, 2013 12:16 PM
To: janetpalma@comcast.net
Subject: New comment on 'Ghetto Housing' Or Affordable Apartments Near BART?

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Hi Janet Palma,

David also commented on 'Ghetto Housing' Or Affordable Apartments Near BART?

"And never has, Paul. If she had, she'd be like everyone else who grew up in, or lived near a project--can't get out soon enough! Typical "liberal"--ghetto housing, mass transit, etc, are all great for everyone else."

To respond [view the comment on Patch](#).

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Janet Palma

From: San Leandro Patch <noreply@patch.com>
Sent: Wednesday, February 06, 2013 12:09 PM
To: janetpalma@comcast.net
Subject: New comment on 'Ghetto Housing' Or Affordable Apartments Near BART?

[View as Webpage](#)



Hi Janet Palma,

David also commented on 'Ghetto Housing' Or Affordable Apartments Near BART?.

"No, Theresa, according to you, it's ok to steal if the thieves outnumber the people they're stealing from (renters outnumber landlords, so they should enact rent control, according to you). Yes, Theresa, it *could* happen that a landlord doubles the rent. And it *could* happen then that the renter moves. I'm pretty sure that you can appreciate that's not a wise business decision. You're complaining about something that happened in Alameda; this is San Leandro. So, how will enacting rent control in San Leandro "help" somebody in Alameda? You need a course in reading comprehension. I never called renters thieves. I called your concept of rent control thievery (which it is), that you justified by renters outnumbering landlords (which doesn't change the facts about rent control)."

To respond [view the comment on Patch](#).

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RESOLUTION NO. 02-13

**A RESOLUTION OF THE BOARD OF ZONING ADJUSTMENTS
OF THE CITY OF SAN LEANDRO**

**APPROVING A HEIGHT VARIANCE FOR THE HALUS WIND TURBINE
APPLICATION
PLN2012-00006**

WHEREAS, Halus Power Systems (Applicant) proposes to construct a single wind turbine on an approximately 4.7 acre site at 2539 Grant Avenue. The turbine structure would include an 80 foot tall pole, the turbine mounted on top of the pole, and three blades with a diameter of 20 feet each, thus making it 100 feet tall to the top rotation point. The base of the structure would be approximately six feet in diameter and taper to three feet in diameter at the top and attachment of the turbine. The proposed use is permitted by right, however the height exceeds zoning ordinance standards; therefore, the Applicant has requested a variance from the height standards. The proposal is referred to herein as the Project; and

WHEREAS, the Project site is a flag-shaped lot on the north side of Grant Avenue, zoned IG-Industrial General, and developed with a warehouse and outdoor storage of equipment and turbine structures. To the north of the Project site are the San Lorenzo Creek flood control channel and the Heron Bay residential development. Existing developed industrial sites are south, east and west of the site; and

WHEREAS, on February 7, 2013, the Board of Zoning Adjustments adopted a revised Mitigated Negative Declaration for the Project in accordance with CEQA and the CEQA Guidelines (Resolution 01-13, attached as Exhibit A and incorporated herein by reference); and

WHEREAS, a staff report, dated February 7, 2013, described and analyzed the revised Mitigated Negative Declaration, including comments and responses, and the Project for the Board of Zoning Adjustments, which report is on file with the City and incorporated herein by reference; and

WHEREAS, the staff report recommended approval of the variance based on findings required in the zoning ordinance and subject to conditions of approval. The findings are attached as Exhibit B and incorporated herein by reference; the conditions of approval are attached as Exhibit C and incorporated herein by reference.

WHEREAS, the Board of Zoning Adjustments reviewed the staff report, the revised Mitigated Negative Declaration, including comments and responses, at a noticed public hearing on February 7, 2013 at which time all interested parties had the opportunity to be heard; and

NOW, THEREFORE, BE IT RESOLVED THAT:

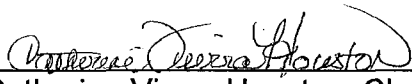
A. The foregoing recitals are true and correct and made a part of this resolution.

B. The Board of Zoning Adjustments reviewed and considered the revised Mitigated Negative Declaration, including comments received during the public review period and the City's written responses to comments, prior to acting on the Project.

C. Based on the whole of the record, the Board of Zoning Adjustments hereby approves the height variance to allow a wind turbine structure with a maximum height of 100 feet, based on the variance findings in attached Exhibit B and subject to the conditions of approval in attached Exhibit C, both of which exhibits are incorporated herein by reference.

PASSED, APPROVED, AND ADOPTED this 7th day of February, 2013 by the following vote:

AYES: Members Daly, Thomas, Vice Chair Mendieta, Chair Houston	(4)
NOES: None	(0)
ABSENT: Members Abelee, Makin, Palma	(3)
ABSTAIN: None	(0)



Catherine Vierra Houston, Chairperson

ATTEST:



Sally Barros, Secretary

EXHIBIT A

RESOLUTION NO. 01-13

A RESOLUTION OF THE BOARD OF ZONING ADJUSTMENTS
OF THE CITY OF SAN LEANDRO

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RESOLUTION NO. 01-13

**A RESOLUTION OF THE BOARD OF ZONING ADJUSTMENTS
OF THE CITY OF SAN LEANDRO**

**ADOPTING A MITIGATED NEGATIVE DECLARATION AND MITIGATION
MONITORING PROGRAM FOR THE HALUS WIND TURBINE APPLICATION
PLN2012-00006**

WHEREAS, Halus Power Systems (Applicant) proposes to construct a single wind turbine on an approximately 4.7 acre site at 2539 Grant Avenue. The turbine structure would include an 80 foot tall pole, the turbine mounted on top of the pole, and three blades with a diameter of 20 feet each, thus making it 100 feet tall to the top rotation point. The base of the structure would be approximately six feet in diameter and taper to three feet in diameter at the top and attachment of the turbine. The proposed use is permitted by right, however the height exceeds zoning ordinance standards; therefore, the Applicant has requested a variance from the height standards. The proposal is referred to herein as the Project; and

WHEREAS, the Project site is a flag-shaped lot on the north side of Grant Avenue, zoned IG-Industrial General, and developed with a warehouse and outdoor storage of equipment and turbine structures. To the north of the Project site are the San Lorenzo Creek flood control channel and the Heron Bay residential development. Existing developed industrial sites are south, east and west of the site; and

WHEREAS, the City prepared an Initial Study consistent with CEQA Guidelines section 15063 and determined that a Mitigated Negative Declaration was required for the Project; and

WHEREAS, based on the Initial Study, the City prepared a Mitigated Negative Declaration (MND) dated May 22, 2012, which was circulated for public review for the required 30-day period. Following a meeting between the Applicant and the Heron Bay Homeowners Association on June 20, 2012, the City extended the public review period for an additional 40 days, to July 31, 2012; and

WHEREAS, based on the feedback from the June 20, 2012 meeting and written comments that had been submitted on the MND, the City determined that additional information was needed on the Project. The City prepared a revised Mitigated Negative Declaration (revised MND), dated October 11, 2012, and reflecting its independent judgment and analysis on the potential for environmental impacts from implementation of the Project. The revised MND

superseded the first MND and was circulated for public review for the required 30-day period, ending November 13, 2012. The revised MND is attached as Exhibit A and incorporated herein by reference; and

WHEREAS, the City received extensive comments on the revised MND from the Heron Bay Association through its attorney, including a supporting report from Paul Taylor, as well as comments from the President of the Association. Comments were also received from individuals, including residents of Heron Bay. No comments were received from any public agency during the comment period; and

WHEREAS, although not required by CEQA, the City prepared written responses to the comments on the revised MND in a Responses to Comments document dated January 29, 2013, which responses provide the City's good faith, reasoned analysis of the environmental issues raised by the comments from the Association and individuals. Because the Association comments were so extensive and addressed all of the revised MND, the City responded only to the amended comments from the Association, including the amended Taylor report and President Lee's comments, and not their comments on the first MND. The Responses to Comments document is attached as Exhibit B and incorporated herein by reference. It includes all the comment letters received during the public review period and the City's responses to them; and

WHEREAS, the City carefully reviewed the comments and written responses, including information developed in the course of preparing the responses, and determined that the comments and responses did not constitute or require substantial revisions to the revised Mitigated Negative Declaration. On these bases, the City determined that no recirculation of the revised MND was required pursuant to CEQA Guidelines section 15073.5; and

WHEREAS, a staff report, dated February 7, 2013 and incorporated herein by reference, described and analyzed the draft revised Mitigated Negative Declaration, including comments and responses, and the Project for the Board of Zoning Adjustments, which report is attached as Exhibit C and incorporated herein by reference; and

WHEREAS, the Board of Zoning Adjustments reviewed the staff report, the draft revised Mitigated Negative Declaration, including comments and responses, at a noticed public hearing on February 7, 2013 at which time all interested parties had the opportunity to be heard; and

WHEREAS, the revised Mitigated Negative Declaration identifies mitigation measures applicable to the Project, therefore a Mitigation Monitoring Program must be adopted in conjunction with any Project approval (see Exhibit D, incorporated herein by reference); and

WHEREAS, the revised Mitigated Negative Declaration and related project and environmental documents, and all of the documents incorporated herein by reference, are available for review in the Planning Services Division at City Hall, 835 East 14th Street, San Leandro, California 94577, during normal business hours. The location and custodian of the draft revised Mitigated Negative Declaration and other documents that constitute the record of proceedings for the Project is the City of San Leandro Planning Services Division, attn: Elmer Penaranda.

NOW, THEREFORE, BE IT RESOLVED THAT:

- A. The foregoing recitals are true and correct and made a part of this resolution.
- B. The Board of Zoning Adjustments has reviewed and considered the draft revised Mitigated Negative Declaration, including comments received during the public review period and the City's written responses to comments, prior to acting on the Project.
- C. The revised Mitigated Negative Declaration adequately describes the environmental impacts of the Project. On the basis of the whole record before it, the Board of Zoning Adjustments finds that the Project, as mitigated, would avoid or reduce the potentially significant biology, geology and airport hazard impacts to a point where clearly no significant effects would occur, and, there is no substantial evidence that the Project as mitigated may have a significant effect on the environment. The Board of Zoning Adjustments further finds as follows:
 - 1. Based on the whole record, including but not limited to the revised MND with responses to comments, and all supporting information, studies, and evidence, there is no substantial evidence supporting a fair argument of significant impact from the Project.
 - 2. The revised MND was prepared and considered in a fully public process, consistent with all public notice and participation requirements of CEQA and the CEQA Guidelines.
 - 3. Extensive comments were submitted on the revised MND but none of the comments constitutes substantial evidence of a fair argument of significant environmental impact, as further detailed in the written responses to comments and summarized briefly below.

Aesthetics. There are no public scenic views or vistas substantially affected by the Project. The Bay Trail is not adjacent to the Project site; the Project site is in the opposite direction of the bay and marshlands relative to the Bay Trail. The Project site is not in or adjacent to the bay and marshlands; it is inland of them. The "trail" adjacent to the Project site is a gated flood control maintenance area where public use and access is

not authorized. Photographs in the record are among the factual supports for the revised MND conclusions on public views and vistas. The City recognizes that personal observations may be relevant on non-technical subjects such as aesthetics, however, the observations must still be based on facts. No factual evidence of public views or vistas substantially affected by the Project was presented.

Many of the personal observations addressed private views from individual backyards. The number of affected personal views is limited to a few homes along the south Heron Bay boundary, over 500' away. This is not a substantial impact under CEQA as any potential impact is limited to a small number of private views.

The revised MND conclusion of no potential for significant impact due to shadowing was supported by a technical study from an ESA expert on the subject. Paul Taylor, on behalf of the Association, shows no evidence of expertise on the subject.

Biology. The revised MND was circulated to both public agencies primarily concerned with biological resources along the bayfront, especially avian species. Neither agency, the State Department of Fish and Game (now known as Department of Fish and Wildlife), and the East Bay Regional Parks District, submitted any comments on the revised MND. The CDFW's recommendations were incorporated into the revised MND. The revised MND was further based on a technical study by ESA, a well-known Bay Area environmental consulting firm with experience in biological and avian resources in the nearby bay and marsh areas. The Association's purported expert shows no expertise in biological resources generally or avian resources or shorebirds; his evidence is not expert advice supported by facts.

Aircraft navigational radar. The revised MND discloses the pertinent permit requirements from the ACALUC and FAA, which are incorporated as mitigation measures. The Project has since received clearance from the FAA, which clearance is included in the responses to comments. The Association's purported expert shows no expertise in radar, aeronautics, airport operations or regulations; his evidence is not expert advice supported by facts.

Noise. The revised MND finds no potential for significant impact, based on the manufacturer's noise specifications showing noise levels would not exceed 55 dB at the Project property line, which complies with City standards for industrial (and residential) uses. The Association's purported expert shows no expertise in noise analysis; his evidence is not expert advice supported by facts.

Property values and economic hardship. Social and economic changes are not an environmental impact under CEQA.

Risk of failure or abandonment. The Project must comply with all applicable building code and other development requirements. There is no substantial evidence, e.g., studies, opinions based on fact from a qualified expert on turbine systems to support the Association speculations on this subject.

D. The revised Mitigated Negative Declaration has been completed in compliance with CEQA and the CEQA Guidelines.

E. The revised Mitigated Negative Declaration is complete and adequate and reflects the City's independent judgment and analysis as to the environmental effects of the Halus Wind Turbine Project.

BE IT FURTHER RESOLVED that based on the above findings, the Board of Zoning Adjustments adopts the following:

A. Mitigated Negative Declaration. The Board of Zoning Adjustments hereby adopts the revised Mitigated Negative Declaration for the Halus project, consisting of the Initial Study/Mitigated Negative Declaration dated October 11, 2013, and the Responses to Comments dated January 29, 2013, which documents are attached as Exhibits A and B and incorporated herein by reference.

B. Mitigation Monitoring Program. The Board of Zoning Adjustments hereby adopts the Mitigation Monitoring Program attached as Exhibit D and incorporated herein by reference.

PASSED, APPROVED, AND ADOPTED this 7th day of February, 2013 by the following vote:

AYES: Members Daly, Thomas, Vice Chair Mendieta, Chair Houston	(4)
NOES: None	(0)
ABSENT: Members Abelee, Makin, Palma	(3)
ABSTAIN: None	(0)

Catherine Vierra Houston, Chairperson

ATTEST:

Sally Barros, Secretary

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EXHIBIT A

Revised Mitigated Negative Declaration



CITY OF SAN LEANDRO

MITIGATED NEGATIVE DECLARATION

Notice is hereby given that the City of San Leandro finds that no significant effect on the environment as prescribed by the California Environmental Quality Act of 1970, as amended will occur for the following proposed project:

- I. **PROJECT NAME:** Halus Power Systems Wind Turbine (PLN2012-00006)
- II. **PROJECT APPLICANT:** Louis Rigaud, Halus Power Systems, 2539 Grant Avenue, San Leandro, California 94579
- III. **PROJECT LOCATION:** 2539 Grant Avenue, San Leandro, CA 94579 (APN 080G-0910-015-00)

IV. PROJECT DESCRIPTION:

The proposed project is an 80-foot tall, single wind turbine to be located at 2539 Grant Avenue, San Leandro, CA 94579. Blades will extend an additional 20 feet from the structure for a maximum height of 100 feet. The turbine will operate at times when wind conditions are suitable and the blades will rotate at a maximum of 44 revolutions per minute (rpm's). The proposed turbine will generate a peak of approximately 50 kilowatt (kW) of electricity. The annual production is expected to be about 75,000 kilowatt hours (kWh's). Noise levels for the proposed wind turbine are anticipated to not exceed 55 decibels Adjusted (dBA). The proposed wind turbine will be located on a monopole in the interior of the site. Structures up to sixty (60) feet in height are permitted in the IG Zoning District and a variance to height is required for exceeding 60 feet. The proposed turbine and supporting structure would be an accessory use to the primary manufacturing/research and development use of the site.

V. MANDATORY FINDINGS OF SIGNIFICANCE

The Community Development Director finds, based on the initial study, that the proposed project as described above will not have a significant effect on the environment and therefore does not require an environmental impact report. The mitigation measures identified herein would reduce all impacts to a less than significant level. Therefore, there is no substantial evidence, in light of the whole record before the agency, that the project, with mitigations, may have a significant effect on the environment.

VI. IDENTIFICATION OF ENVIRONMENTAL EFFECTS

An Initial Study conducted by the City of San Leandro (including an attached checklist) determined that the proposed project, with incorporated mitigation measures, will reduce any project impacts to a less than significant level. This Mitigated Negative Declaration has been prepared in accordance with Section 15070 of the State of California Environmental Quality Act (CEQA) Guidelines.

- A. The proposed project has been reviewed according to the standards and requirements of the California Environmental Quality Act (CEQA) and an Initial Study Environmental

Evaluation Checklist has been prepared with a determination that the project will not have a significant impact on the environment and as long as the applicant complies with all identified mitigation measures.

- B. The project area is located within the seismically-active Bay Area. Therefore, the project applicant would be required to comply with all applicable State and City regulations to address geologic hazards. The mitigation measures are conditions of approval.

VII. SUMMARY OF MITIGATION MEASURES

Mitigation Measure

~~#1a. If construction must be scheduled to occur during the migratory bird and raptor nesting season (February 15 through August 15 for most birds),~~ a qualified wildlife biologist, familiar with the species and habitats in the Project area, will be retained to conduct pre-construction surveys for raptors and nesting birds within 300 feet of construction activities. The surveys shall be conducted one week before initiation of construction. If no active nests are detected during surveys, activities may proceed. If active nests are detected then the applicant should consult with the Lead Agency and DFG on appropriate buffers. (BZA amended this measure by motion at its February 7, 2013 meeting.)

#1b. To reduce impacts to raptors, the applicant shall minimize small mammal habitat from occurring beneath the wind swept area of the turbine.

#1c. To reduce impacts to avian species from electrocution, all electrical wires shall be placed underground or follow minimization methods established by Avian Power Line Interaction Committee.

#1d. If a state or federally listed species is killed during Project operations without the appropriate Incidental Take Permit (ITP) under the California Endangered Species Act (CESA) or the federal Endangered Species Act, the applicant shall halt all turbine operations immediately. The applicant must consult with the United States Fish and Wildlife Service (USFWS) and/or California Department of Fish and Game (DFG).

#1e. If a carcass is found that is federally threatened, endangered or protected by the Migratory Bird Treaty Act (MBTA), the information shall be reported by a qualified biologist to USFWS, Office of Law Enforcement, Renewable Energy Officer at (650) 876-9078 within five days of its discovery.

#1f. If a carcass of a species listed pursuant to CESA or Fish and Game Code Section 3511 is discovered, DFG shall be immediately notified at (707) 944-5500.

#1g. If a species is injured as a result of Project operations, the applicant shall immediately take it to a DFG approved wildlife rehabilitation or veterinary facility, such as Sulphur Creek Nature Center, at (510) 881-6747; or Ohlone Humane Center, at (510) 797-9449. Permittee shall bear any costs associated with the care and treatment of such injured species.

#1h. A post-construction monitoring plan shall be approved by DFG and implemented within one month of initial turbine operation.

#1i. Turbine may not operate in heavy rain or dense fog. (BZA added this measure by motion at its February 7, 2013 meeting for the purpose of protecting avian species.).

Mitigation Measure #2: The City of San Leandro has incorporated the 2009 International Building Code into its municipal building code (Title 7, Chapter 7-5). The project applicant would be required to comply with all applicable State and City regulations to address potential geologic hazards associated with the proposed project, including ground shaking and liquefaction. Geotechnical and seismic design criteria must conform to engineering recommendations in accordance with the seismic requirements of the 2009 California Building Code (Title 24) and any amendments adopted in the San Leandro Municipal Code. Additionally, because the project site is in a liquefaction Seismic Hazard Zone, the project applicant will be required to comply with the guidelines set forth by California Geological Survey Special Publication 117.

Mitigation Measure #3: Halus Power Systems shall secure approval of Alameda County Airport Land Use Commission and the Federal Aviation Administration prior to building permit approval of the wind turbine.

VIII. PERSON WHO PREPARED INITIAL STUDY:

Kathleen Livermore / EP
Kathleen Livermore, Contract Planner

Date: *October 11, 2012 (amended 2-7-2013) EP*

IX. REVIEW PERIOD:

The review period is from October 12, 2012 to November 13, 2012. All written comments regarding this Mitigated Negative Declaration must be received by the City of San Leandro, Planning Services Division, 835 East 14th Street, San Leandro, California 94577, no later than 4:00 p.m., November 13, 2012.

A Board of Zoning Adjustments regular meeting has been scheduled for December 6, 2012. Written and oral comments may also be made during this public meeting. Final action on the Mitigated Negative Declaration and proposed project will be taken by the Board of Zoning Adjustments unless appealed to the City Council.

COPY OF INITIAL STUDY IS ATTACHED

For additional information, please contact the City of San Leandro, Planning Services Division, 835 East 14th Street, San Leandro, California 94577, Telephone (510) 577-3314, or e-mail epenaranda@sanleandro.org

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CITY OF SAN LEANDRO
DEPARTMENT OF DEVELOPMENT SERVICES
Planning Division

INITIAL STUDY CHECKLIST FORM

1. **Project Title:** Halus Power Systems Wind Turbine (PLN2012-00006).
2. **Lead Agency Name and Address:** City of San Leandro
835 East 14th Street
San Leandro, California 94577
3. **Contact Person and Phone Number:** Elmer Penaranda
(510) 577-3314
4. **Project Location:** 2539 Grant Avenue, San Leandro, California
APN 080G-0910-015-00
5. **Project Sponsor's Name and Address:** Halus Power Systems
Louis Rigaud
2539 Grant Avenue
San Leandro, California 94579
6. **General Plan Designation:** General Industrial (IG)
7. **Zoning:** Industrial General (IG)
8. **Project Description:** The proposed project is an 80-foot tall, single wind turbine to be located at 2539 Grant Avenue, San Leandro, CA 94579. Blades will extend an additional 20 feet from the structure for a maximum height of 100 feet. The turbine will operate at times when wind conditions are suitable and the blades will rotate at a maximum of 44 revolutions per minute (rpm's). The proposed turbine will generate a peak of approximately 50 kilowatt (kW) of electricity. The annual production is expected to be about 75,000 kilowatt hours (kWh's). Noise levels for the proposed wind turbine are anticipated to not exceed 55 decibels Adjusted (dBA). The proposed wind turbine will be located on a monopole in the interior of the site. Structures up to sixty (60) feet in height are permitted in the IG Zoning District and a variance to height is required for exceeding 60 feet. The proposed turbine and supporting structure would be an accessory use to the primary manufacturing/research and development use of the site.
9. **Surrounding Land Uses and Setting:** Properties in the vicinity include adjacent recycling operation, warehousing and distribution facilities, Oro Loma Sanitary District wastewater operations, a PG&E electrical sub-station and large high-tension electrical lines. In addition, an 80-foot tall cellular telephone tower is located to the southwest. The Heron Bay residential community is located to the north across San Lorenzo Creek Storm water Drainage Channel.
10. **Other public agencies whose approval is required:** Alameda County Airport Land Use Commission, Federal Aviation Administration

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

Aesthetics
 Biological Resources

Agriculture Resources
 Cultural Resources

Air Quality
 Geology/Soils

- Hazards & Hazardous Materials
- Mineral Resources
- Public Services
- Utilities/Service Systems

- Hydrology/Water Quality
- Noise
- Recreation
- Mandatory Findings of Significance

- Land Use/Planning
- Population/Housing
- Transportation/Traffic

DETERMINATION:

On the basis of this initial evaluation:

- I find that the proposed project **COULD NOT** have a significant effect on the environment, and a **NEGATIVE DECLARATION** will be prepared.
- I find that although the proposed project **COULD** have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. **A MITIGATED NEGATIVE DECLARATION** will be prepared.
- I find that the proposed project **MAY** have a significant effect on the environment, and an **ENVIRONMENTAL IMPACT REPORT** is required.
- I find that the proposed project **MAY** have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An **ENVIRONMENTAL IMPACT REPORT** is required, but it must analyze only the effects that remain to be addressed.
- I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier **EIR** or **NEGATIVE DECLARATION** pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier **EIR** or **NEGATIVE DECLARATION**, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

Signature: Kathleen Livermore/gp

Date: October 11, 2012

Printed name: Kathleen Livermore

Title: Contract Planner

ENVIRONMENTAL IMPACTS:

Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less than Significant Impact	No Impact
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I. **AESTHETICS.** *Would the project:*

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less than Significant Impact	No Impact
<p>a. Have a substantial adverse effect on a scenic vista?</p> <p><u>Comment:</u> The proposed wind turbine is located in an industrial general zoning district with heavy industrial uses. Attachment 6 shows 11 photo simulations from various vantage points to illustrate how the proposed wind turbine would appear. The height of the tower and blades is similar or less than the height of PG&E high tension utility towers in the vicinity. The proposed wind turbine will be located on a monopole in the interior of the site. The monopole design reduces the profile and visibility of the structure, especially when compared to the lattice-structure design of the nearby electrical high tension wires. The photo simulations provide sufficient evidence that the project will not create an adverse effect on public or private scenic vistas. The photo simulations confirmed that the proposed turbine will be a minor visual addition to a district that has a sewage treatment plant, high tension wires and cellular network antennae. It will not obstruct westerly views of San Francisco Bay as it will be located to the east of the bay and behind the PG&E substation and high tension lines.</p> <p>Therefore, there would not be a substantial adverse effect on scenic vistas.</p>	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>
<p>b. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?</p> <p><u>Comment:</u> The proposed wind turbine is located in an industrial general zoning district with industrial uses. The height of the tower and blade is similar or less than the height of PG&E high tension utility towers in the vicinity. The subject property is not located along a scenic highway. There would not be a substantial adverse effect on scenic resources.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
<p>c. Substantially degrade the existing visual character or quality of the site and its surroundings?</p> <p><u>Comment:</u> The proposed wind turbine is located in an area that is already occupied by heavy industrial uses including the Oro Loma Sewage Treatment Plant, the PG&E substation with high-tension wires and an adjacent junk yard. The existing visual character is of industrial uses. Open space to the northwest is already compromised with the Pacific Gas and Electric high tension utility towers. The proposed wind turbine would be compatible with the existing visual character of the area. The photo simulations support these findings. Therefore, the wind turbine would not substantially degrade the existing visual character or quality of the site and its surroundings.</p>	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>
<p>d. Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?</p> <p><u>Comment:</u> The proposed wind turbine would not create a new source of light or glare as no exterior lighting is proposed or required.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

II. AGRICULTURE RESOURCES. *In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. Would the project:*

<p>a. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?</p> <p><u>Comment:</u> There is no designated farmland in San Leandro.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
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	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less than Significant Impact	No Impact
b. Conflict with existing zoning for agricultural use, or a Williamson Act contract? <i>Comment:</i> There is no land within San Leandro that is subject to a Williamson Act contract. Furthermore, the proposed wind turbine is located on land zoned and used for industrial general purposes.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
c. Involve other changes in the existing environment which due to their location or nature, could result in conversion of Farmland, to non-agricultural use? <i>Comment:</i> There is no designated farmland in San Leandro.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

III. AIR QUALITY. *Where available, the significance criteria established by the applicable air quality management or air pollution control district may be relied upon to make the following determinations. Would the project:*

a. Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
b. Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
c. Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
d. Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
e. Create objectionable odors affecting a substantial number of people? <i>Comment a-e:</i> The proposed wind turbine would not create any air emission and would not generate traffic that could contribute to cumulative air quality impacts. Also, the wind turbine could provide valuable information on this type of alternative energy source, which could reduce reliance on carbon-emitting fossil fuels.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

IV. BIOLOGICAL RESOURCES. *Would the project:*

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less than Significant Impact	No Impact
<p>a. Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?</p> <p>Comment: A Technical Memorandum, dated May 10, 2012, was prepared by Environmental Science Associates (ESA) to evaluate potential impacts to avian species resulting from construction of the wind turbine. The study concluded that bird species at highest risk in the area are populations of California clapper rails and California black rails. Any risk to these populations would be greatly reduced due to the distance from the habitat area and the rails' ground-dwelling behavior and relatively little time spent in flight. Bird fatalities are relatively infrequent events at wind farms and therefore a single wind turbine poses little risk. Higher bird fatalities occur at altitudes greater than 400 feet. Based on comparison of available data, it is estimated that the small turbine would result in 0.152 bird deaths per year. At that rate, it would take 6.5 years of continuous operation to result in the death of one bird. Please see the Technical Memorandum for additional information.</p> <p>The proposed wind turbine was reviewed by the California Department of Fish and Game. In a letter from Scott Wilson, Acting Regional Manager of the Bay Delta Region, several mitigation measures were recommended for inclusion in this document. The following mitigation measures are therefore included:</p> <p>Mitigation Measure</p> <p>#1a. If construction must be scheduled to occur during the migratory bird and raptor nesting season (February 15 through August 15 for most birds), a qualified wildlife biologist, familiar with the species and habitats in the Project area, will be retained to conduct pre-construction surveys for raptors and nesting birds within 300 feet of construction activities. The surveys shall be conducted one week before initiation of construction. If no active nests are detected during surveys, activities may proceed. If active nests are detected then the applicant should consult with the Lead Agency and DFG on appropriate buffers.</p> <p>#1b. To reduce impacts to raptors, the applicant shall minimize small mammal habitat from occurring beneath the wind swept area of the turbine.</p> <p>#1c. To reduce impacts to avian species from electrocution, all electrical wires shall be placed underground or follow minimization methods established by Avian Power Line Interaction Committee.</p> <p>#1d. If a state or federally listed species is killed during Project operations without the appropriate Incidental Take Permit (ITP) under the California Endangered Species Act (CESA) or the federal Endangered Species Act, the applicant shall halt all turbine operations immediately. The applicant must consult with the United States Fish and Wildlife Service (USFWS) and/or California Department of Fish and Game (DFG).</p> <p>#1e. If a carcass is found that is federally threatened, endangered or protected by the Migratory Bird Treaty Act (MBTA), the information shall be reported by a qualified biologist to USFWS, Office of Law Enforcement, Renewable Energy Officer at (650) 876-9078 within five days of its discovery.</p> <p>#1f. If a carcass of a species listed pursuant to CESA or Fish and Game Code Section 3511 is discovered, DFG shall be immediately notified at (707) 944-5500.</p> <p>#1g. If a species is injured as a result of Project operations, the applicant shall immediately take it to a DFG approved wildlife rehabilitation or veterinary facility, such as Sulphur Creek Nature Center, at (510) 881-6747; or Ohlone Humane Center, at (510) 797-9449. Permittee shall bear any costs associated with the care and treatment of such injured species.</p> <p>#1h. A post-construction monitoring plan shall be approved by DFG and implemented within one month of initial turbine operation.</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less than Significant Impact	No Impact
<p>b. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?</p> <p><u>Comment:</u> The proposed wind turbine was reviewed by the California Department of Fish and Game. In a letter from Scott Wilson, Acting Regional Manager of the Bay Delta Region, several mitigation measures were recommended for inclusion in this document (see Mitigation Measures 1a. through 1h above). Inclusion of these Mitigation Measures would reduce any impacts on riparian habitat or other sensitive communities to a less than significant level.</p>	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>
<p>c. Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?</p> <p><u>Comment:</u> The proposed wind turbine is not anticipated to have substantial adverse effects on federally protected wetlands and will not result in any direct removal, filling, hydrological interruption or other means. The wind turbine is proposed to be placed on a developed property in the Industrial General Zoning District. The proposal was reviewed by the California Department of Fish and Game. In a letter from Scott Wilson, Acting Regional Manager of the Bay Delta Region, several mitigation measures were recommended for inclusion in this document. No impacts to federally protected wetlands were identified as the project will not result in any direct removal, filling, hydrological interruption of marshes, vernal pools, coastal areas etc., therefore no mitigations are required.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
<p>d. Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?</p> <p><u>Comment:</u> The proposed wind turbine was reviewed by the California Department of Fish and Game. In a letter from Scott Wilson, Acting Regional Manager of the Bay Delta Region, several mitigation measures were recommended for inclusion in this document (see Mitigation Measures 1a. through 1h above). Inclusion of these Mitigation Measures would reduce any impacts on native resident or wildlife species or corridors to a less than significant level.</p>	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>
<p>e. Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinances?</p> <p><u>Comment:</u> The proposed wind turbine is not anticipated to conflict with policies or ordinances protecting biological resources. The wind turbine is proposed to be placed on a property in the Industrial General Zoning District.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
<p>f. Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan?</p> <p><u>Comment:</u> The proposed wind turbine is not anticipated to conflict with any Habitat Conservation Plan, Natural Community Conservation Plan or other habitat conservation plan. The wind turbine is proposed to be placed on a property in the Industrial General Zoning District.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

V. CULTURAL RESOURCES: *Would the project:*

<p>a. Cause a substantial adverse change in the significance of a historical resource as defined in Sec. 15064.5?</p> <p><u>Comment:</u> The proposed wind turbine will not result in any substantial adverse change in the significance of a historical resource.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
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	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less than Significant Impact	No Impact
b. Cause a substantial adverse change in the significance of an archaeological resource pursuant to Sec. 15064.5? <u>Comment:</u> The proposed wind turbine will not cause a substantial adverse change in the significance of an archaeological resource.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
c. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? <u>Comment:</u> The proposed wind turbine will not destroy a unique paleontological resource or unique geologic feature.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
d. Disturb any human remains, including those interred outside of formal cemeteries? <u>Comment:</u> The proposed wind turbine will not disturb any human remains.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

VI. GEOLOGY AND SOILS. *Would the project:*

a. Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault. Refer to Division of Mines and Geology Special Publication 42.	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
b. Result in substantial soil erosion or loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
c. Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, (excavation, grading, clearing, grubbing or fill) and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
d. Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property? (21,27)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less than Significant Impact	No Impact
<p>e. Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater? (n/a)</p> <p><u>Comment:</u></p> <p>a) i. The Alquist-Priolo Earthquake Fault Zoning Act requires the delineation of zones along sufficiently active and well defined faults by the California Department of Conservation, Geological Survey (CGS). The project site is not within an Earthquake Fault Zone, as defined by the Alquist-Priolo Earthquake Fault Zoning Act, and no known active or potentially active faults exist on the sites. The nearest active fault to the project sites are the Hayward fault, approximately 3 miles to the northeast; the Calaveras to the northeast; and the San Andreas to the southwest. Therefore, no fault rupture hazards are anticipated with project implementation.</p> <p>ii, iii. In 2002, the U.S. Geologic Survey (USGS) predicted a 62 percent probability of a magnitude 6.7 or greater earthquake occurring in the San Francisco Bay Area by the year 2032. During a major earthquake on a segment of one of the nearby faults, strong shaking is expected to occur at the project sites. The project sites are also within a designated liquefaction hazard zone. Strong shaking during an earthquake can result in ground failure such as that associated with soil liquefaction, lateral spreading and cyclic densification. Therefore, mitigation of potential liquefaction hazards is required with project implementation.</p> <p>Mitigation Measure #2: The City of San Leandro has incorporated the 2009 International Building Code into its municipal building code (Title 7, Chapter 7-5). The project applicant would be required to comply with all applicable State and City regulations to address potential geologic hazards associated with the proposed project, including ground shaking and liquefaction. Geotechnical and seismic design criteria must conform to engineering recommendations in accordance with the seismic requirements of the 2009 California Building Code (Title 24) and any amendments adopted in the San Leandro Municipal Code. Additionally, because the project site is in a liquefaction Seismic Hazard Zone, the project applicant will be required to comply with the guidelines set forth by California Geological Survey Special Publication 117.</p> <p>iv. The site is relatively flat and not located in a landslide zone.</p> <p>b) The placement of the wind turbine will involve minimal disturbance of the site with a footprint of 20 feet by 20 feet or 400 square feet.</p> <p>c) Compliance with Mitigation Measure #1 above will result in a less than significant impact with respect to on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse potential impacts.</p> <p>d) Compliance with Mitigation Measure #1 above will result in a less than significant impact with respect to expansive soil.</p> <p>e) No septic tanks are needed for the proposed wind turbine.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

VII. GREENHOUSE GAS EMISSIONS. *Would the project:*

a. Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
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	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less than Significant Impact	No Impact
<p>b. Conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases?</p> <p><u>Comment a.-b.:</u> The proposed wind turbine would not create greenhouse gas emissions and would not generate traffic that could contribute to cumulative greenhouse gas impacts. (Source: American Planning Association, Planning Advisory Service Report Number 566: Planning For Wind Energy.) Also, the wind turbine could provide valuable information on this type of alternative energy source, which could reduce reliance on carbon-emitting fossil fuels.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

VIII. HAZARDS AND HAZARDOUS MATERIALS. Would the project:

<p>a. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?</p>	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>
<p>b. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?</p>	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>
<p>c. Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?</p> <p><u>Comment a.-c.:</u> Halus Power Systems has maintenance chemicals on-site and are required to have a Hazardous Material Business Plan (HMBP). The chemicals include coatings, paint and oil for the turbines and engines. The HMBP is current and they are in compliance with all city regulations. Halus Power Systems has passed their inspections, which are required once every two years. Compliance with their HMBP would reduce any potential hazardous materials impact to a less than significant level.</p>	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>
<p>d. Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?</p> <p><u>Comment:</u> The property at 2539 Grant Avenue is not on a list of hazardous materials sites.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
<p>e. For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?</p> <p><u>Comment:</u> The proposed wind turbine is subject to the regulations of the Alameda County Airport Land Use Commission and the Federal Aviation Administration requirements. The proposed wind turbine is at a height similar to the PG&E high tension wires. Halus must secure approval of both the Alameda County Airport Land Use Commission and the Federal Aviation Administration.</p> <p>Mitigation Measure #3: Halus Power Systems shall secure approval of Alameda County Airport Land Use Commission and the Federal Aviation Administration prior to building permit approval of the wind turbine.</p>	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>
<p>f. For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?</p> <p><u>Comment:</u> The proposed wind turbine is not within the vicinity of a private airstrip. They are subject to the regulations of the Alameda County Airport Land Use Commission. See Mitigation Measure #3 above.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
<p>g. Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?</p> <p><u>Comment:</u> The proposed wind turbine has a Hazardous Materials Business Plan and is not expected to interfere with any emergency response or evacuation plan.</p>	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>

	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less than Significant Impact	No Impact
h. Expose people or structures to a significant risk of loss, injury, or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands? <u>Comment:</u> The proposed wind turbine will not result in a wildland fire risk.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

IX. HYDROLOGY AND WATER QUALITY. *Would the project:*

a. Violate any water quality standards or waste discharge requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
b. Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
c. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
d. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
e. Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
f. Otherwise substantially degrade water quality? <u>Comment a-f:</u> The placement of the wind turbine will involve minimal disturbance of the site with a footprint of 20 feet by 20 feet or 400 square feet. This placement is not anticipated to violate water quality standards or waste discharge requirements. It will not substantially deplete groundwater supplies or substantially alter the existing drainage pattern of the site, result in substantial erosion or increase the rate of runoff or otherwise substantially degrade water quality.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
g. Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map? <u>Comment:</u> The proposed wind turbine does not involve the placement of housing.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
h. Place within a 100-year flood hazard area structures which would impede or redirect flood flows? <u>Comment:</u> The proposed wind turbine is not in a 100-year flood zone.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
i. Expose people or structures to a significant risk of loss, injury, or death involving flooding, including flooding as a result of the failure of a levee or dam? <u>Comment:</u> The proposed wind turbine would not expose people or structures to a flooding risk.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
j. Inundation by seiche, tsunami, or mudflow? <u>Comment:</u> The proposed wind turbine would not result in an inundation risk.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

X. LAND USE PLANNING. *Would the project:*

a. Physically divide an established community?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
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	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less than Significant Impact	No Impact
b. Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinances) adopted for the purpose of avoiding or mitigating an environmental effect?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
c. Conflict with any applicable habitat conservation plan or natural community conservation plan? <u>Comment a-c:</u> The proposed wind turbine would not result in new construction that could divide a community or conflict with any land use policy or plan. It would not conflict with any habitat conservation or natural community conservation plan. The wind turbine is in compliance with San Leandro General Plan Policy 7.03 related to Sustainable Manufacturing as well as the San Leandro Climate Action Plan Goal 3.3 to increase residential, commercial and industrial renewable energy use.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

XI. MINERAL RESOURCES. Would the project:

a. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
b. Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan? <u>Comment a-b:</u> The proposed wind turbine will not result in any impacts to mineral resources.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

XII. NOISE. Would the project result in:

a. Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinances, or applicable standards of other agencies?	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>
b. Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels? <u>Comment:</u> The proposed wind turbine is not anticipated to result in groundborne vibration or noise levels.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
c. A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
d. A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
e. For a project located within an airport land use plan or where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
f. For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels? (n/a) <u>Comment a, c-f:</u> The proposed wind turbine is located in a General Industrial area. The nearest residences are located approximately 500 feet away and have been constructed to minimize noise from aircraft operations at the Oakland International Airport to the north. The manufacturer's noise specifications provided by the applicant confirm that the wind turbine is designed to not exceed 55 decibels. Further, the manufacturer specifications for this turbine state that there are no audible tones or impulses 56 meters or 184 feet from the turbine. This is within the acceptable range for industrial as well as residential uses. The General Plan lists 55 db as Normally Acceptable in the residential areas and 65-80 db as Normally Acceptable in the industrial areas. The proposed wind turbine placement would result in a less than significant noise impact.	<input type="checkbox"/>	<input type="checkbox"/>	X	<input type="checkbox"/>

Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less than Significant Impact	No Impact
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XIII. POPULATION AND HOUSING. *Would the project:*

a. Induce substantial population growth in an area either directly (for example, by proposing new homes and businesses or indirectly (for example, through extension of roads or other infrastructure)? (1,3)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
b. Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
c. Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere? <u>Comment a-c:</u> The proposed wind turbine will not involve any additional housing. It would not induce population growth, would not displace housing and would not displace people.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

XIV. PUBLIC SERVICES.

a. Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered government facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:				
Fire protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Police protection?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Schools?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Parks?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
Other public facilities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
<u>Comment:</u> The proposed wind turbine would not increase the need for additional public services.				

XV. RECREATION.

a. Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated? (5, 34),	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
b. Does the project include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment? (1) <u>Comment a-b:</u> The proposed wind turbine would not result in additional recreational needs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

XVI. TRANSPORTATION/TRAFFIC. *Would the project:*

a. Cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
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	Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less than Significant Impact	No Impact
b. Exceed, either individually or cumulatively, a level of service standard established in the Growth Limitation Plan, the county congestion management agency for designated roads or highways?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
c. Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks? (n/a)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
d. Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? (3,25)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
e. Result in inadequate emergency access?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
f. Result in inadequate parking capacity?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
g. Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks)? <u>Comment a.-g.:</u> The proposed wind turbine would not increase traffic, change air traffic, increase hazards, impact emergency access, create inadequate parking or conflict with adopted policies or plans.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

XVII. UTILITIES AND SERVICE SYSTEMS. Would the project:

a. Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
b. Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
c. Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
d. Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
e. Result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
f. Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X
g. Comply with federal, state, and local statutes and regulations related to solid waste? <u>Comment a.-g.:</u> The proposed wind turbine would not exceed wastewater treatment requirements, would not require new water or wastewater treatment facilities, require new storm drainage facilities or expansion of facilities, require new water supplies, or exceed landfill requirements. The wind turbine will comply with all federal, state and local statutes and regulations related to solid waste.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X

Potentially Significant Impact	Potentially Significant Unless Mitigation Incorporated	Less than Significant Impact	No Impact
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XVIII. MANDATORY FINDINGS OF SIGNIFICANCE.

<p>a. Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?</p> <p><u>Comment:</u> A Technical Memorandum, dated May 10, 2012, was prepared by Environmental Science Associates (ESA) to evaluate potential impacts to avian species resulting from construction of the wind turbine. The study concluded that bird species at highest risk in the area are populations of California clapper rails and California black rails. Any risk to these populations would be greatly reduced due to the distance from the habitat area and the rails' ground-dwelling behavior and relatively little time spent in flight. Bird fatalities are relatively infrequent events at wind farms and therefore a single wind turbine poses little risk. Higher bird fatalities occur at altitudes greater than 400 feet. Based on comparison of available data, it is estimated that the small turbine would result in 0.152 bird deaths per year. At that rate, it would take 6.5 years of continuous operation to result in the death of one bird. The proposed wind turbine was reviewed by the California Department of Fish and Game. In a letter from Scott Wilson, Acting Regional Manager of the Bay Delta Region, several mitigation measures were recommended for inclusion in this document (see Mitigation Measures 1a. through 1h above). Inclusion of these Mitigation Measures would reduce any impacts on wildlife to a less than significant level.</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>b. Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)</p> <p><u>Comment:</u> The proposed wind turbine would not result in any impacts that are individually or cumulatively considerable.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>c. Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?</p> <p><u>Comment:</u> The proposed wind turbine is located in a General Industrial area that is already subject to industrial uses. The existing visual character is of industrial uses. Open space to the northwest is already compromised with the Pacific Gas and Electric high tension utility towers. The proposed wind turbine would have a similar visual quality. The nearest residences are located approximately 500 feet away and have been constructed to minimize noise from aircraft operations at the Oakland International Airport to the north. The wind turbine is designed to not exceed 55 decibels. Further, the manufacturer specifications for this turbine state that there are no audible tones or impulses 56 meters or 184 feet from the turbine. This is within the acceptable range for industrial as well as residential uses. The proposed wind turbine placement would result in a less than significant noise impact. The proposed wind turbine will not result in any adverse effects on human beings, either directly or indirectly.</p>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

ATTACHMENTS

1. Location Map
2. Illustrative Location Map with proposed location of turbine
3. Facility Map (Existing Conditions)
4. Proposed Site Plan (Dimensioned)
5. Noise/Sound Information
6. Photo Simulations
7. ESA Technical Memorandum: "Potential Impacts to Avian Species Resulting from Construction of a Single Wind Turbine at Halus Power Systems in San Leandro, CA", dated May 10, 2012.
8. ESA Technical Memorandum: "Evaluation of Potential Shadows Proposed Vestas Wind Turbine, San Leandro, California" dated September 20, 2012
9. Letter from Scott Wilson, California Department of Fish and Game dated June 29, 2012
10. Determination of No Hazard to Air Navigation from the Federal Aviation Administration dated June 21, 2012

INITIAL STUDY SOURCE LIST

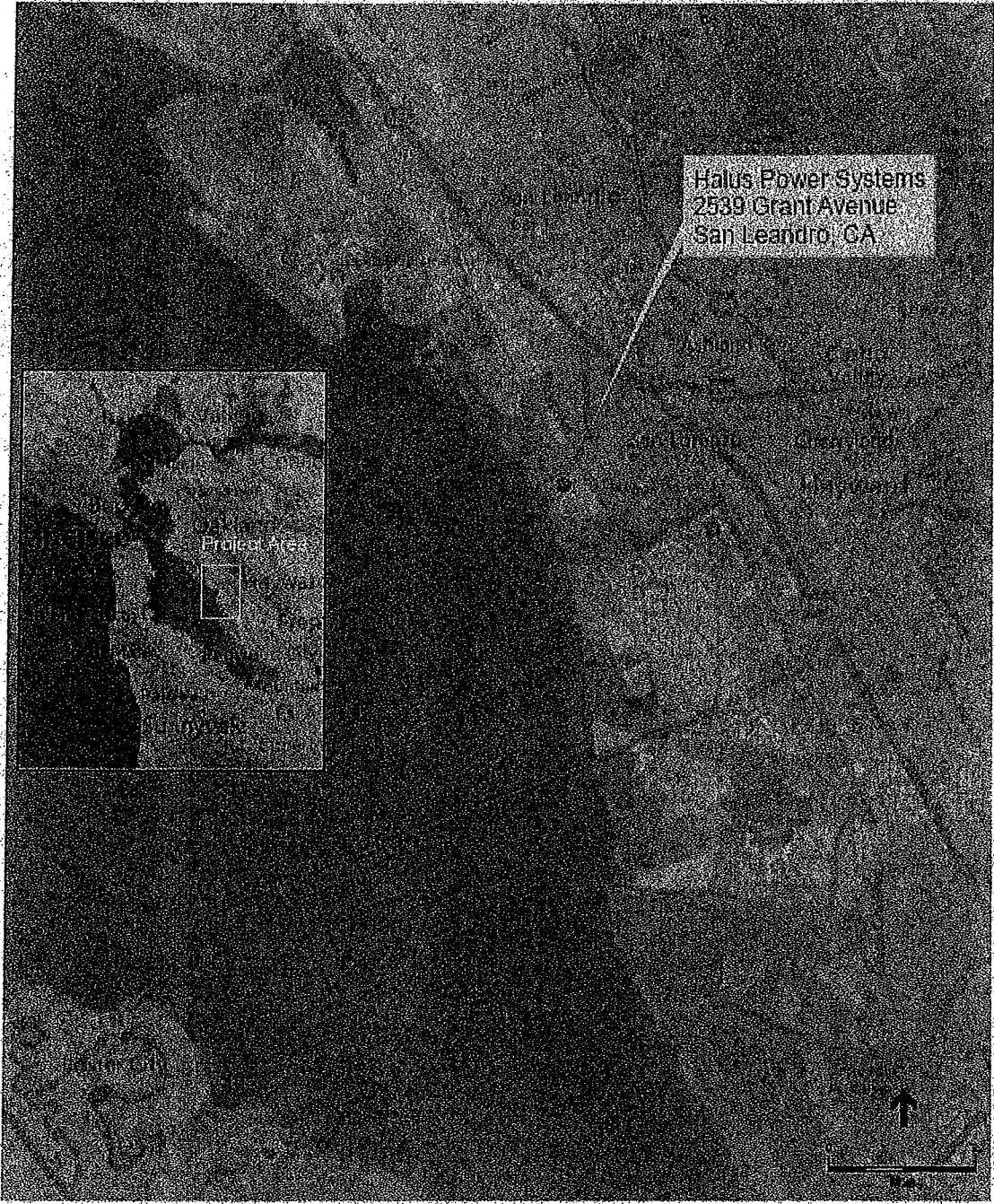
Sources

1. *City of San Leandro General Plan*, Adopted May 2002.
2. *San Leandro General Plan Update Draft Environmental Impact Report*, Prepared by Barry Miller, AICP, November 2001.
3. *State of California Seismic Hazard Zones, San Leandro Quadrangle*, February 14, 2003.
4. California Geological Survey, *Special Publication 117: Guidelines for Evaluating and Mitigating Seismic Hazards in California*, Adopted March 13, 1997 by the State Mining and Geology Board in Accordance with the Seismic Hazards Mapping Act of 1990.
5. Stinson, M.C., M.W. Manson, and J.J. Plappert, *Mineral Land Classification: Aggregate Materials in the San Francisco - Monterey Bay Area, Part II: Classification of Aggregate Resource Areas, South San Francisco Bay Production - Consumption Region*, California Division of Mines and Geology, Special Report 146, Part II, 1983, 75 maps at scales 1:485,000, 1:250,000, 1:48,000, see Plate 2.40.
6. *California Code of Regulations, Section 15000 et seq. State CEQA Guidelines.*
7. *CEQA and Greenhouse Gas Analysis: What's Next?* By Gary Jakobs and Curtis Alling, June 16, 2009.
8. *Technical Advisory on CEQA and Climate Change: Addressing Climate Change Through California Environmental Quality Act (CEQA) Review*, J

9. *American Planning Association, Planning Advisory Service Report Number 566: Planning For Wind Energy*
10. ESA Technical Memorandum: "Potential Impacts to Avian Species Resulting from Construction of a Single Wind Turbine at Halus Power Systems in San Leandro, CA", dated May 10, 2012.
11. ESA Technical Memorandum: "Evaluation of Potential Shadows Proposed Vestas Wind Turbine, San Leandro, California" dated September 20, 2012
12. Letter from Scott Wilson, California Department of Fish and Game dated June 29, 2012
13. Determination of No Hazard to Air Navigation from the Federal Aviation Administration dated June 21, 2012

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Location Map



Halus Power Systems
2539 Grant Avenue
San Leandro, California

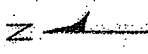
Initial Study Checklist
Halus Power Systems Wind Turbine
Attachment 1

Illustrative Location Map and Proposed Location of Turbine

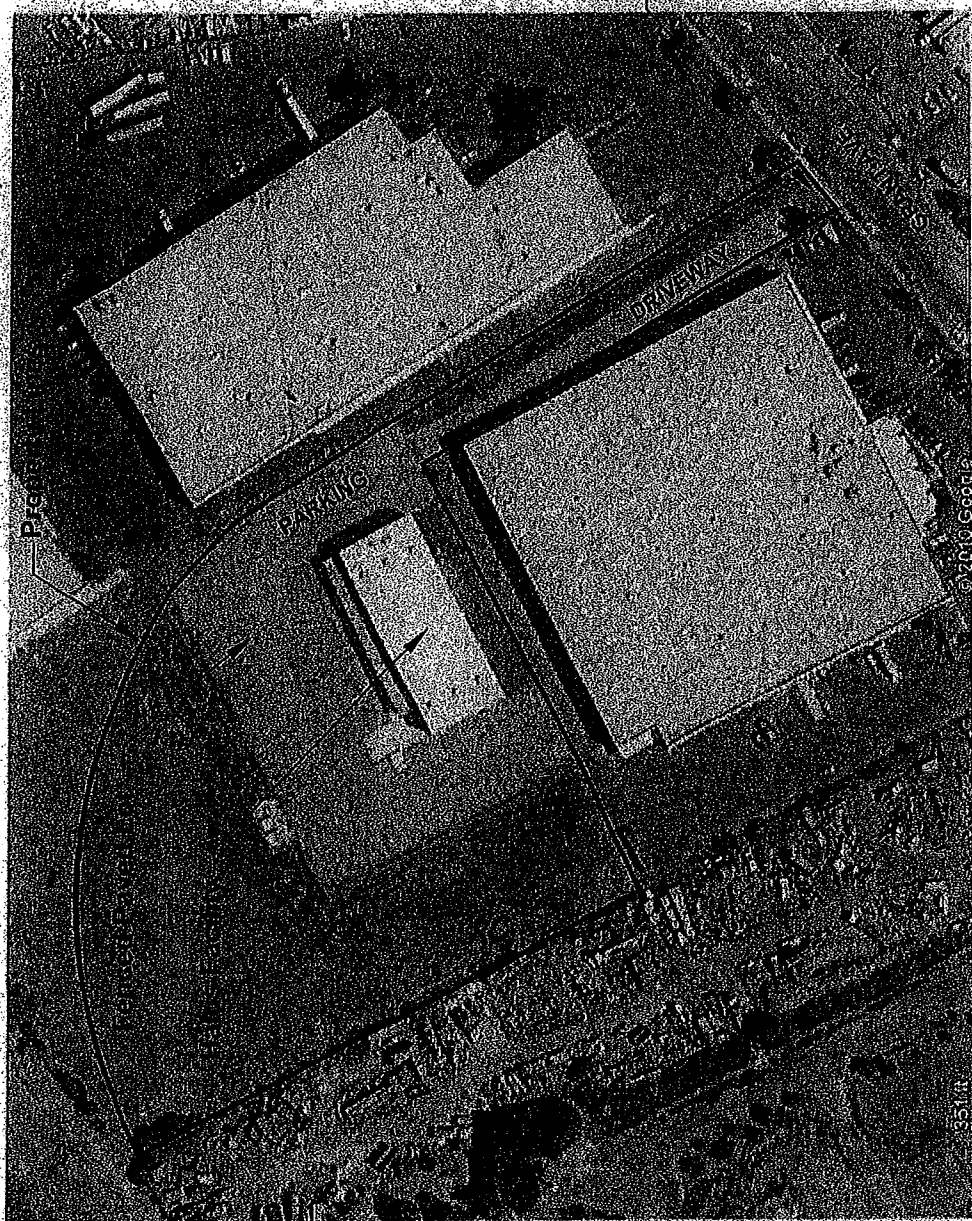


Halus Power Systems
2539 Grant Avenue
San Leandro, California

Initial Study Checklist
Halus Power Systems Wind Turbine
Attachment 2



Main Property Entrance



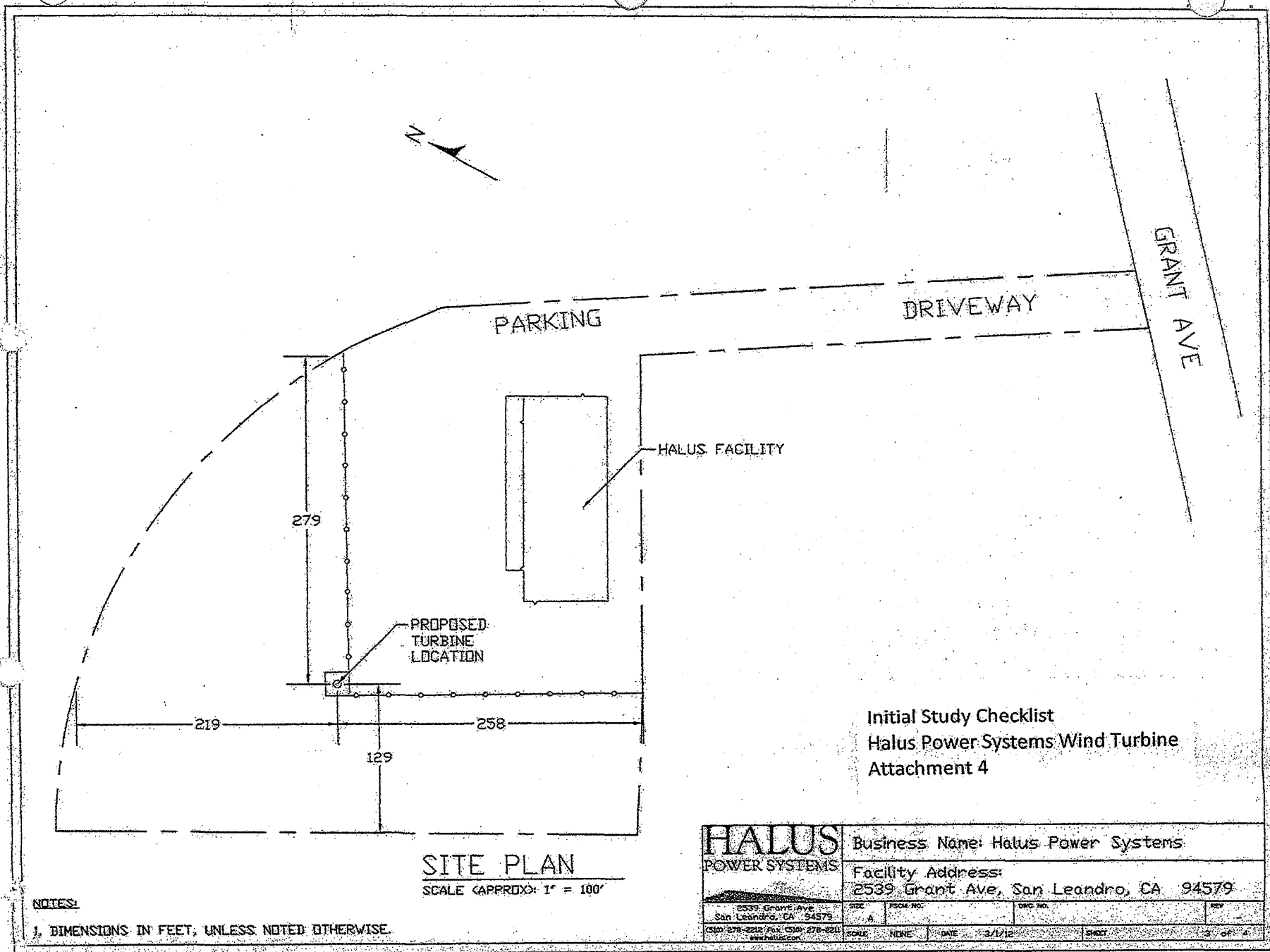
HALUS
POWER SYSTEMS

Business Name: Halus Power Systems
Facility Address:
2539 Grant Ave, San Leandro, CA 94579

2539 Grant Ave San Leandro, CA 94579	SEE PLAN	DATE	SHEET
2539 Grant Ave San Leandro, CA 94579	SCALE	DATE	SHEET
2539 Grant Ave San Leandro, CA 94579	SCALE	DATE	SHEET

FACILITY MAP
SCALE (APPROX): 1" = 140'

Initial Study Checklist.
Halus Power Systems Wind Turbine
Attachment 3



Initial Study Checklist
 Halus Power Systems Wind Turbine
 Attachment 4

SITE PLAN
 SCALE (APPROX): 1" = 100'

NOTES:
 1. DIMENSIONS IN FEET, UNLESS NOTED OTHERWISE.

HALUS POWER SYSTEMS		Business Name: Halus Power Systems	
2539 Grant Ave San Leandro, CA 94579		Facility Address: 2539 Grant Ave, San Leandro, CA 94579	
2539 Grant Ave San Leandro, CA 94579	SIZE: A	FORM NO:	DATE: 3/1/12
(510) 278-2212 Fax: (510) 278-2211 www.halus.com	SCALE: NONE	DATE: 3/1/12	SHEET: 13 of 4

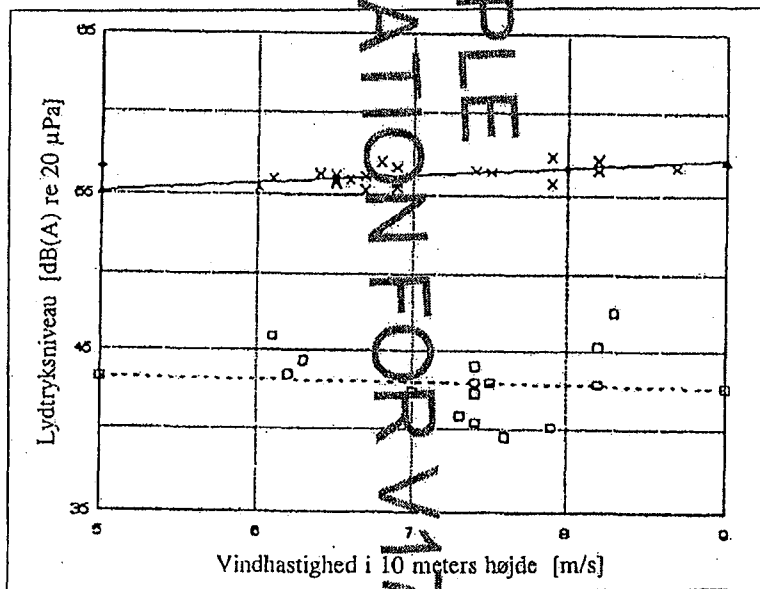
11. Encl. 2, Noise résumé of Vestas V29 -225 kW wind turbine

- The measurement has been done under accreditation, registration no. 134, from DANAK by:

Acoustica as
 Sohngårdsholmvej 2
 DK 9000 Aalborg
 Phone 45 98 113011
 Fax 45 98 117374

Tripod Wind Energy is authorised by the Danish Ministry of Energy to carry out power curve measurements and type testing in accordance with the Danish system for approval of wind turbines.

- This resume is made August 15, 1996 by Vestas Wind Systems A/S
 - The measurements are reported in "Acoustica-report P8.005.94", which is dated June 1994. The measurements are carried out on June 9, 1994.
 - The Windturbine type is: VESTAS V29.225 kW
 - The measurement was performed according to the "Recommendation for wind turbine power curve measurements [Risø-I-745(EN), November 1993]".
 - Results of the measurement:
- 6a.



The sound power level (L_{Aeq}) can be calculated from the sound pressure level, using the following expression:

$$L_{wa} = L_{Aeq} * 10 * \log(4 * \pi * (d^2 + h^2)) - 6 \text{ dB}$$

Where, d = distance from the base of the wind turbine to the measurement ($d = 56$ m).
 h = hub height ($h = 32$ m).

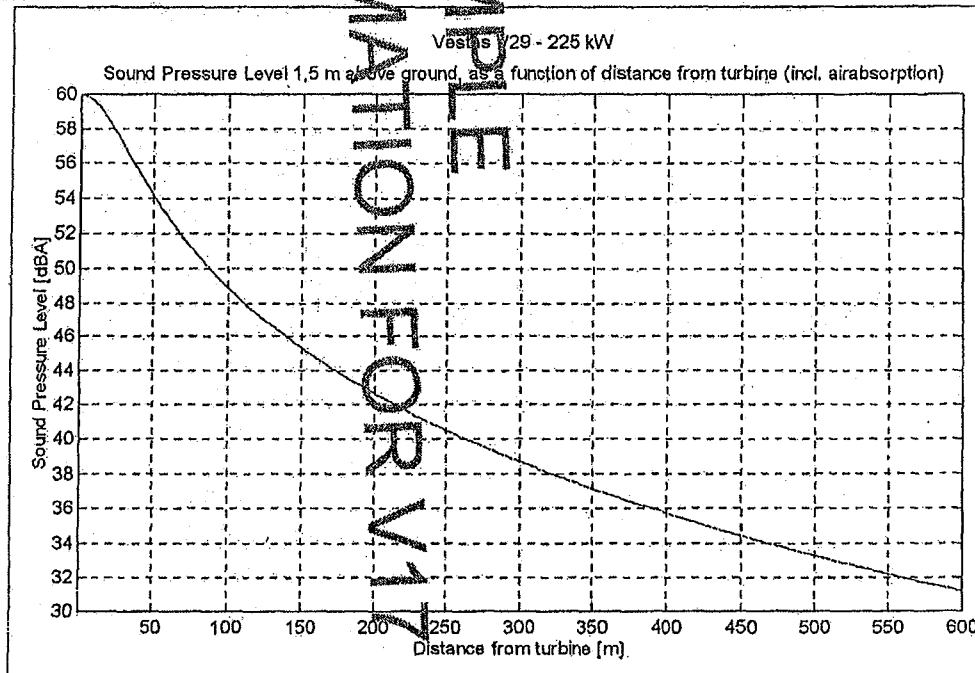
6b. The measurements show the following results at a wind speed of 8 m/s. The measurements are given respectively, as the A-weighted sound pressure level $L_{Aeq,ref}$ and the A-weighted sound power level $L_{WA,ref}$.

Frequency	Sound pressure $L_{Aeq,ref}$ [dB(A)]	Sound Power $L_{WA,ref}$ [dB(A)]
1/1 octave 63 Hz	35.2	76.4
1/1 octave 125 Hz	42.5	83.7
1/1 octave 250 Hz	47.3	88.5
1/1 octave 500 Hz	52.1	93.3
1/1 octave 1 kHz	51.1	92.3
1/1 octave 2 kHz	48.4	89.6
1/1 octave 4 kHz	40.4	81.6
1/1 octave 8 kHz	29.8	71.0
A-weighted, total	56.6	97.8

According to statutory order no. 304 of May 14, 1991, from the Danish Ministry of the Environment, the degree of accuracy on the results is ± 2 dB.

6c. An analysis of the noise in a distance of 56 meter show that the noise from the turbine contains no clearly audible tones or impulses. The analysis has been pre-formed according to guideline no. 6/1984, "Noise from Industrial Plants", from the Danish Ministry of the Environment.

6d.





Halus Wind Turbine Project – Photo Simulation



Photo Location 1 (asterisk marks turbine location)

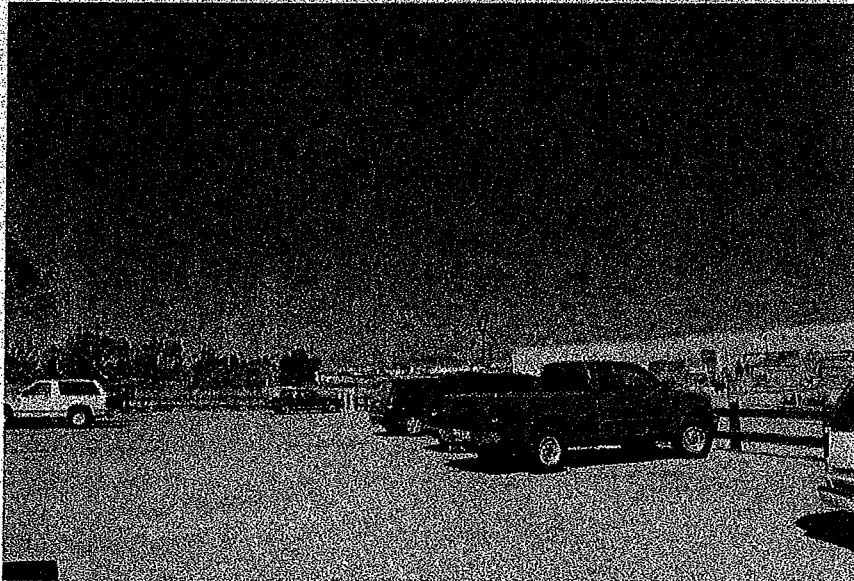


Photo 1: View from Grant Ave Trail Entrance Parking Lot



Photo Location 2 (asterisk marks turbine location)

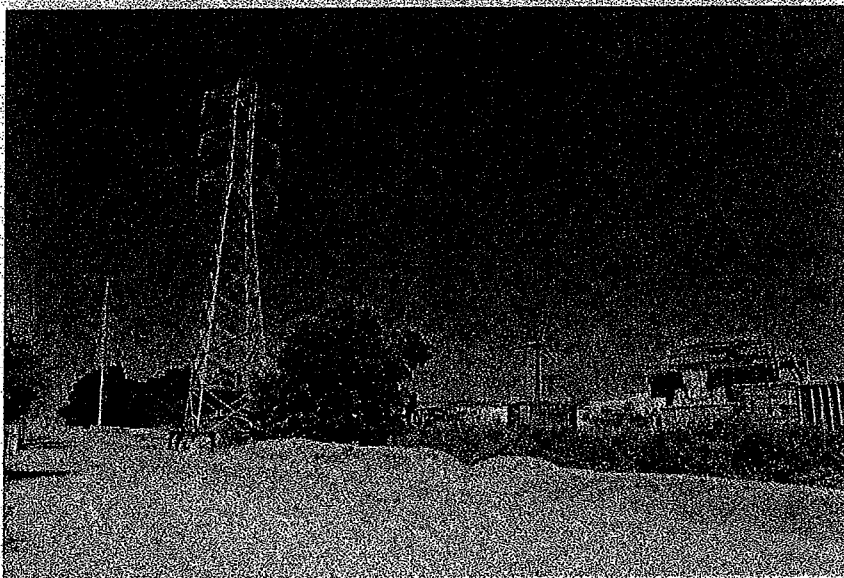


Photo 2: View from Trail through PG&E Lines and Neighboring Salvage Yard



Photo Location 3 (asterisk marks turbine location)

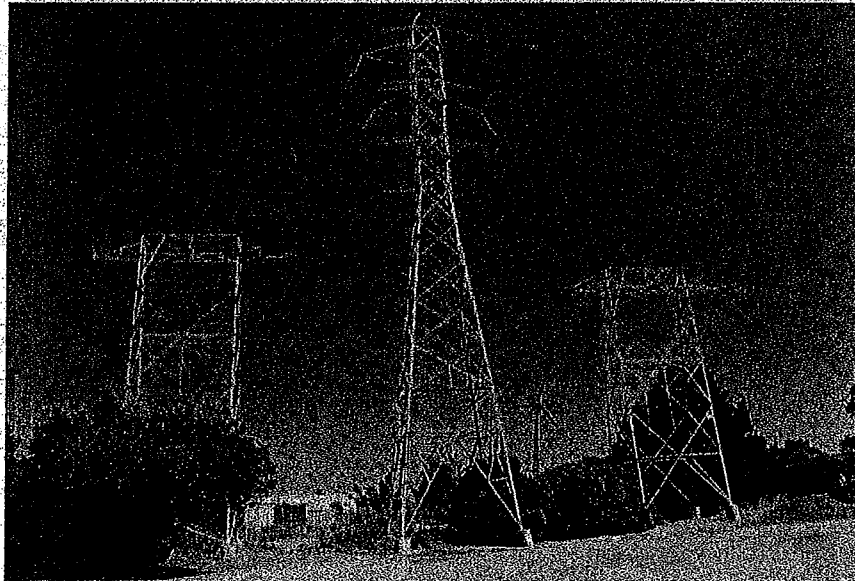


Photo 3: View from Trail through PG&E Lines and Neighboring Salvage Yard



Photo Location 4 (asterisk marks turbine location)



Photo 4: View from Trail and Grant Avenue PG&E Substation (South Side of San Lorenzo Creek/Flood Canal)



Photo Location 5 (asterisk marks turbine location)



Photo 5: View from Trail (South Side of San Lorenzo Creek/Flood Canal)

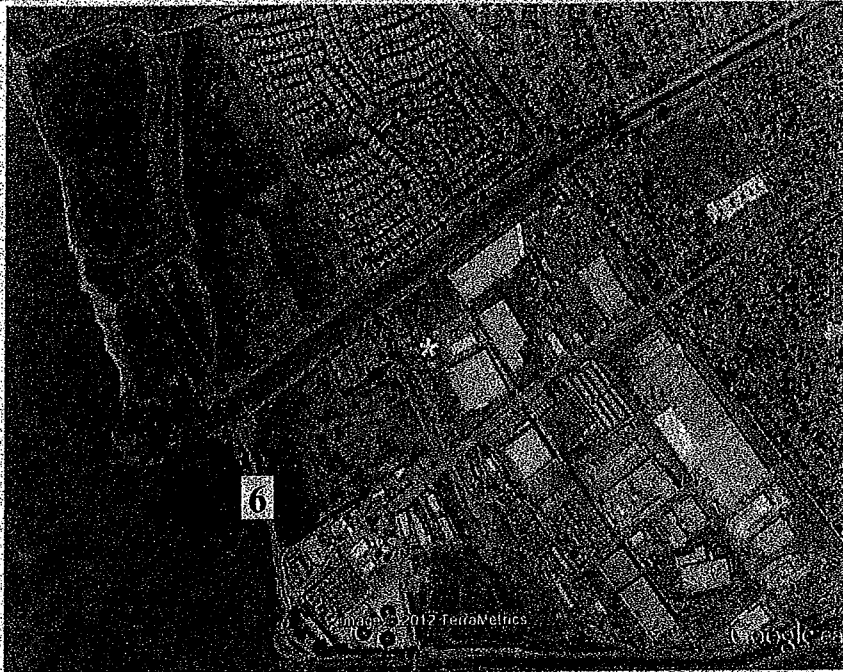


Photo Location 6 (asterisk marks turbine location)

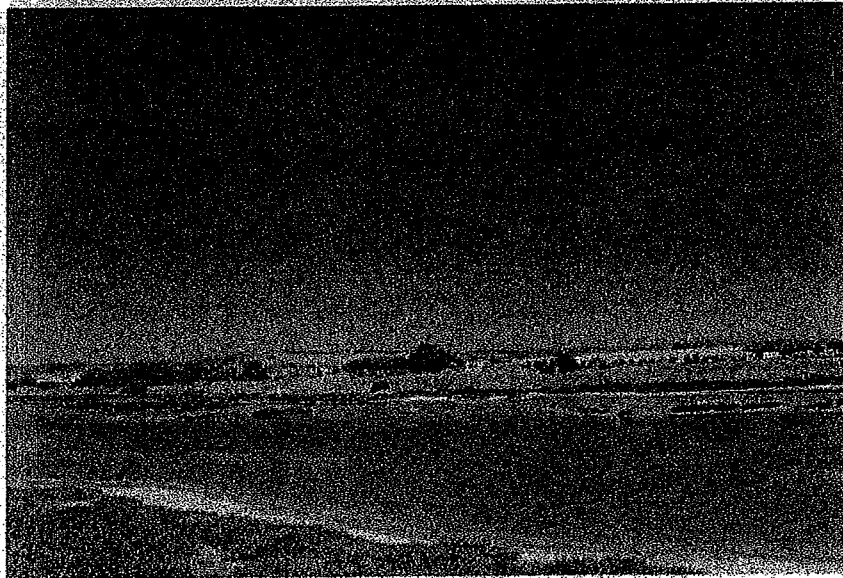


Photo 6: View from Trail



Photo Location 7 (asterisk marks turbine location)



Photo 7: View from Trail (Halus Property View Blocked by Oro Loma)



Photo Location 8 (asterisk marks turbine location)

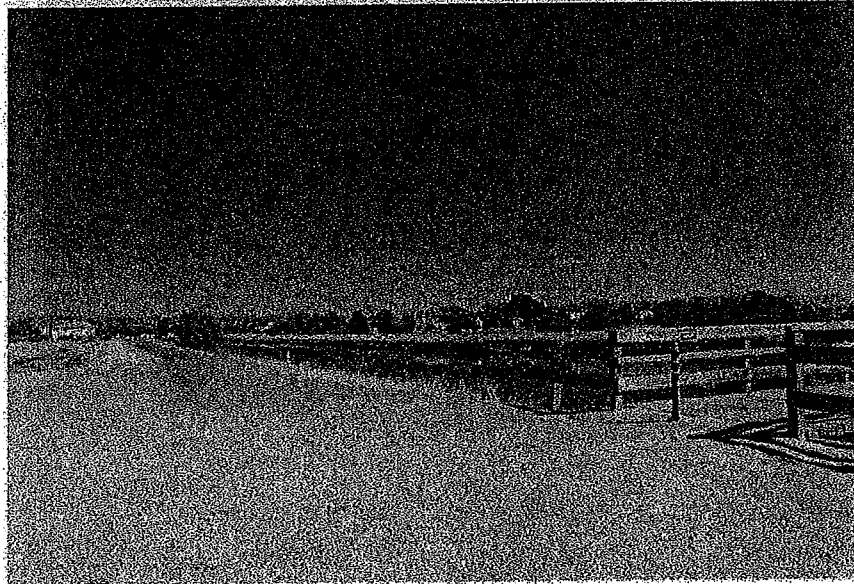


Photo 8: View from Trail (North Side of San Lorenzo Creek/Flood Canal)



Photo Location 9 (asterisk marks turbine location)

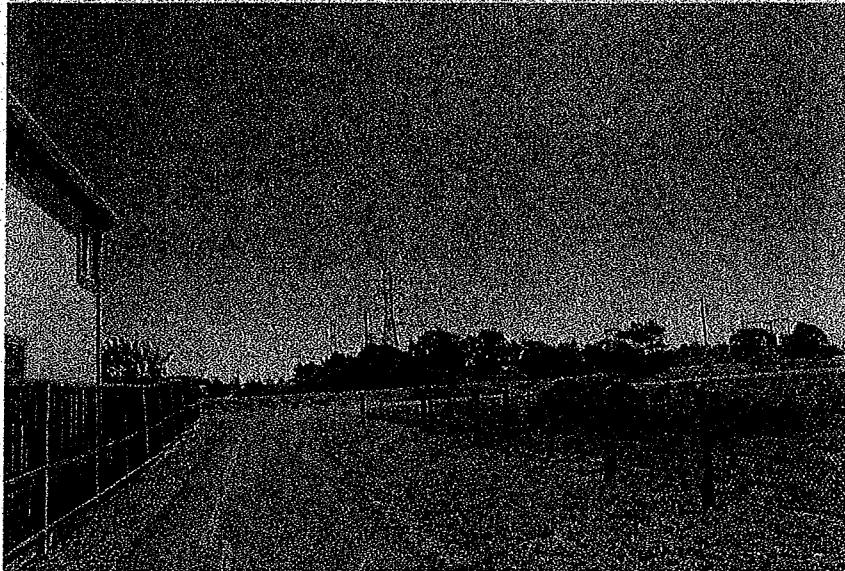


Photo 9: View from Trail at Front Yard of Heron Bay Southwest Unit (Halus Property Not Visible)



Photo Location 10 (asterisk marks turbine location)



Photo 10: View from Trail Near Backyard of Heron Bay Southwest Corner Unit, North Side
of San Lorenzo Creek/Flood Canal



Photo Location 11 (asterisk marks turbine location)

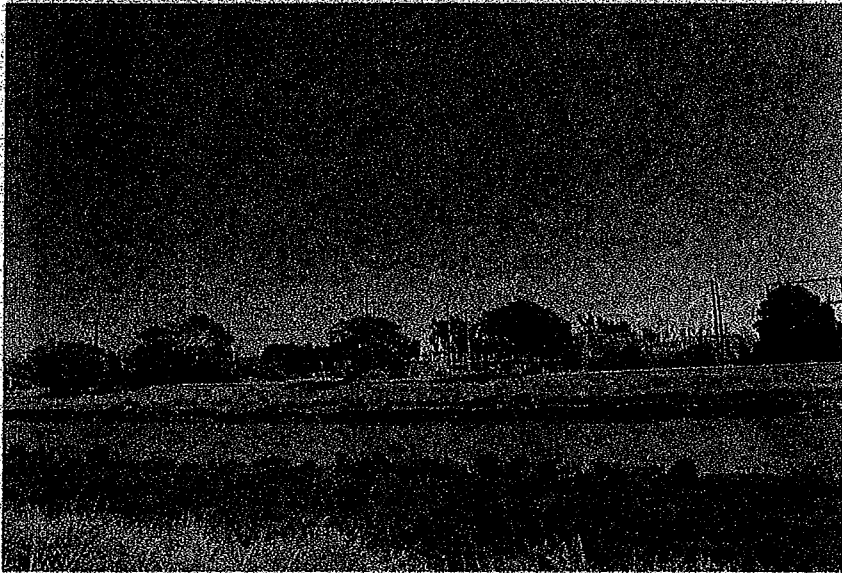


Photo 11: View from North Side of San Lorenzo Creek/Flood Canal

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technical memorandum

date May 10, 2012

to Louis Rigaud, Halus Power Systems

from Chris Rogers

subject Potential Impacts to Avian Species Resulting from Construction of a Single Wind Turbine at Halus Power Systems in San Leandro, CA

Summary

The construction of a single wind turbine at Halus Power Systems in San Leandro, California, poses a low potential risk to birds and bats, and is low relative to other causes of mortality, including habitat loss, nest predation by invasive species (e.g., red foxes, feral cats), and collision with other structures (e.g., buildings, transmission lines). The nearby Roberts Landing Shoreline Marshlands Enhancement area supports resident populations of the federally-endangered California clapper rail (*Rallus longirostris obsoletus*) and wintering populations of the state-endangered California black rail (*Laterallus jamaicensis coturniculus*), so even a low risk of collision resulting in the loss of one breeding individual could impact the population. The turbine's location create a limited biological risk. If the City of San Leandro issues a Variance for the proposed project, this discretionary action triggers environmental review under the California Environmental Quality Act (CEQA). The level of CEQA review is at the discretion of the City of San Leandro (i.e. Notice of Exemption, Negative Declaration, Mitigated Negative Declaration, etc.).

The following findings are the results of our review of available, comparable and relevant studies of the impacts of single small wind turbines:

1. The construction of a single turbine poses a low risk to birds and bats and is particularly low when compared to other causes of mortality including habitat loss, nest predation by invasive species (e.g. red foxes, feral cats) and collision with other structures (e.g. buildings, transmission lines).
2. The proposed single, small turbine is 80 feet in height with an additional maximum height of 100 feet at the full vertical extension of the blades. The relatively low height along with a relatively slow blade rotation (45 rpm) serves to minimize the risk to birds and bats particularly when compared to the larger, more typical turbines in commercial use today. Specifically, the risk to bats is not likely to be significant given the low height of the proposed turbine.
3. Environmental guidance for small wind projects is lacking at both a federal and state level and no California or San Francisco Bay guidelines for small wind projects have been identified. The

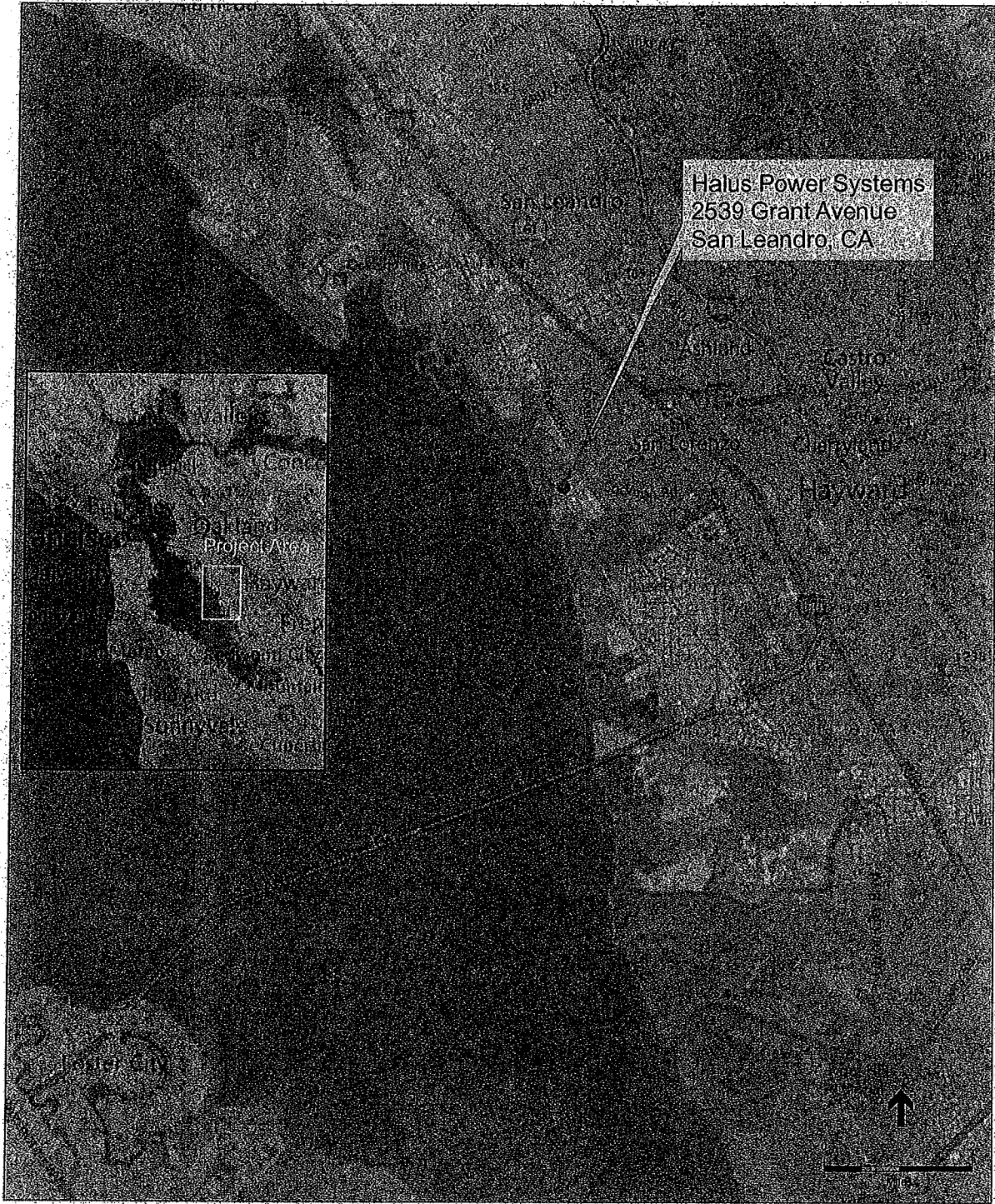
Initial Study Checklist
Halus Power Systems Wind Turbine
Attachment 7

best identified substitute for State Environmental Guidance for Small Wind Projects is the New Jersey Department of Environmental Protection's "Technical Manual for Evaluating Impacts of Wind Turbines Requiring Coastal Permits" which allows small wind projects with a rotor-swept area of less than 2,000 square feet to be constructed without surveys or mitigation. Since the proposed wind turbine will have a rotor swept area of less than 2,000 square feet, no additional surveys or mitigation should be required.

4. While there have been a multitude of studies (e.g. in the Altamont Pass Wind Resource Area and elsewhere) those studies cannot be applied to this project because they a) include multiple wind turbines in close proximity to one another; and/or b) analyze significantly larger turbines with different operating characteristics. Further, the study results are unclear, inconclusive or conflicting making it difficult to assert any definitive causal relationship related to the wind turbines and avian fatalities in a particular location. Specifically, the Altamont study results are not appropriate to this project due to:
 - a. Differences in topography and landscape
 - b. Differences in types of bird species and their flight characteristics
 - c. Turbine height and density
5. The bird species at highest risk in the area in proximity to the proposed project are the local populations of California clapper rails and California black rails. However any risk proposed by the proposed turbine would be greatly reduced due to the distance from the habitat area and rails' ground-dwelling behavior and relatively little time spent in flight. These species are far more likely to be impacted by human activities including pedestrian trails, leashed and unleashed dogs, the adjacent power substation and transmission towers. A small wind turbine is likely to blend in with the "background noise" of existing structures and recreational activities.
6. Bird fatalities are relatively infrequent events at wind farms and therefore a single wind turbine poses little risk. Higher bird fatalities occur when turbines are taller and when the elevation is higher. In this case the turbine is small (100' to the blade tip) and the elevation is only 8.5' above sea level. Study results summarized by Curry and Kerlinger (2007) indicate that the nocturnal migration of waterfowl, shorebirds, and songbirds occurs in most places across broad fronts at altitudes generally greater than 400 feet (122 meters).
7. Based upon the comparison of the proposed project with available data, it is estimated that the small turbine would result in 0.152 bird deaths per year. At that rate, it would take 6.5 years of continuous operation to result in the death of one bird. This would not be a significant biological impact to common bird populations, but could be construed as significant for listed endangered or threatened species.

Project Description

Halus Power Systems, a San Leandro supplier of remanufactured wind turbines, is requesting approval from the City of San Leandro of a Variance to exceed the 60 foot height limit and allow an 80-foot tall (100 feet to the fully extended blade height), single, 50kW wind turbine to be located in the middle of their property located at 2539 Grant Avenue in the I-G Zoning District (see **Figure 1, Project Location**).



SOURCE: Microsoft Virtual Earth

Halus Power Systems, 120282

Figure 1
Project Location

The proposed wind turbine will be used for research and development purposes as part of the company's ongoing efforts to increase operational and energy efficiencies of the turbines it re-manufactures. The energy generated by the turbine will also offset the company's demand for non-renewable energy for their operations. As proposed, the project is a discretionary action by the City, which requires environmental review under the California Environmental Quality Act (CEQA).

Turbine specifications are identified below in **Table 1, Summary of Turbine Specifications**. The turbine would be erected upon a tubular tower, with a maximum blade height of approximately 100 feet and a ground clearance of approximately 51.5 feet. The turbine will achieve full power at 37.6 mph (16.8 m/s), and the turbine has a rotational speed of approximately 44 rpm. The cut-in wind speed is 7.4 mph (3.3 m/s) and the cut-off wind speed is 62 mph (28 m/s). An electronic wind vane allows the turbine to change its orientation relative to the wind.

**TABLE 1
SUMMARY OF TURBINE SPECIFICATIONS**

Specifications:	Vestas V17-90kW (Refurbished to be 50 kW)
Tubular Tower Height:	73.82 feet (22.5 meters)
Hub Height:	76 feet (23.2 meters)
Rotor Diameter:	44 feet (15.0 meters)
Total Height:	100 feet (30.5 meters)
Swept Area:	2,000 square feet (186 square meters)
Tip Ground Clearance:	51.5 feet (15.7 meters)
Blades:	3

SOURCE: Halus Power Systems, 2012

Site Conditions

The proposed project is located within an area zoned as an Industrial General District, bordered by industrial properties to the west and east, and bordered by San Lorenzo Creek and a Residential Single-Family District to the north. To the northwest is open space known as East Marsh, which is a subsection of the City of San Leandro's Roberts Landing Shoreline Marshlands Enhancement area. This area is 600 feet from the proposed turbine location, and is separated from the project site by San Lorenzo Creek and its flood maintenance roads. The project area is bordered by the City of San Lorenzo to the south, and these parcels provide similar industrial land uses. The turbine location is proposed in an open laydown yard behind (north of) the Halus Power Systems building as depicted in **Figure 2, Proposed Turbine Location**. This area provides 4 acres and a minimum of 100 feet of paved and ruderal open ground surrounding the turbine in any direction, and is 200 feet from any permanent structures. Based on aerial photography of the project site, the laydown yard appears to be comprised of ruderal upland vegetation. At this location, the turbine would be 370 feet from San Lorenzo Creek and 600 feet from East Marsh. Prevailing winds originate from the west for eleven months of the year, excepting November when winds originate from the east/northeast, as depicted in **Figure 3, Prevailing Winds in the Marsh/Urban Interface Zone— January through December**.



East Marsh

Tower Height: 74 feet
Highest Blade Reach: 104 feet
Rotor Diameter: 60 feet
Ground Clearance: 48 feet

Halus Power Systems

San Lorenzo Creek Mouth

SOURCE: Microsoft Virtual Earth

Halus Power Systems. 120282
Figure 2
Proposed Turbine Location



SOURCE: Microsoft Virtual Earth

Halus Power Systems, 120282

Figure 3

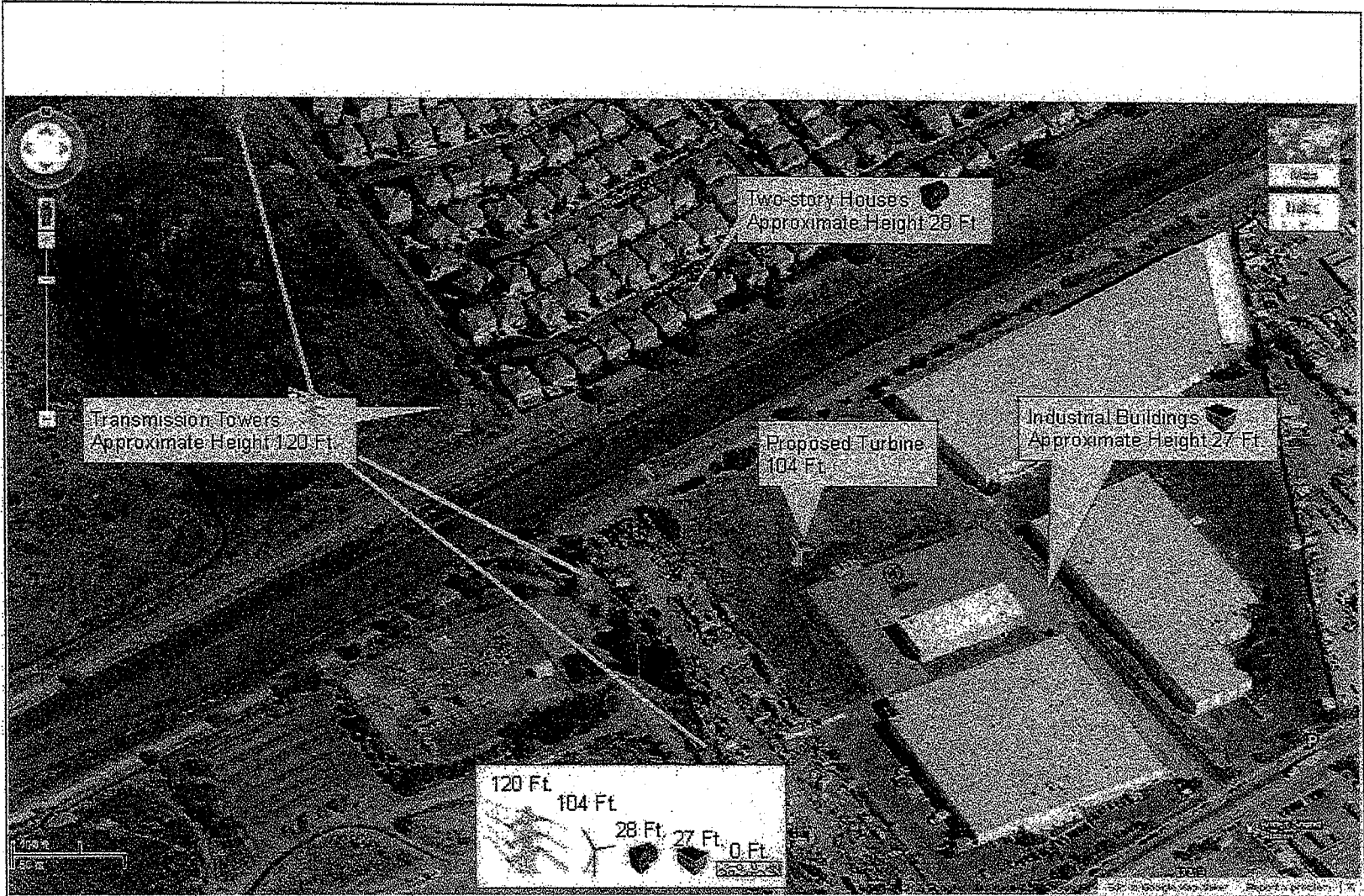
Prevailing Winds in the Marsh/Urban Interface Zone, January through December

Other tall structures in the immediate area include a string of large transmission towers estimated to be approximately 120 feet tall traversing East Marsh and other properties, an adjacent substation with utility poles that are typically 60-70 feet tall, an 80-foot tall cellular antenna tower at the Oro Loma Sanitary District treatment plant, two-story residential houses that are approximately 28 feet tall at the roof peak, and commercial buildings that are approximately 27 feet tall at the perimeter parapet wall, as depicted in **Figure 4, Surrounding Structural Heights in the Project Area**. At 100 feet maximum blade height, the proposed single turbine would be taller than commercial buildings, residential houses and utility poles, but shorter and less numerous than the transmission towers.

Avian Overview of San Francisco Bay

The ability to fly allows avians to be widespread. Their mobility and tendency towards migration means that a wind turbine in one geographic location can affect avians across a much larger geographic swath. Biologists evaluating the impacts of wind turbines must grapple with the problem of "how wide to cast their net" to accurately capture the full suite of species that could be impacted, to then prioritize that list according to some probability of impact. The proposed project is located within the San Francisco Bay shoreline at the marsh/urban interface (see Figure 3). The San Francisco Bay Estuary is renowned as a major North American refuge for many species of waterfowl and shorebirds during their migration and wintering (August through April) periods, and it provides breeding habitat during the summer for a few species; the Estuary is recognized as a Western Hemisphere Shorebird Reserve Network site of international importance for more than a million shorebirds in migration and as the winter home for more than fifty percent of diving ducks in the Pacific Flyway (Goals Project, 2000). The San Francisco Bay, its shoreline, and interior margins up to four miles inland, are also recognized by the Audubon Society and American Bird Conservancy as a California Important Bird Area. The Important Bird Areas Network is an international network that connects local sites to global conservation efforts. The San Francisco Bay Area Wetlands Ecosystem Goals Project's (Goals Project) publication *Bayland Ecosystem Species and Community Profiles* (Goals Project, 2000) was consulted to characterize the importance of San Francisco Bay to avians in general and to identify important resident and migratory species in the area. The California Department of Fish and Game's California Natural Diversity Database (CNDDDB) (CDFG, 2012) and the U.S. Fish and Wildlife Service (USFWS, 2012) were consulted to identify threatened and endangered species and California species of special concern. **Table 2, Special-status Resident and Migratory Birds of the San Francisco Bay Estuary** prioritizes avian species of concern by their legal status: (a) listed as threatened or endangered under federal or state endangered species acts; (b) identified by CDFG as a California Species of Special Concern; or (c) identified by the Goals Project as a key wildlife species.

The Goals Project was a cooperative effort among nine state and federal agencies and nearly 100 Bay Area scientists to identify the kinds, amounts, and distribution of habitats needed to sustain healthy populations of fish and wildlife in and around San Francisco Bay, including waterfowl, shorebirds, and other bayland birds. Their publication identified 32 bird species of importance, with common species often being representative of a suite of birds using similar habitats. Four threatened or endangered species were identified in San Francisco Bay: the federally-threatened western snowy plover (*Charadrius alexandrinus*), the federally-endangered and state-endangered California clapper rail, the state-threatened California black rail, and the federally-endangered and state-endangered California least tern (*Sterna antillarum brownii*).



SOURCE: Google Maps

Halus Power Systems, 120282

Figure 4

Surrounding Structural Heights in the Project Area

The CNDDDB and USFWS also identified the state-threatened bank swallow (*Riparia riparia*). Eleven California Species of Special Concern were identified: tricolored blackbird (*Agelaius tricolor*), tule greater white-fronted goose (*Anser albifrons gambelli*), western burrowing owl (*Athene cinicularia*), short-eared owl (*Asio flammeus*), northern harrier (*Circus cyaneus*), yellow warbler (*Dendroica petechia brewsteri*), saltmarsh common yellowthroat (*Geothlypis trichas sinuosa*), song sparrow (*Melospiza melodia samuelis*, *M.m. pusillula*, *M. m. maxillaries*), white pelican (*Pelecanus erythrorhynchus*), savannah sparrow (*Passerculus sandwichensis*), and black skimmer (*Rhynchops niger*).

Thirty-two Local Species of Concern (Goals Project focal species) were identified, some with overlapping status as threatened or endangered or a California Species of Special Concern. Those with Local status only are: western grebe (*Aechmophorus occidentalis*), Clark's grebe (*Aechmophorus clarkia*), northern pintail (*Anas acuta*), mallard (*Anas platyrhynchos*), black turnstone (*Arenaria melanocephala*), canvasback (*Aythya valisineria*), red knot (*Calidris canutus*), western sandpiper (*Calidris mauri*), snowy egret (*Egretta thula*), common moorhen (*Gallinula chloropus*), california gull (*Larus californicus*), long-billed dowitcher (*Limnodromus scolopaceus*), marbled godwit (*Limosa fedoa*), surf scoter (*Melanitta perspicillata*), black-crowned night heron (*Nycticorax nycticorax*), ruddy duck (*Oxyura jamaicensis*), brown pelican (*Pelecanus occidentalis*), double-crested cormorant (*Phalacrocorax auritus*), Wilson's phalarope (*Phalaropus tricolor*), caspian tern (*Sterna caspia*), and Forster's tern (*Sterna forsteri*).

East Marsh, located 600 feet northwest of the proposed turbine location, provides habitat for California clapper rails and California black rails. Clapper rails are considered non-migratory residents of San Francisco Bay salt marshes but post-breeding dispersal has been documented from August to November (Goals Project, 2000). Black rails are considered migratory winter residents of the south San Francisco Bay. Migration is commonly believed to occur August through October, probably by juveniles. Their migration pattern in California is unclear and the extent of their winter dispersal is unknown (Goals Project, 2000). Other special-status residents of grasslands, marshes, and salt ponds within 1-2 miles of the project area include Alameda song sparrow, western burrowing owl, northern harrier, and western snowy plover (CDFG, 2012). Because of similarity of habitats to those at Roberts Landing, these species also may use or move through East Marsh and surrounding areas.

The Risk to Birds and Bats

Avians can be directly and indirectly affected by wind turbines. Direct impacts are caused by collisions with turbine blades or tower structures, and usually result in death. In the case of bats, direct impacts result from barotrauma—fatal internal organ damage caused by a drastic change in air pressure near the tips of rotating turbine blades. The risk for collision may be affected by turbine height, rotor diameter, blade rotation speed, avian abundance, species-specific bird flight behavior, avian perception of turbines, seasonal presence, and weather conditions. Unfortunately, there is a shortage of information on bird and bat behavior, migratory bird routes, and the ways in which topography, weather, time of day, and other factors affect bird and bat mortality (National Audubon Society, 2007).

Indirect impacts can range from temporary disturbance resulting from the noise and human presence associated with construction (which can reduce survivability by causing stress, decreased food intake, brood neglect, nest abandonment, etc.), to permanent displacement associated with operation of the new turbine/s. Some ornithologists believe that prey species, such as greater sage-grouse and prairie chickens, are behaviorally programmed to perceive tall structures as a threat, and therefore avoid using habitats where tall structures exist (National Audubon Society, 2007). Clapper rails and black rails, also being prey species with ground-dwelling

habits, may react similarly to wind turbines and other tall structures. Human disturbance from recreational use, utilities maintenance, and high-intensity adjacent uses (*i.e.*, frequent or loud activities outside the norm of their natural habitat) can disturb rails and cause home range abandonment with subsequent nesting failure; proposed use of adjacent land near marshes should, therefore, be carefully evaluated prior to being permitted (Goals Project, 2000).

Small Wind Power Projects

Small wind turbines are an emerging technology and their use is not currently widespread. Thus, policies relating to their implementation and practical experience with their impacts on avians and bats are also lacking. Small wind refers to wind energy systems that are generally less than 100 kW in capacity and produce electrical power for on-site use. These turbines are suitable for use with small businesses, small industrial facilities, family farms, agricultural operations, single homes, cabins, and even sailboats. A distinction is made here between turbines used for business operations versus home use. While the rated capacity may be similar, home-use turbines typically have a rotor diameter of 3-12 feet (1-3 meters), while those used for business/small industrial operations typically have a larger rotor diameter, such as the 44-foot diameter of the proposed Vestas turbine.

Several studies were identified that evaluated the impacts of single turbines, but their applicability in determining risk to birds at the proposed project is limited because those studies evaluated large turbines. At a single 200-foot tower wind turbine in Solano County, California, seven fatalities were documented from September 1982 to January 1983, and the total fatality estimate with adjustments for scavenger removal and searcher efficiency was estimated at 54 birds (Byrne 1983, 1985 *in* Erickson et. al., 2005); a study in Sandusky, Ohio monitored a single, large turbine for avian mortality during four migratory seasons and found two dead birds during this period (Gauthreaux, 1994 *in* Erickson et. al., 2005); two large experimental turbines and a meteorological tower in Wyoming were monitored for avian mortality in the early 1980s, where twenty-five fatalities were found over a one-year period. Most fatalities involved passerines that had collided with guy wires on the meteorological tower (U.S. Bureau of Reclamation 1984 *in* Erickson et. al., 2005).

Recent single turbine projects in or near San Francisco Bay marsh habitat include the construction of a single large wind turbine at the Anheuser-Busch facility and a string of four small turbines at the Fairfield-Suisun Sewer District, both in the City of Fairfield. Slightly beyond the San Francisco Bay but within freshwater marsh avian habitat, the same Vestas turbine as proposed here was constructed at the Rio Viento RV Park and Campground near Rio Vista, California. This turbine, located on Sherman Island in the San Joaquin-Sacramento River Delta, became operational in 2007. The Rio Viento turbine was not subject to environmental review, and no pre- or post-construction monitoring was required (Halus Power Systems, 2012).

The Anheuser-Busch turbine has a 1.5 megawatt rated capacity and is on a 320-foot tower, and became operational in fall 2011. The four turbines at Fairfield-Suisun Sewer District have a total rated capacity of 200 kW. Towers are between 80 and 100 feet tall. These turbines became operational in 2010. Fatality monitoring is not presently required at the Anheuser-Busch facility but remains a potential requirement. One year of post-construction monitoring was required at Fairfield-Suisun Sewer District (City of Fairfield Planning Department, pers. comm., 2012); however, fatality monitoring data is not readily available to the public for this project and was not obtained for review.

**TABLE 2
SPECIAL-STATUS RESIDENT AND MIGRATORY BIRDS
OF THE SAN FRANCISCO BAY ESTUARY**

Scientific Name Common Name	Listing Status USFWS/ CDFG/ Local	General Habitat	Potential for Species Occurrence in the Project Area or to be Affected by the Project	Residency or Period of Migration
FEDERAL OR STATE THREATENED AND ENDANGERED SPECIES				
<i>Charadrius alexandrinus</i> Western snowy plover	FT/CSC/— Goals Project focal species	Forage in tidal flats. Nest on salt pond levees and around pond edges.	Interior nesting populations generally migrate to the coast in winter. Salt ponds occur within 2 miles; collision potential when arriving/dispersing.	Resident and migratory. Jul.-Oct. dispersal to the coast; Mar.-Apr. arrival to salt ponds.
<i>Laterallus jamaicensis coturniculus</i> California black rail	—/ST/— Goals Project focal species	Salt and freshwater marshes.	Seasonally present in adjacent East Marsh. Primarily a ground bird. Collision potential when arriving/dispersing.	Winter resident with Aug.-Oct. dispersal
<i>Rallus longirostris obsoletus</i> California clapper rail	FE/SE/— Goals Project focal species	Salt marshes.	Present year-round in adjacent East Marsh. Primarily a ground bird. Collision potential when arriving/dispersing.	Year-round resident with Aug.-Nov. dispersal
<i>Riparia riparia</i> Bank swallow	—/ST/—	Rivers, streams, lakes, and ocean coasts.	Migratory and a widely-dispersing species. Breeding colonies within 10 miles in San Mateo and San Francisco counties. Collision potential during migration and dispersal.	Migratory. Mar.-May arrival; Jun.-July dispersal
<i>Sterna antillarum browni</i> California least tern	FE/SE/— Goals Project focal species	Estuaries, sandy beaches, salt flats with sparse vegetation.	Forage in central and south San Francisco Bay. Present within 3 miles at nearby Hayward Regional Shoreline Park. One of the largest breeding populations occurs at Alameda Point. Collision potential during local and regional movements.	Migratory. Apr. arrival. Aug.-Sept. dispersal.
STATE SPECIES OF SPECIAL CONCERN				
<i>Agelaius tricolor</i> Tricolored blackbird	—/CSC/—/	Freshwater marshes with dense stands of cattails or bulrushes, occasionally in willows, thistles, mustard, blackberry brambles, and dense shrubs and grains.	Nesting populations within 10 miles but greater than 5 miles from project area. Collision potential during migration and dispersal.	Migratory. Spring/summer
<i>Anser albifrons gambelli</i> Tule greater white-fronted goose (representative of geese and swans)	—/CSC/— Goals Project focal species	Intertidal mudflats and freshwater marshes.	Winter resident of the North Bay. Other represented species are winter residents of the central Bay. Collision potential during local and regional movements.	Migratory. Sept. arrival. Feb. dispersal.
<i>Athene cucularia</i> Western burrowing owl	—/CSC/— Goals Project focal species	Flat coastal lowlands and low- growing grasslands with burrowing mammals.	Resident within 1 mile at nearby Hayward Shoreline Regional Park. Collision potential while foraging.	Resident.
<i>Asio flammeus</i> Short-eared owl	—/CSC/—	Salt marshes and freshwater marshes.	Recorded nesting occurrence within 10 miles; suitable habitat at East Marsh. Collision potential while foraging.	Resident and migratory.

Scientific Name Common Name	Listing Status USFWS/ CDFG/ Local	General Habitat	Potential for Species Occurrence in the Project Area or to be Affected by the Project	Residency or Period of Migration
STATE SPECIES OF SPECIAL CONCERN (continued)				
<i>Circus cyaneus</i> Northern harrier	-/CSC/-	Marshlands, tidal flats, fields, and open grasslands.	Recorded nesting occurrence within 10 miles; suitable habitat at East Marsh. Collision potential while foraging.	Resident.
<i>Dendroica petechia brewsteri</i> Yellow warbler	-/CSC/-	Dense riparian vegetation, usually willows, in close proximity to water.	Recorded nesting occurrence within 10 miles. Unlikely to occur in the project area. Collision potential during migration.	Migratory. Breeding resident Mar.- Oct.
<i>Geothlypis trichas sinuosa</i> Saltmarsh common yellowthroat	-/CSC/- Goals Project focal species	Fresh and brackish marsh associated with Bay wetlands; occurs in salt marsh during the winter.	Recorded nesting occurrence within 10 miles; suitable habitat at East Marsh. Collision potential during local and regional movements.	Resident.
<i>Melospiza melodia samuelis</i> , <i>M.m. pusillula</i> , <i>M. m. maxillaris</i> Song sparrow	-/CSC/- Goals Project focal species	Tidal salt marshes, seasonal wetlands, intertidal mudflats, adjacent uplands.	Present in East Marsh. Collision potential during local and regional movements.	Resident.
<i>Pelecanus erythrorhynchos</i> White pelican	-/CSC/- Goals Project focal species	Shallow water, dikes and levees of salt ponds.	Wintering population in Hayward marshes. Collision potential during local and regional movements.	Migratory. Present Jun.- Dec.
<i>Passerculus sandwichensis</i> Savannah sparrow	-/CSC/- Goals Project focal species	Salt marshes and moist grasslands.	Suitable habitat present at East Marsh. Collision potential during local and regional movements.	Resident.
<i>Rhynchops niger</i> Black skimmer	-/CSC/-	Islands, mud flats.	Nesting population present within 5 miles, in Santa Clara County. Collision potential during local and regional movements.	Resident.
SPECIES OF LOCAL CONCERN - San Francisco Bay Area Wetlands Ecosystem Goals Project				
<i>Aechmophorus occidentalis</i> Western grebe	Goals Project focal species	Sheltered coves and sloughs, reservoirs.	Large numbers occur in Richardson's Bay and other areas where boaters are restricted. Collision potential during local and regional movements.	Non-breeding resident (does not breed in the Bay).
<i>Aechmophorus clarkii</i> Clark's grebe	Goals Project focal species	Sheltered coves and sloughs, reservoirs.	Large numbers occur in Richardson's Bay and other areas where boaters are restricted. Collision potential during local and regional movements.	Non-breeding resident (does not breed in the Bay).
<i>Anas acuta</i> Northern pintail (representative of ducks using similar habitats).	Goals Project focal species	Bays, mudflats, salt ponds, diked fresh and estuarine wetlands.	San Francisco Bay is an important wintering area. Collision potential during local and regional movements.	Resident and migratory. Breed and winter in San Francisco Bay.
<i>Anas platyrhynchos</i> Mallard (representative of dabbling ducks)	Goals Project focal species	Marshes, lagoons, baylands, managed wetlands, salt ponds.	San Francisco Bay is an important wintering area. Collision potential during local and regional movements.	Resident and migratory. Breed and winter in San Francisco Bay.
<i>Arenaria melanocephala</i> Black turnstone (representative of shorebirds using rocky shores)	Goals Project focal species	Rocky, unvegetated shores, intertidal mudflats, sandflats, beaches.	Not abundant in the San Francisco Bay. Collision potential during local and regional movements.	Migratory. Non-breeding winter resident.

Scientific Name Common Name	Listing Status USFWS/ CDFG/ Local	General Habitat	Potential for Species Occurrence in the Project Area or to be Affected by the Project	Residency or Period of Migration
SPECIES OF LOCAL CONCERN - San Francisco Bay Area Wetlands Ecosystem Goals Project (continued)				
<i>Aythya valisineria</i> Canvasback (representative of species using similar habitats)	Goals Project focal species	Estuarine and lacustrine low-salinity shallow-water habitats; intertidal mudflats.	South Bay salt ponds are used by thousands of birds. Collision potential during local and regional movements.	Migratory. Winter resident. Sept.-Nov. arrival; Feb.-Apr. departure.
<i>Calidris canutus</i> Red knot (representative of dowitchers, dunlins, and some plovers)	Goals Project focal species	Tidal flats, salt ponds.	Uncommon in the San Francisco Bay. Hayward salt ponds are important roosting habitat. Collision potential during local and regional movements.	Migratory.
<i>Calidris mauri</i> Western sandpiper	Goals Project focal species	Tidal flats, salt ponds, managed wetlands, seasonal wetlands.	Hundreds of thousands of birds may concentrate in San Francisco Bay during migrations. Collision potential during local and regional movements.	Migratory. Jun.-Oct. arrival; Apr.-May departure.
<i>Egretta thula</i> Snowy egret	Goals Project focal species	Marshes, mudflats, beaches.	This species has recovered to its carrying capacity in San Francisco Bay. Suitable habitat at East Marsh. Collision potential during local movements.	Resident.
<i>Gallinula chloropus</i> Common Moorhen	Goals Project focal species	Salt marshes, brackish marshes, lakes, streams.	Common throughout the San Francisco Bay. Collision potential during local movements.	Resident.
<i>Larus californicus</i> California gull (representative of other gulls, terns)	Goals Project focal species	Salt ponds, salt pond levees, landfills.	Hundreds of birds breed in Alameda County at the Naval Air Station. Collision potential during local and regional movements.	Migratory. Breeding resident.
<i>Limnodromus scolopaceus</i> Long-billed dowitcher	Goals Project focal species	Fresh and brackish water wetlands, occasionally in salt marsh.	San Francisco Bay supports tens of thousands of wintering birds. Collision potential during local and regional movements.	Migratory. Mar.-May arrival. Jun.-Oct. dispersal.
<i>Limosa fedoa</i> Marbled godwit (representative of all large shorebird species)	Goals Project focal species	Tidal flats, sandy beaches, salt marshes, seasonal wetlands, salt ponds.	San Francisco Bay supports the second largest wintering concentration in the world, at 15,000-20,000 birds. Collision potential during local and regional movements.	Migratory. Winter resident. Jul.-Oct. arrival. Mar.-May departure.
<i>Melanitta perspicillata</i> Surf scoter (representative of sea ducks that use deeper, open water habitat)	Goals Project focal species	Open waters, marine and estuarine habitats, tidal wetlands.	San Francisco Bay is the most important inshore habitat in the eastern Pacific. Collision potential during local and regional movements.	Migratory. Winter resident, present from Oct.-May.
<i>Nycticorax nycticorax</i> Black-crowned night heron	Goals Project focal species	Brackish and salt marshes, margins of lakes and streams.	This species has recovered to stable populations in San Francisco Bay. Suitable habitat at East Marsh. Collision potential during local movements.	Resident.
<i>Oxyura jamaicensis</i> Ruddy duck	Goals Project focal species	Salt ponds, open wetlands, shallow lagoons, estuaries.	About 85% of the North American population winters in San Francisco Bay, crucial to wintering populations. Collision potential during local and regional movements.	Migratory. Winter resident. Sept.-Dec. arrival. Feb.-Apr. departure.
<i>Pelecanus occidentalis</i> Brown pelican	Goals Project focal species	All deeper waters of the Bay, including salt ponds and creek mouths.	Recently de-listed as a federal endangered species. Uncommon in San Francisco Bay. Several hundred may be present each summer and fall. Collision potential during local and regional movements.	Migratory, non-breeding. Present in summer, fall, and winter.

Scientific Name Common Name	Listing Status USFWS/ CDFG/ Local	General Habitat	Potential for Species Occurrence in the Project Area or to be Affected by the Project	Residency or Period of Migration
SPECIES OF LOCAL CONCERN — San Francisco Bay Area Wetlands Ecosystem Goals Project (continued)				
<i>Phalacrocorax auritus</i> Double-crested cormorant	Goals Project focal species	Inland bodies of fresh, brackish, and saline water.	Widespread in San Francisco Bay; around 10,000 individuals. Collision potential during local and regional movements.	Resident.
<i>Phalaropus tricolor</i> Wilson's phalarope (representative of shorebirds using salt ponds)	Goals Project focal species	Salt ponds, levees and islands, mudflats.	The South Bay is the area of greatest importance to the species. Peak numbers occur in July, up to 40,000 birds. Collision potential during local and regional movements.	Migratory.
<i>Sterna caspia</i> Caspian tern	Goals Project focal species	Open ocean and bay, salt ponds, marshes, freshwater ponds, rivers, reservoirs.	Approximately 1,450 nesting pairs reside in San Francisco Bay. Nesting occurs at Hayward Shoreline Regional Park. Collision potential during local and regional movements.	Migratory. Breeds locally. Aug. dispersal.
<i>Sterna forsteri</i> Forster's tern	Goals Project focal species	Open water, salt ponds marshes, estuarine habitats.	Approximately 2,000 birds in San Francisco Bay. Breeding colonies occur in the south bay. Collision potential during local and regional movements.	Migratory. Breeds locally. Migrants and local breeders present Apr.-Nov.

Source: Goals Project, 2000; CDFG, 2012.

Vestas turbines were among the first generation of wind turbines installed in the Altamont Pass Wind Resource Area in California, and, along with all older-generation turbines, are blamed for a high proportion of avian deaths in that area (California Energy Commission, 2009; Smallwood, 2010). Nonetheless, the Altamont experience may not apply to the proposed project area and numerous studies have found that bird abundance and flight behavior, rather than turbine characteristics, are more predictive of collision risk, as discussed below.

Impact Studies at Large Wind Farm Projects

There is a clear difference between large wind farms and single tower installations. Wind farm impacts are probably density-dependent, both the density of turbines and the density of resident and migratory birds. However, most applicable research has been conducted at large facilities and the literature should be noted even for a small project such as the one proposed. Studies have wrestled with identifying causes and effects of avian mortality against a heterogeneous background of turbine type; turbines going in and out of operation; repowering; variable turbine power-output; changing weather and seasons; varied land uses, and very limited information about avian populations, migration patterns, and fluctuating prey densities. As a consequence, study results are often unclear, and sometimes inconclusive or conflicting, making it difficult to identify causes of, implement effective strategies for, and above all extrapolate to small wind projects. (ESA, 2011).

Reports reviewed for this assessment include Smallwood's (2010) comparisons of the effects of relative turbine sizes; among other factors, Smallwood's (2010b) observation the old-generation turbines kill more birds per unit of energy generated than repowered wind farms, and Smallwood and Thelander's (2004) finding that configuration of multiple towers or strings of towers affects mortality, all are suggestive that multiple tower sites with older generations of turbines are a qualitatively and quantitatively different than single-tower facilities.

Other sources reviewed included Curry and Kerlinger (2001), Barclay et al. (2007), (de Lucas et al., 2008), Hötter et al. (2006), and Moorehead and Epstein, 1985 in Curry and Kerlinger, (2007). All or most of these found various types of impacts and different contributing causative factors when studying collisions at wind farms and were evaluated for the discussion which follows.

Implications for Proposed Project Risk

The applicability of these studies, especially Smallwood's (2010) at Altamont, to the proposed project is questionable due to differences in topography, the suite of bird species and their flight characteristics, landscape, and turbine density. Red-tailed hawk, American kestrel, barn owl, burrowing owl, and golden eagle comprise the majority of raptor fatalities in the Altamont. While these species are likely to be at least seasonally present in the project region, their populations are probably lower in the project region than in the Altamont, the topography is very different, and it should not be assumed these species will be disproportionately at risk from the proposed project. Alternately, based on observed correlations between local bird presence/abundance and collision risk in the Altamont, the local populations of California clapper rails and California black rails may be at greatest risk for collision with the proposed turbine. From a behavioral standpoint, this risk would seem to be greatly reduced due to the rails' ground-dwelling behavior and relatively little time spent in flight, though the risk would increase during seasonal migrations and dispersals. Study results summarized by Curry and Kerlinger (2007) indicate that the nocturnal migration of waterfowl, shorebirds, and songbirds occurs in most places across broad fronts at altitudes generally greater than 400 feet (122 meters), but some songbirds have been recorded flying below this height. Due to the relatively short tower height, the collision or barotrauma risk to bats resulting from the proposed project is not likely to be significant.

Regarding indirect impacts, some types of birds are disturbed and displaced more by wind turbine construction and operation than others. According to Curry and Kerlinger (2007), disturbance and displacement effects have been documented in grassland and prairie birds and in some waterfowl. Some European studies have demonstrated displacement of shorebirds. Resident raptors may be displaced by construction activities during the nesting season, but habituate to turbines after the construction phase. As previously noted, rails can be easily disturbed by human activities. Pedestrian trails around East Marsh are already subject to heavy recreational use including leashed and unleashed dogs, an adjacent power substation, and transmission towers (Dvorak, pers. observation); it is also worth noting that the tower would not actually be in the marsh but 600 feet away, which means that marsh birds would be in danger only if driven into the airspace while escaping a predator or other threat. East Marsh is also bordered by residential neighborhoods and industrial facilities. According to survey results of the clapper rail population in Hayward over a five-year period from 2005-2009, the population declined significantly the last two years (Spartina Project, 2009); however, it is unknown whether the survey period was sufficient to characterize a population trend. A small business/industrial-sized wind turbine in the area may blend in with the "background noise" of existing structures and recreation, or may be considered as contributing to a cumulative adverse effect on local rail population.

Despite the Altamont experience, fatalities are relatively infrequent events at wind farms (Curry and Kerlinger, 2007). In a recent review of the literature on U.S. wind farms, mortality estimates were similar among projects, averaging 2.51 birds per turbine per year and 3.19 birds per MW per year. A second, similar estimate for the average collision risk of all turbines in North America combined is 3.04 deaths per year per megawatt and 2.11 fatalities per turbine. Based on these figures applied to the project's 50 kW output, a low-end mortality estimate would be 0.152 deaths per year resulting from the proposed turbine. Thus, the turbine would have to operate for 6.5 years to result in one bird death. On a per-turbine basis, the high-end annual fatality average would be four birds per year. For common species, this level of fatality would not impact the species at a level of biological significance (a population level). However, the loss of four breeding adults annually from a population of threatened or endangered species could significantly impact the population. This risk should be considered in concert with other environmental risks to the population, including habitat loss, predation, and collision with other structures. Erickson et. al. (2001) found that buildings and windows kill between 98 million and 980 million birds annually, power lines kill up to 174 million birds annually, vehicles kill up to 80 million birds annually, and communication towers kill up to 50 million birds annually. By comparison, wind generation facilities kill up to 40,000 birds annually, or just a fraction of one percent. Erickson's research appears to be well accepted and perceived as scientifically valid. In this light, the scale of impact in context suggest that they would be less than significant, especially if certain mitigations are applied (see below).

Comparative Environmental Guidance for Small Wind Projects

Environmental guidance for small wind projects appears to be lacking at both a federal and state level. While the USFWS *Final Land Based Wind Energy Guidelines* (2012) were expected to include guidance for small scale and individual turbines, this recently-released document limited small wind guidance to a suggestion that small wind projects follow the same basic logic and tiered review process for utility-scale projects. No California or San Francisco Bay guidelines for small wind projects were identified. The best identified corollary or substitute for state guidelines is from the New Jersey Department of Environmental Protection, which issued *A Technical Manual for Evaluating Impacts of Wind Turbines Requiring Coastal Permits* to guide turbine siting on land and water in coastal areas; their tiered approach allows small wind projects with a rotor-swept area of less than 2,000 square feet to be constructed without surveys or mitigation but requires one year of post-construction monitoring

for small wind projects with a rotor-swept area between 2,000 and 4,000 square feet (this project would be less than 2,000 square feet). Projects with larger swept areas are subject to pre-construction avian use and abundance surveys, post-construction fatality monitoring, and other mitigations.

In Europe and Canada, where there is a higher prevalence of small wind (single turbine) and community wind (1-3 turbines) projects, coastal wetlands are usually regulated where other areas are not, and some provinces have established upfront regional thresholds for wind energy development at which small individual wind projects would begin to cumulatively resemble large wind farms. Canada's *Birds and Bird Habitat: Guidelines for Wind Power Projects* establishes the significance criteria for small and large wind project impacts as 14 birds/ turbine/ year at individual turbines or turbine groups; 0.2 raptors/ turbine/ year (all raptors) across a wind power project; 0.1 raptors/ turbine/ year (provincially tracked raptors) across a wind power project; or 2 raptors/wind power project (<10 turbines). These rates are greater than those predicted for the proposed project.

Local Examples

As previously noted, small wind or single-turbine projects in the San Francisco Bay area include the Anheuser-Busch turbine and the Fairfield-Suisun Sewer District four-turbine string. No pre-construction surveys were conducted for these projects. No environmental review was required for the Rio Viento RV Park and Campground turbine on Sherman Island. Post-construction fatality monitoring was required for one year at Fairfield-Suisun Sewer District, and post-construction fatality monitoring is a potential requirement for Anheuser-Busch. Both projects were reviewed under CEQA at the level of an Initial Study/Mitigated Negative Declaration (IS/MND). The proposed turbine differs from these examples, but the level of CEQA review, if any, for such a facility is determined by the lead agency according to its own discretion.

Recommendations

The turbine would be constructed in a heavily developed area that is largely industrial, the turbine is relatively small, the threatened and endangered bird species are ground-dwelling marsh residents with minimal-flight characteristics that greatly reduce their risk for collision, the biological risk appears to be low overall and low relative to other causes of collision mortality. The biological risk could be lower than habitat loss caused by global warming related to continued use of oil-dependent energy, and project approval need not wait for upfront resolution of future landscape-level concerns related to the density of small wind projects in the San Francisco Bay marsh-urban interface.

Should mitigation be deemed necessary by the lead agency, effective measures that could avoid or reduce potential impacts on birds could include weather-dependent shutdowns for brief periods during dense fog or heavy rain in an effort to offset the heightened collision risk to birds caused by inclement weather. If such shutdowns are infeasible, Halus Power Systems could make a financial contribution to continued *Invasive Spartina* Project operations to improve habitat for rail populations in the adjoining marsh.

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Technical Memorandum

TO: Louis Rigaud,
Halus Power Systems
2539 Grant Avenue
San Leandro, CA

FROM: Charles Bennett
Environmental Science Associates
550 Kearny Street, Suite 800
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DATE: September 20, 2012 (Rev. October 9, 2012)

SUBJECT: Evaluation of Potential Shadows
Proposed Vestas Wind Turbine,
San Leandro, California
ESA 120160

Initial Study Checklist
Halus Power Systems Wind Turbine
Attachment 8.

Summary

Introduction

ESA conducted a thorough analysis of potential shadow due to construction of a proposed Vestas Wind Turbine Generator (WTG) to be located at 2539 Grant Avenue, San Leandro, on the homes and residents to the north and northwest of the site. To accomplish this, ESA

- Modeled the outlines and topography of the site, the adjacent San Lorenzo Creek channel and its flood maintenance roads, the existing residential development that flanks the maintenance road north of the channel; and the physical characteristics of the WTG.
- Conducted a series of shadow simulations to identify those times of day and times of year when shadow from the project would approach or reach the residences,
- From a review of the shadow simulations and detailed analysis of potential shadows, determined whether shadow from the proposed WTG could reach the residences during the interval from one hour after sunrise to one hour before sunset on any day of the year.

Conclusion

The study determined that the proposed project would cast no shadows on the residences from one hour after sunrise to one hour before sunset throughout the year. In winter, as illustrated by the winter solstice case, shadow from the project (WTG) tower and hub would reach toward the southwestern corner of the residential development in the morning, but only as far as the channel of San Lorenzo

Creek. Furthermore, even considering the shadow from the highest position for the rotor blades, that shadow would not reach the residences during that time interval.

Project and Site

Project Description

Halus Power Systems, a San Leandro supplier of remanufactured wind turbines, is requesting approval from the City of San Leandro of approval of an 80-foot tall, single, 50kW wind turbine to be located in the middle of their property located at 2539 Grant Avenue.

The proposed wind turbine would be used for research and development purposes as part of the company's ongoing efforts to increase operational and energy efficiencies of the turbines it re-manufactures. The energy generated by the turbine would also offset the company's demand for non-renewable energy for their operations. As proposed, the project is a discretionary action by the City, which requires environmental review under the California Environmental Quality Act (CEQA).

Turbine specifications are identified below in Table 1, Summary of Turbine Specifications. The turbine would be erected upon a tubular tower, with a maximum blade height of approximately 100 feet and a ground clearance of approximately 51.5 feet. The target wind speed to achieve efficient power generation is 37.6 mph (16.8 m/s), and the turbine has a rotational speed of approximately 44 rpm. The cut-in wind speed is 7.4 mph (3.3 m/s) and the cut-off wind speed is 62 mph (28 m/s). An electronic wind vane allows the turbine to change its orientation relative to the wind.

**TABLE 1
SUMMARY OF TURBINE SPECIFICATIONS**

Specifications:	Vestas V17-90kW (Refurbished to be 50 kW)
Tubular Tower Height:	73.82 feet (22.6 meters)
Hub Height:	76 feet (23.2 meters)
Rotor Diameter:	44 feet (15.0 meters)
Total Height:	100 feet (30.5 meters)
Swept Area:	2,000 square feet (186 square meters)
Tip Ground Clearance:	51.5 feet (15.7 meters)
Blades:	3

SOURCE: Halus Power Systems, 2012

The digital model simplifies the geometry of the WTG, making the tower a column 6 ft. in diameter for its full height plus the height of the hub. This exaggerates the shadows cast by the real WTG. A plan view image of the digital model is shown in Figure 1 of the attached figures. Illustrations of shadows in the Figures that follow it are based on the project and existing building and topographic elements in this plan view.

Site Conditions

The proposed project is located within an area zoned as an Industrial General District, bordered by industrial properties to the west and east, and bordered by San Lorenzo Creek and a Residential Single-Family District to the north. To the northwest is open space known as East Marsh, which is a subsection of the City's Roberts Landing Shoreline Marshlands Enhancement area. This area is 600

feet from the proposed turbine location, and is separated from the project site by San Lorenzo Creek and its flood maintenance roads. The project area is bordered by the City of San Lorenzo to the south, and these parcels provide similar industrial land uses. The turbine location is proposed in an open laydown yard behind (north of) the Halus Power Systems building. This area provides 4 acres and a minimum of 100 feet of paved and open ground surrounding the turbine in any direction, and is 200 feet from any permanent structures.

Methodology and Shadow Calculations

Characteristics of Shadows from WTGs

Unlike the shadow from a new industrial building of a comparable height, the shadow from the proposed WTG would be very slender, since each element of the WTG is itself slender. The tubular tower is roughly 6 ft in diameter at the base and 3 ft in diameter at the top; the hub is about 4 ft in diameter; and the three rotor blades are less than 2 ft wide at the base and less than a foot at the tip.

For any tall structure, the edge of the structure's shadow on the ground blurs with distance – the greater the distance the shadow travels, the more the edge of the shadow blurs – primarily because the sun is a disk, and not a point source of light.

If the sun were a point source, the full shadow from each object would simply spread uniformly as distance increases; however, the sun is a disk, and is sufficiently large that it instead creates a full shadow region (an "umbra") that narrows with distance from the object. The blurred outer region of partial shadow is called the penumbra. For very slender objects, it is quite easy to be far enough away that the disk of the sun appears to surround the object. At such a distance, the full shadow cast by the object is not visible, rather what can be observed is a partial shadow, a decrease in the intensity of the sunlight. Examples include wires and cables on telephone poles, the metal lattice of the tall towers that carry high-voltage power lines, and of course, the many large communications towers on hilltops surrounding the Bay. For each example, if the observer is close enough, a full shadow, or umbra, can be seen, but at a given distance, the full shadow disappears, leaving only an indistinct partial shadow that continues to diminish at greater distances.

The sun's disk has an apparent size of approximately 32 minutes (0.53 degrees) of arc. As a direct result, for any slender object that is 1 foot across:

- at a distance of 108 ft., that object would appear the same width as the sun's disk; and,
- at a distance of 216 ft., the object would appear to be half the width of the sun's disk.

This shadow characteristic can be generalized into a rule of thumb – that the full shadow is gone at a distance of approximately 125 to 200 times the smaller dimension of the slender object, such as cable, telephone pole, tower or rotor blade. As a result, the full shadows from most of the component parts of the WTG, because most have a characteristic narrow dimension of 2 ft or less, will be not be distinct at distances of more than 250 ft to 400 ft. Some elements, such as the base of the tubular tower and the hub (nacelle) with a characteristic narrow dimension of 5 ft., will cast shadows that are more visible at

those distances. However, only the nacelle would be high enough off the ground to cast a sensible shadow as far as the edge of the Halus property.

Therefore, although the computer program uses the digital model to calculate and draw shadow outlines at locations far in excess of these distances, it is important to recognize that the sharply defined shadows shown in the attached figures do not accurately portray the diffuse shadows that actually occur and that, in fact, may or may not be seen on the ground at these distances.

Times of Day for Shadows

Every day of the year, the shadows from objects are extremely long as the sun is rising, quickly shorten and then move generally eastward as the sun rises to its peak at mid-day; shadows then lengthen as they continue their eastward motion, becoming extremely long just as the sun is setting. However, over the year, it is the mid-day shadows that change the most in length – ranging from being longest on the winter solstice to being shortest on the summer solstice.

For gardeners, workers, or for those at home during the day, the availability of sunlight and the new shadows of most concern are typically those that occur between mid-morning through mid-afternoon. A much more conservative shadow metric, which is applied in San Francisco for shadows on public parks, is to consider all shadow that occurs during the hours between one hour after sunrise and one hour before sunset, throughout the year. At an hour after sunrise or before sunset, the sun is very low in the sky, typically only 9° to 10° above the horizon, which means that shadows cast by objects will be approximately 6 times as long as the height of the objects.

Using this most stringent shadow criterion for assessing possible shadow effect, this analysis considered the range of shadows that could occur over the course of the year, from the first hour after sunrise to one hour before sunset. To summarize the characteristics of the year-round shadow:

- The trace during the day on the winter solstice marks the northern-most extent of shadow.
- The first shadows on the winter solstice, the equinox and the summer solstice mark the western-most extent of shadow.
- The last shadows on the winter solstice, the equinox and the summer solstice mark the eastern-most extent of shadow.
- The trace during the day on the summer solstice marks the southern-most extent of shadow.

Digital Model and Shadow Projections

A digital scale model of the site and vicinity was constructed to show the outlines and topography of the site, adjacent buildings, as well as the adjacent San Lorenzo Creek channel and its flood maintenance roads, the existing residential development that flanks the maintenance road north of the channel; and the physical characteristics of the WTG. This model was used to cast shadows on three select days of the year:

- winter solstice (December 20th), when days are shortest and mid-day shadows the longest;

- equinox (March 20th or September 20th), when day and night are of equal length; and,
- summer solstice (June 20th), when days are longest and mid-day shadows the shortest;
- The resulting traces of the shadow show the full range of motion for all shadows from the proposed Vestas WTG over the full year.

To illustrate the full extent of shadow motion, the images shown in the attached figures include:

- seven times of day, from 8:30 AM to 3:30 PM, on the winter solstice, when mid-day shadows reach their farthest northward reach;
- three times of day, 7:30 AM, Noon and 5:30 PM, on the vernal equinox, when the trace of shadows over the course of a day runs generally from west to east; and,
- three times of day, 7:00 AM, Noon and 5:30 PM (Pacific Daylight Time), on the summer solstice, when morning shadows begin to the west-southwest, mid-day shadows are shortest of any time of year, and evening shadows end to the east-southeast.

Conclusions

Using the most stringent criterion for possible shadow effect, the study determined that the proposed project would cast no shadows on the residences from one hour after sunrise to one hour before sunset throughout the year.

In winter, as illustrated by the winter solstice case, Figure 2, shadow from the project (WTG) tower and hub would reach toward the southwestern corner of the residential development in the morning, but only each as far as the channel of San Lorenzo Creek.

Furthermore, even considering the shadow from the highest position for the rotor blades, that shadow would not reach the residences during that time interval.

Finally, although sharply defined shadows are projected here for first and last hours of the day, they overstate the real shadow effect of the WTG and do not accurately portray the diffuse shadows that actually may or may not be seen on the ground.



Figures

- Figure 1: Digital Model
- Figure 2: December 21, Shadow at 08:30 AM
Figure 3: December 21, Shadow at 09:00 AM
Figure 4: December 21, Shadow at 11:00 AM
Figure 5: December 21, Shadow at Noon
Figure 6: December 21, Shadow at 01:00 PM
Figure 7: December 21, Shadow at 03:00 PM
Figure 8: December 21, Shadow at 03:00 PM
- Figure 9: March 20, Shadow at 07:30 AM
Figure 10: March 20, Shadow at Noon
Figure 11: March 20, Shadow at 05:15 AM
- Figure 12: June 20, Shadow at 07:00 AM (PDT)
Figure 13: June 20, Shadow at 01:00 PM (PDT)
Figure 14: June 20, Shadow at 07:30 PM (PDT)

Halus Vestas WTG
Scale 1" = 200 ft.

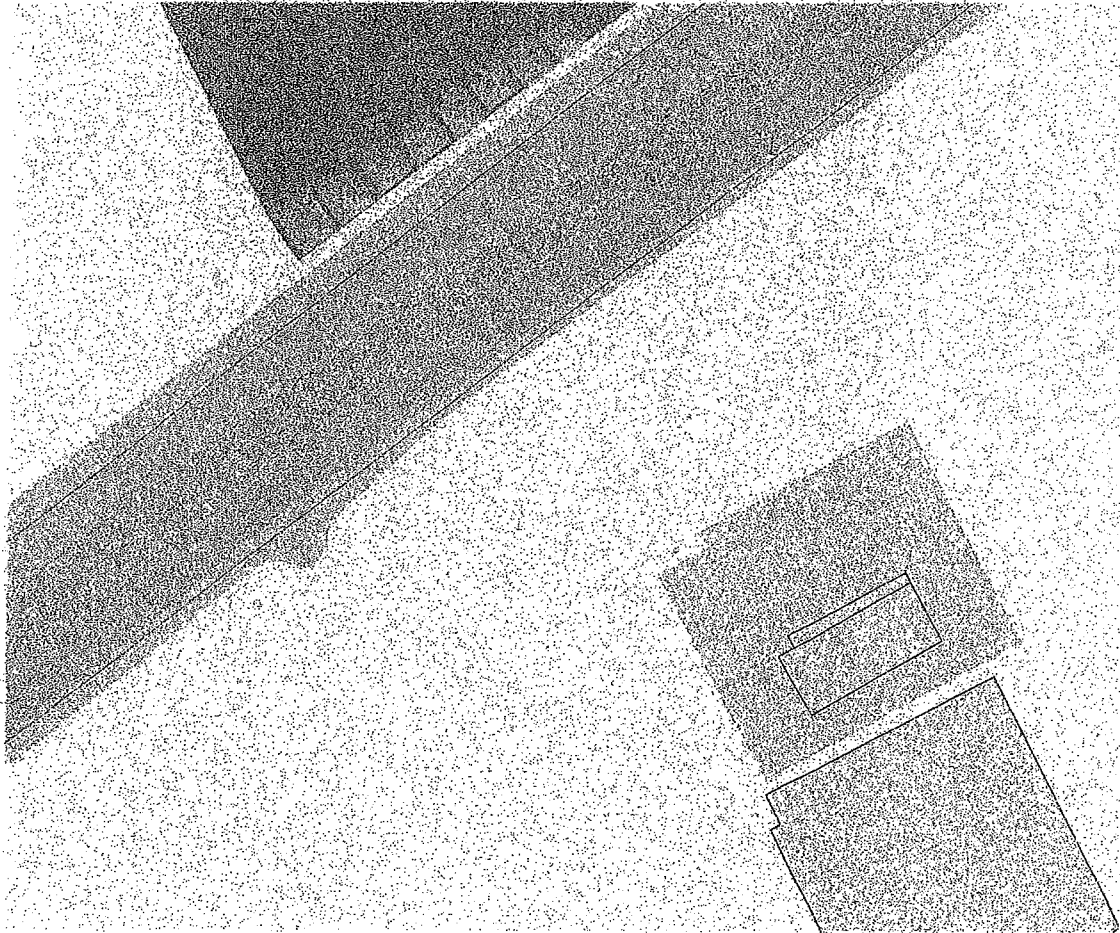


Figure 1:
Digital Model

Halus Vestas WTG
Scale 1" = 200 ft.

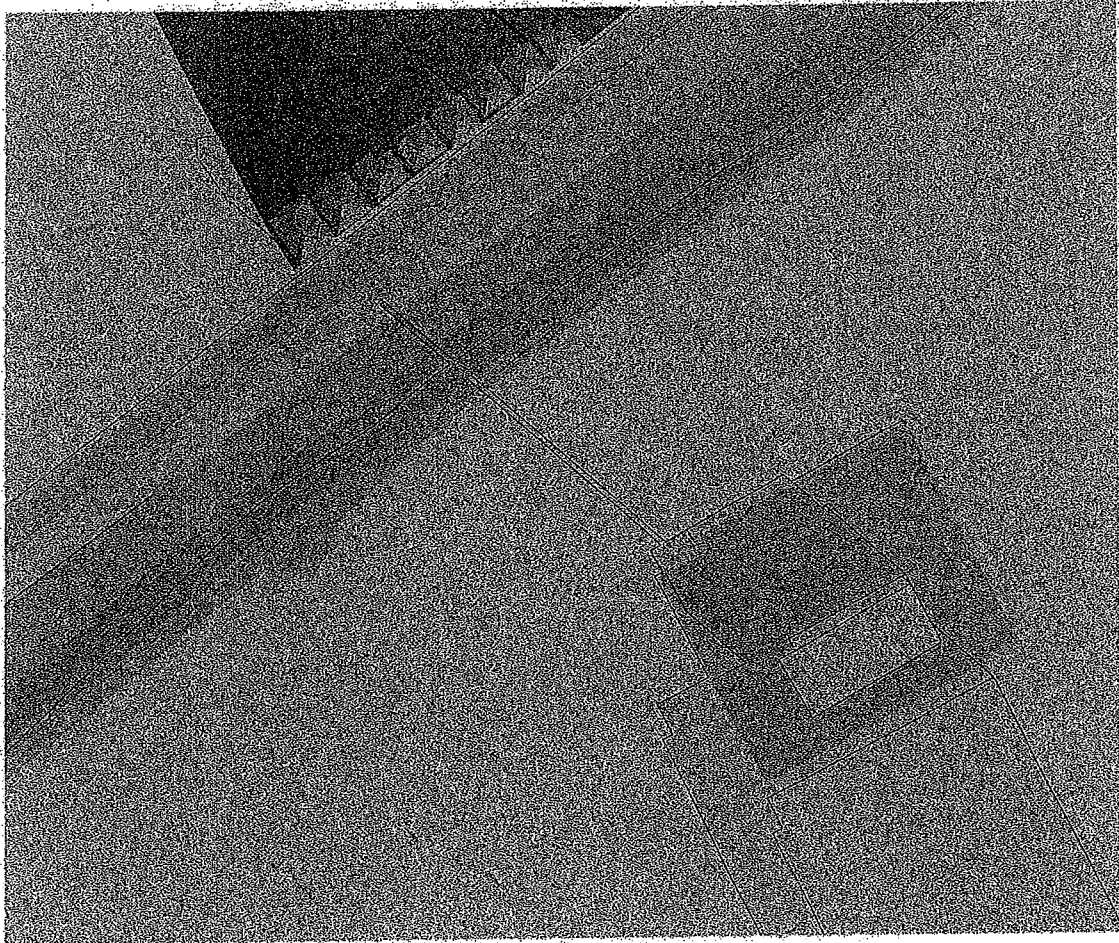


Figure 2:
December 21, Shadow at 08:30 AM

Halus Vestas WTG
Scale 1" = 200 ft.

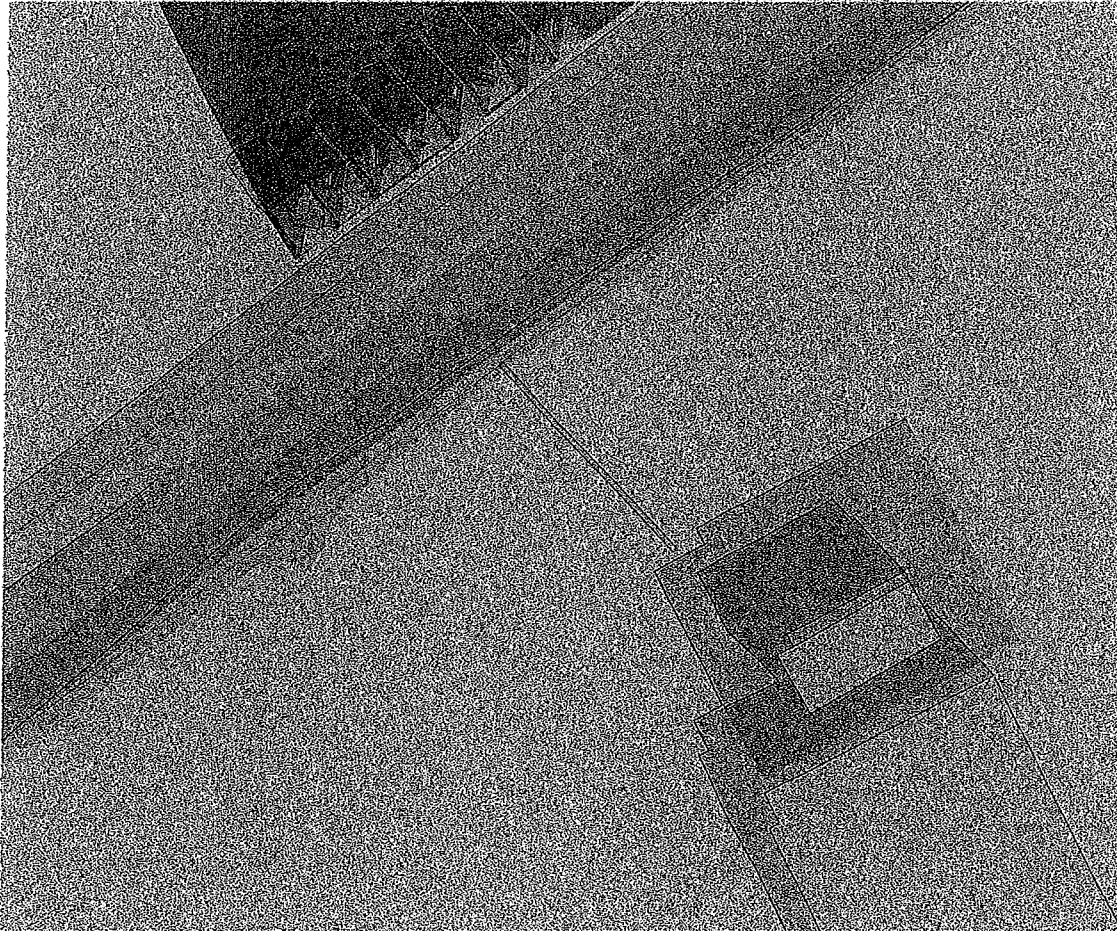


Figure 3:
December 21, Shadow at 09:00 AM

Halus Vestas WTG
Scale 1" = 200 ft.

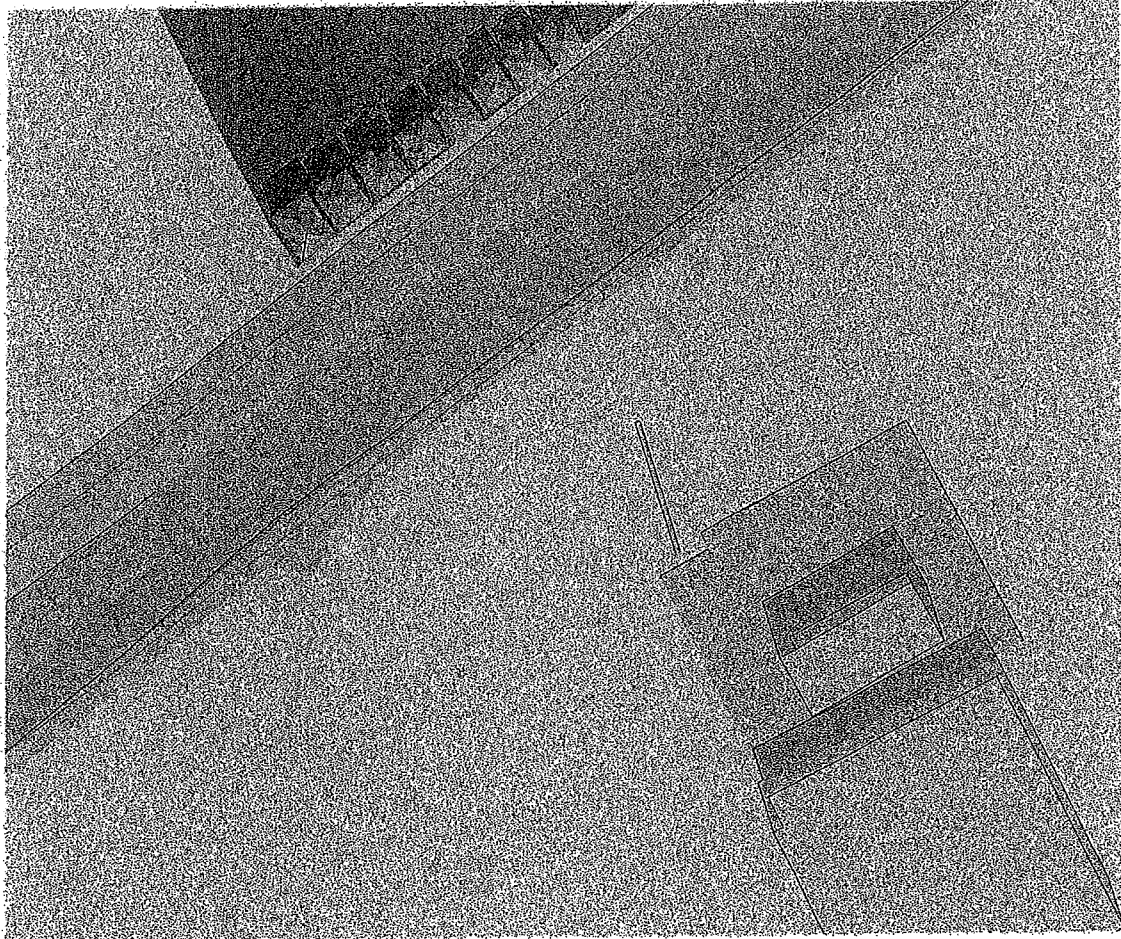


Figure 4:
December 21, Shadow at 11:00 AM

Halus Vestas WTG
Scale 1" = 200 ft.

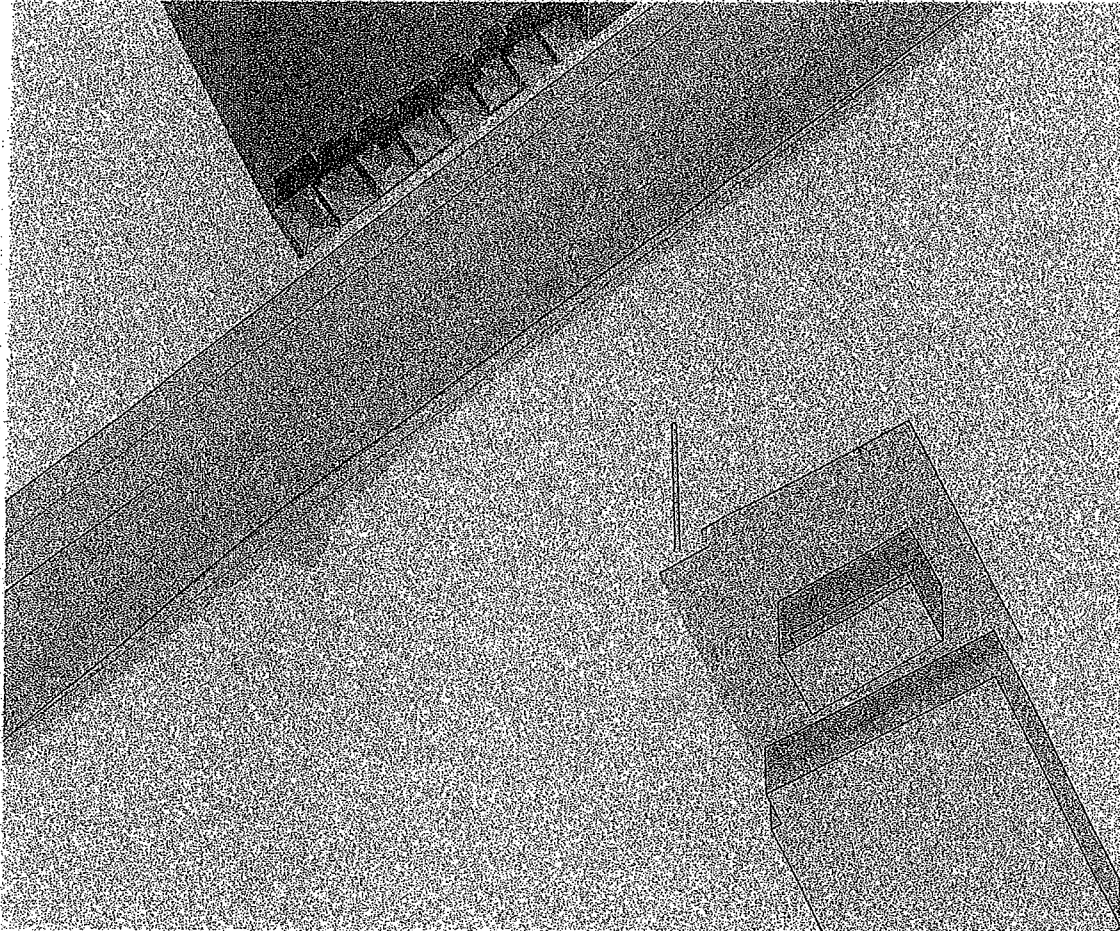


Figure 5:
December 21, Shadow at 12:00 Noon

Halus Vestas WTG
Scale 1" = 200 ft.

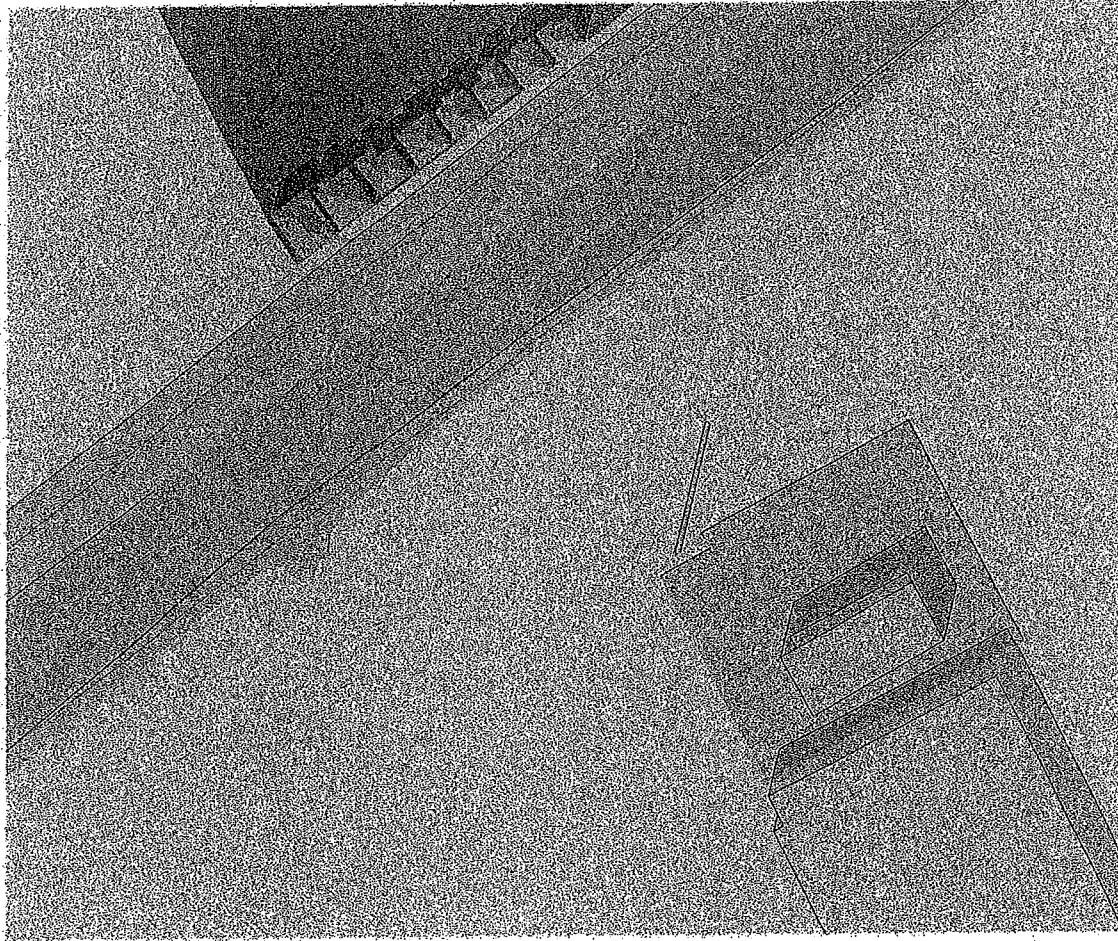


Figure 6:
December 21, Shadow at 01:00 PM

Halus Vestas WTG
Scale 1" = 200 ft.

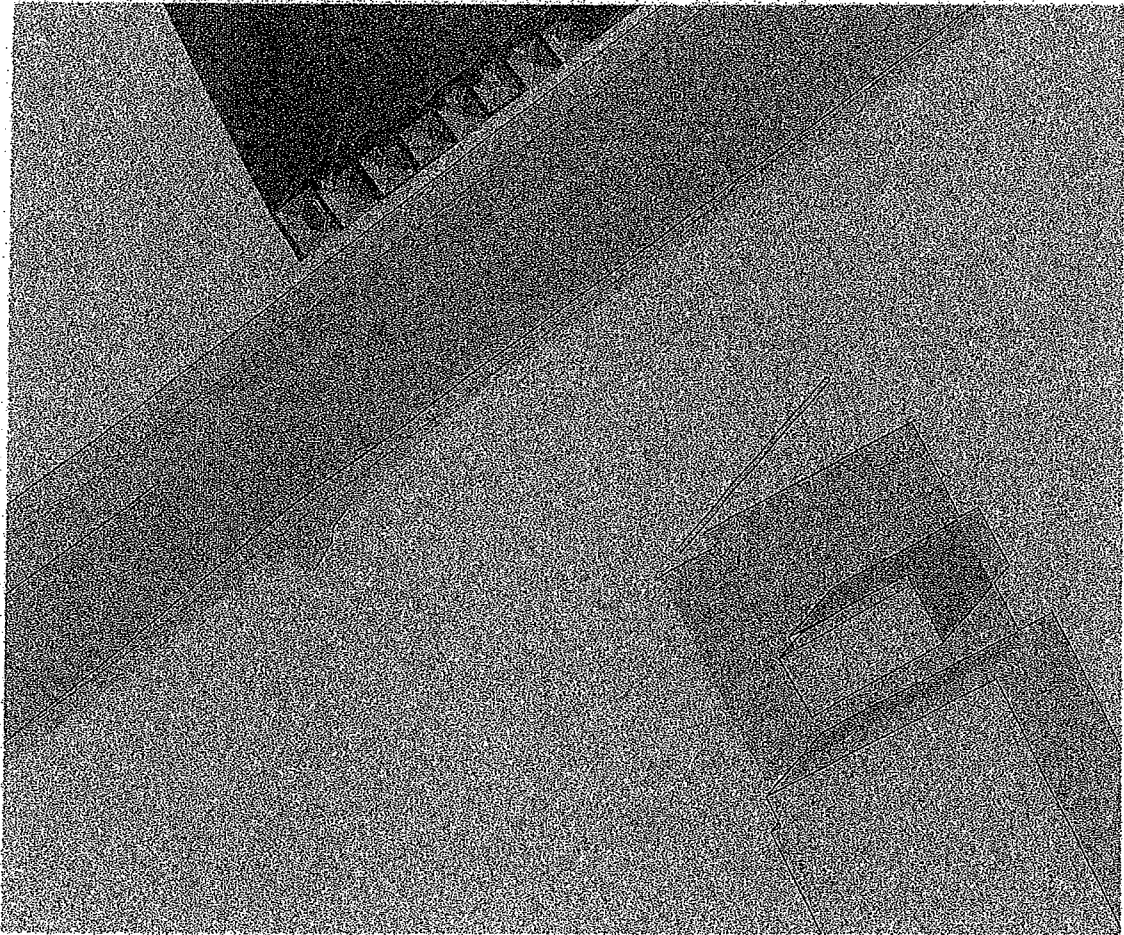


Figure 7:
December 21, Shadow at 03:00 PM

Halus Vestas WTG
Scale 1" = 200 ft.

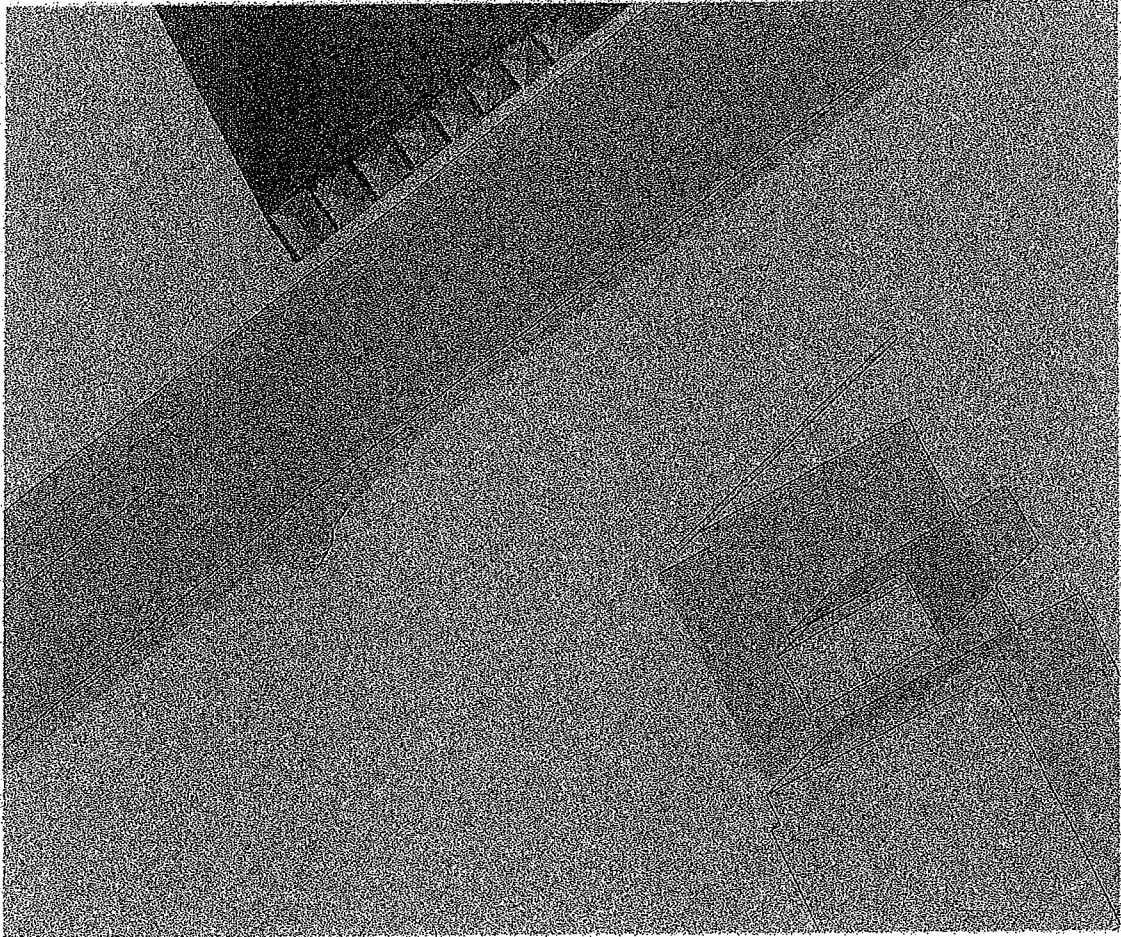


Figure 8:
December 21, Shadow at 03:30 PM

Halus Vestas WTG
Scale 1" = 200 ft.

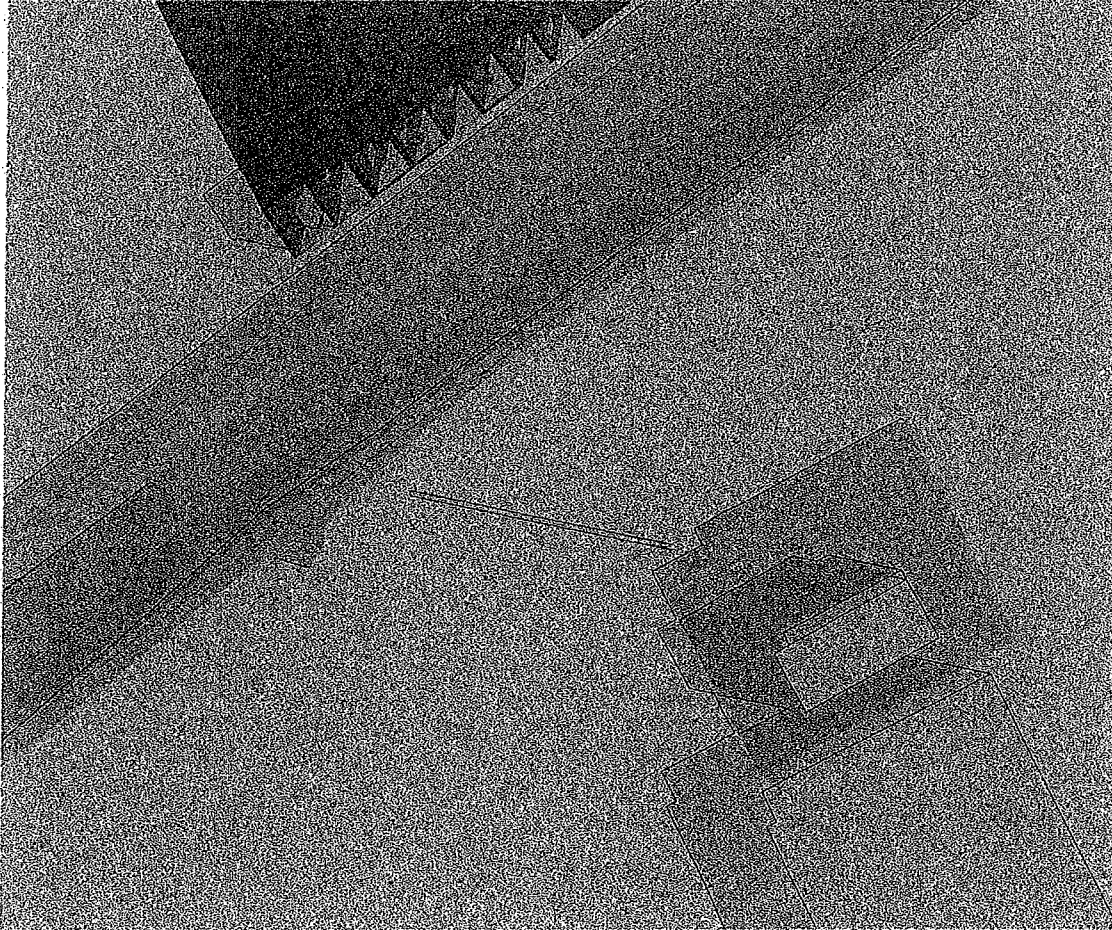


Figure 9:
March 20, Shadow at 07:30 AM

Halus Vestas WTG
Scale 1" = 200 ft.

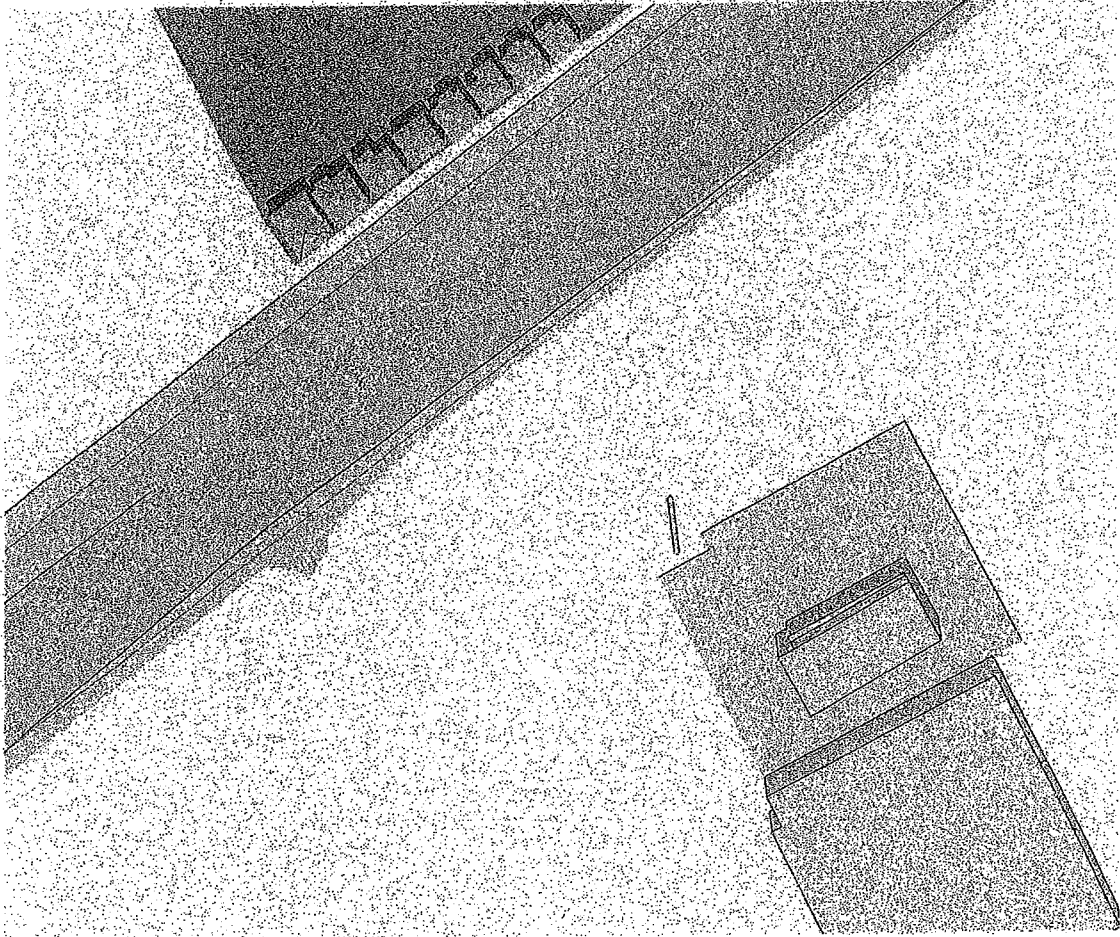


Figure 10:
March 20, Shadow at 12:00 Noon

Halus Vestas WTG
Scale 1" = 200 ft.

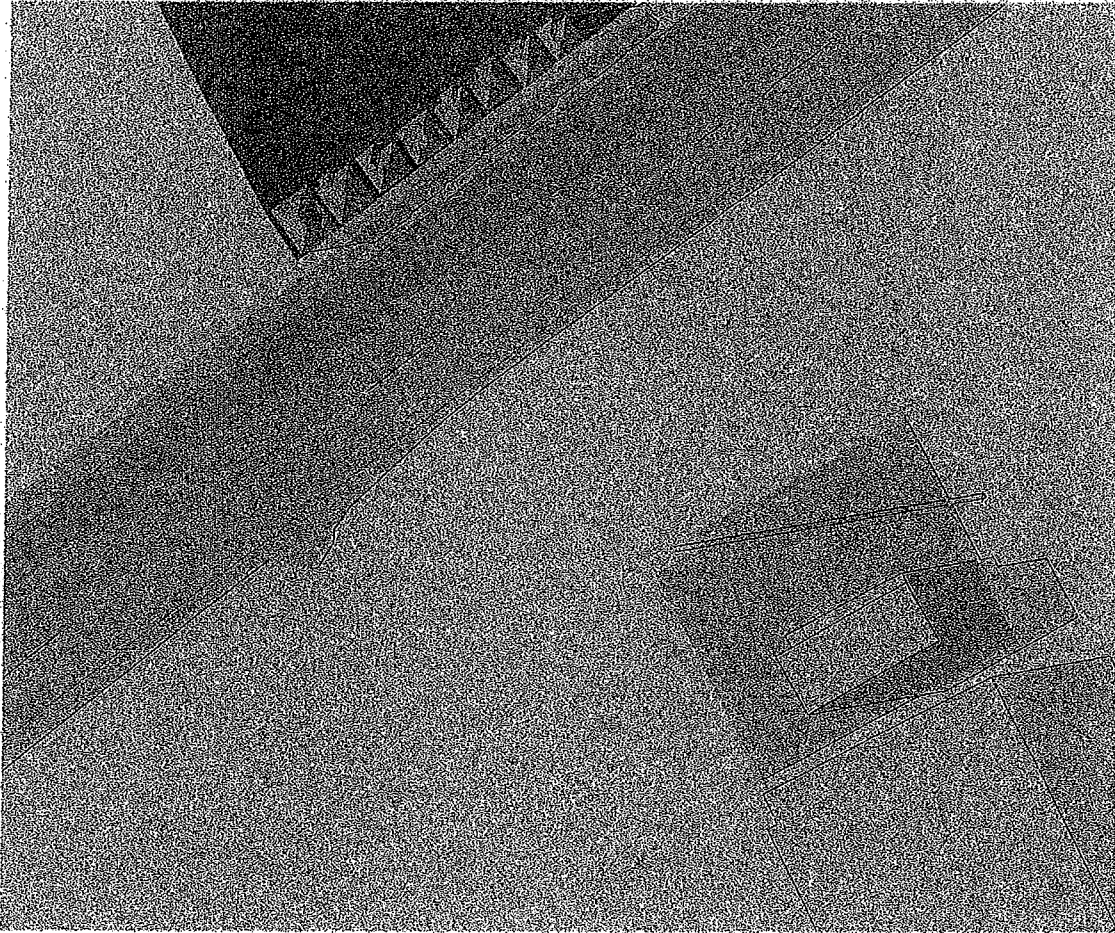


Figure 11:
March 20, Shadow at 05:15 PM

Halus Vestas WTG
Scale 1" = 200 ft.

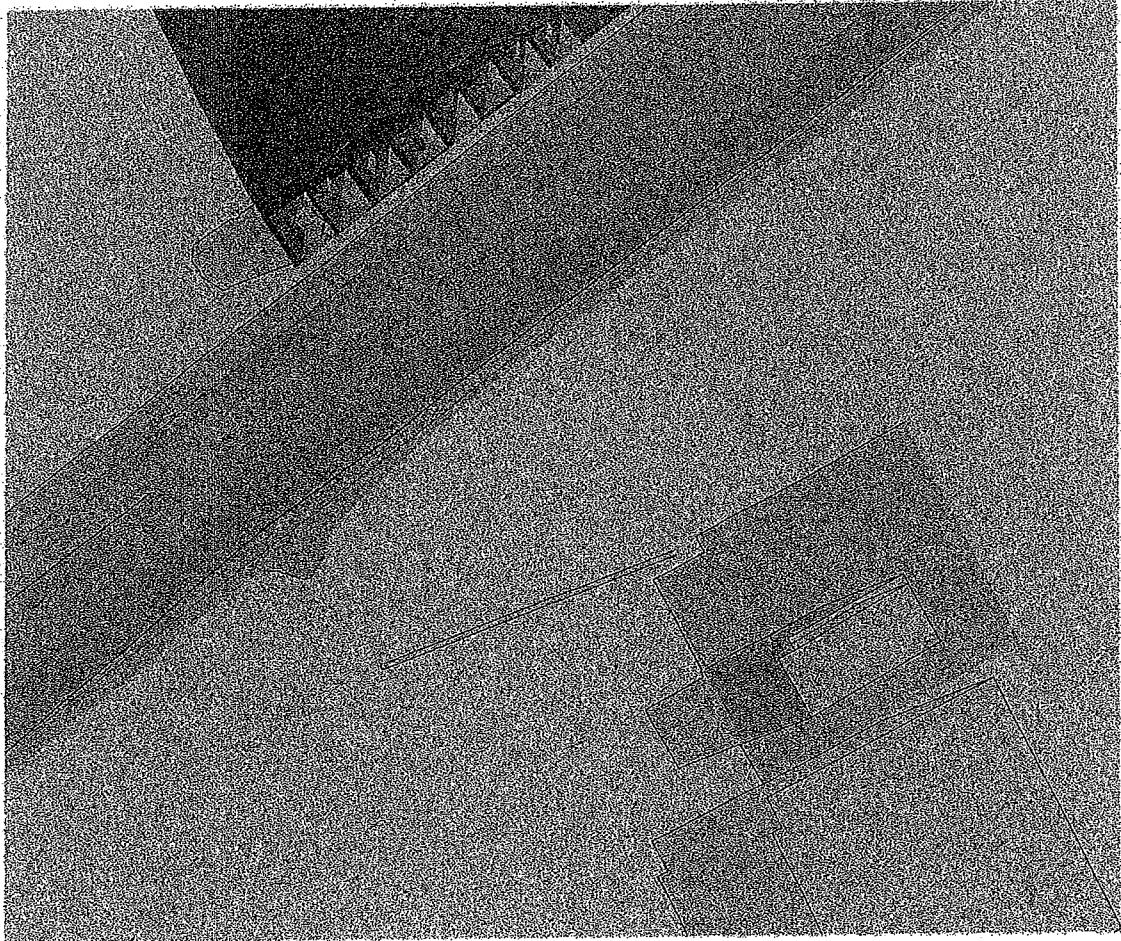


Figure 12:
June 20, Shadow at 07:00 AM

Halus Vestas WTG
Scale 1" = 200 ft.

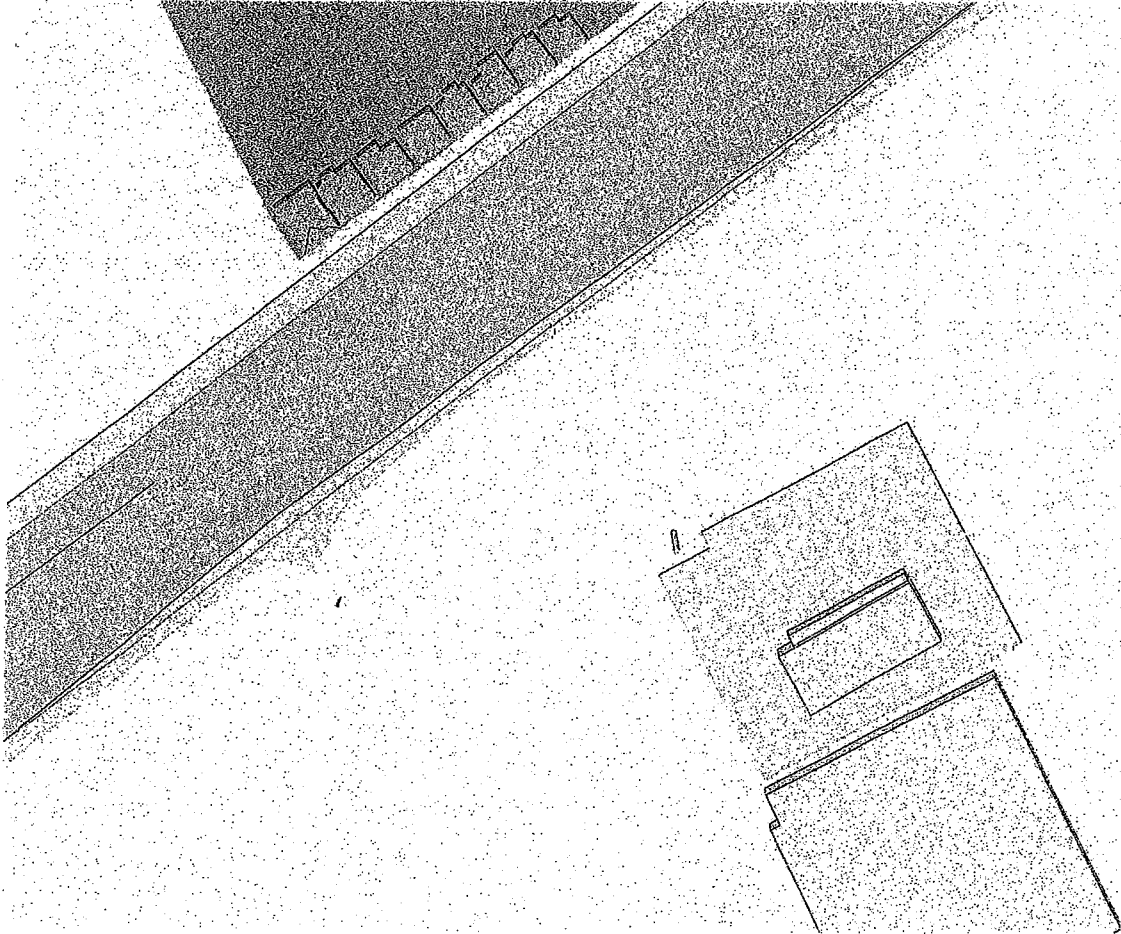


Figure 13:
June 20, Shadow at 01:00 PM

Halus Vestas WTG
Scale 1" = 200 ft.

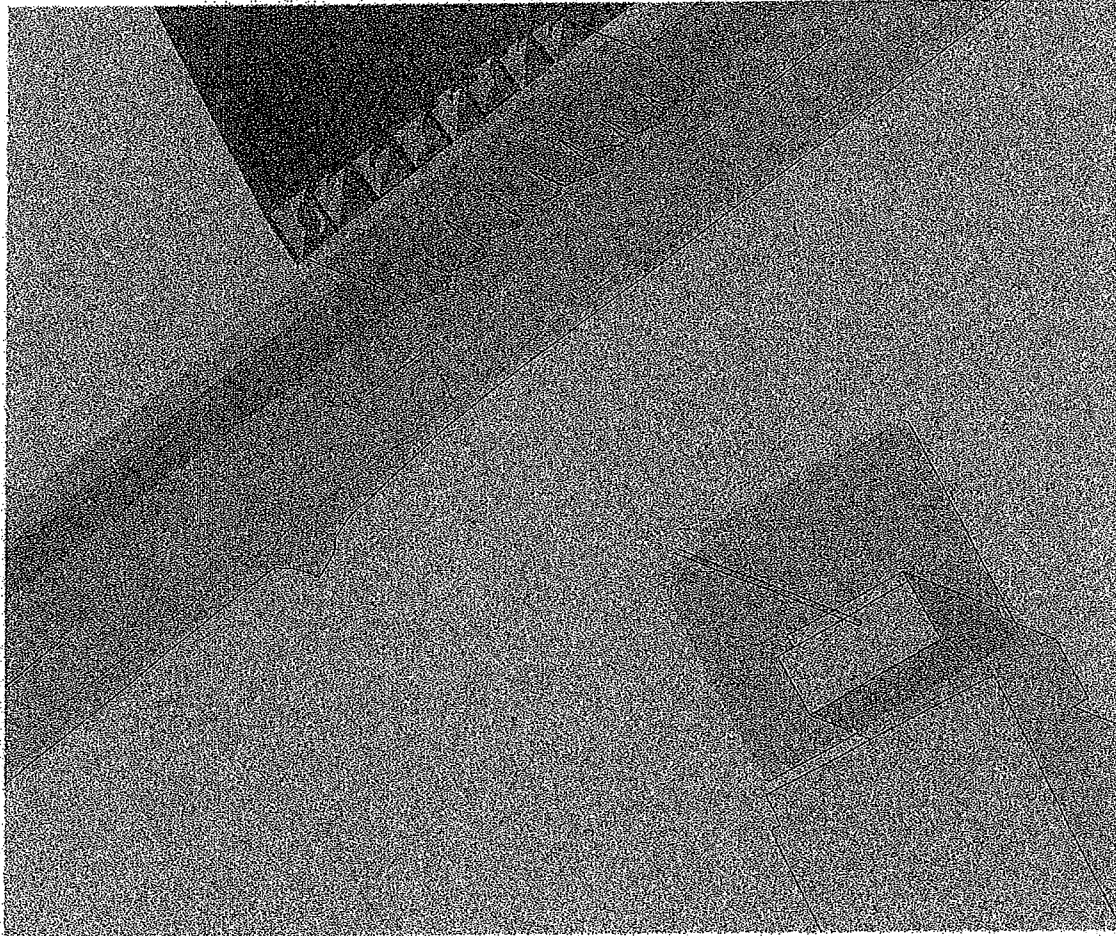


Figure 14:
June 20, Shadow at 07:30 PM

APPENDIX

City of San Francisco - Regulatory Framework for Sunlight and Shadow

City of San Francisco - Sunlight Ordinance

Section 295 of the *Planning Code*, the Sunlight Ordinance, was adopted through voter approval of Proposition K in November 1994 to protect certain public open spaces from shadowing by new structures. Section 295 prohibits the issuance of building permits for structures or additions to structures greater than 40 feet in height that would shade property under the jurisdiction of or designated to be acquired by the Recreation and Park Commission, during the period from one hour after sunrise to one hour before sunset, unless the Planning Commission, following review and comment by the general manager of the Recreation and Park Department in consultation with the Recreation and Park Commission, determines that such shade would have an insignificant impact on the use of such property.

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State of California -- The Natural Resources Agency
DEPARTMENT OF FISH AND GAME
Bay Delta Region
7329 Silverado Trail
Napa, CA 94558
(707) 944-5500
www.dfg.ca.gov

EDMUND G. BROWN JR., Governor
CHARLTON H. BONHAM, Director



June 29, 2012

Initial Study Checklist
Halus Power Systems Wind Turbine
Attachment 9

Ms. Kathleen Livermore
San Leandro Community Development Department
835 East 14th Street
San Leandro, CA 94577

Dear Ms. Livermore:

Subject: Halus Power Systems Wind Turbine, Initial Study/Mitigated Negative Declaration, SCH #2012052061, City of San Leandro, Alameda County

The Department of Fish and Game (DFG) appreciates the opportunity to comment on the proposed Initial Study/Mitigated Negative Declaration (IS/MND) for the Halus Power Systems Wind Turbine Project (Project). The Project includes the installation of a single Vesta 17 wind turbine. The wind turbine will be constructed in an open laydown yard behind Halus Power Systems building, which is approximately four acres. The wind turbine will have a maximum height of 104 feet from the ground to the tip of the blade. An open space known as East Marsh is located 600 feet from the proposed turbine location. San Lorenzo Creek is 370 feet from the Project site and is located between the Project site and East Marsh.

The Technical Memorandum (TM) written by ESA Biological Resources on May 10, 2012 states that the San Francisco Bay Estuary is renowned as a major North American refuge for many species of waterfowl and shorebirds during their migration and wintering periods, as well as providing breeding habitat during the summer months. The TM also provides a list of 38 special-status resident and migratory birds that occur in the area. The TM states that Project construction and operations may result in potentially low impacts to these avian species. The Project's IS/MND states that Project construction and operations may result in potentially low impacts to fully protected, special-status, and migratory birds although no minimization or avoidance measures are proposed. Fully protected species (such as California black rail and California clapper rail) may not be taken or possessed at any time and no licenses or permits may be issued for their take except for collecting these species for necessary scientific research.

Please be advised that a California Endangered Species Act (CESA) Incidental Take Permit (ITP) would be warranted if the Project has the potential to result in take of species of plants or animals listed under CESA, either during construction or over the life of the Project. Issuance of a CESA Permit is subject to California Environmental Quality Act (CEQA)

Conserving California's Wildlife Since 1870

Ms. Kathleen Livermore
June 29, 2012
Page 2

documentation; therefore, a CEQA document supporting the issuance of a CESA Permit would need to specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, DFG encourages early consultation, as significant modification to the Project and mitigation measures may be required to obtain a CESA Permit.

DFG recommends that the San Leandro Community Development Department (Lead Agency) require the applicant to adopt the following avoidance and minimization measures for the life of the Project.

DFG also recommends the Lead Agency require the Project to include the following measures to minimize the potential for avian mortalities:

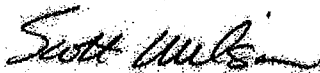
1. If construction must be scheduled to occur during the migratory bird and raptor nesting season (February 15 through August 15 for most birds), a qualified wildlife biologist, familiar with the species and habitats in the Project area, will be retained to conduct pre-construction surveys for raptors and nesting birds within 300 feet of construction activities. The surveys shall be conducted one week before initiation of construction. If no active nests are detected during surveys, activities may proceed. If active nests are detected then the applicant should consult with the Lead Agency and DFG on appropriate buffers.
2. To reduce impacts to raptors, the applicant shall minimize small mammal habitat from occurring beneath the wind swept area of the turbine. A gravel area extending a minimum of 100 feet on all sides from the wind turbine shall be placed and should be maintained to ensure no vegetation will grow.
3. To reduce impacts to avian species from electrocution, all electrical wires shall be placed underground or follow minimization methods established by Avian Power Line Interaction Committee.
4. If a state or federally listed species is killed during Project operations without the appropriate ITP under CESA or the federal Endangered Species Act, the applicant shall halt all turbine operations immediately. The applicant must consult with the United States Fish and Wildlife Service (USFWS) and/or DFG.
5. If a carcass is found that is federally threatened, endangered or protected by the Migratory Bird Treaty Act (MBTA), the information shall be reported by a qualified biologist to USFWS, Office of Law Enforcement, Renewable Energy Officer at (650) 876-9078 within five days of its discovery.
6. If a carcass of a species listed pursuant to CESA or Fish and Game Code Section 3511 is discovered DFG shall be immediately notified at (707) 944-5500.

Ms. Kathleen Livermore
June 29, 2012
Page 3

7. If a species is injured as a result of Project operations, the applicant shall immediately take it to a DFG approved wildlife rehabilitation or veterinary facility, such as Sulphur Creek Nature Center, at (510) 881-6747; or Ohlone Humane Center, at (510) 797-9449. Permittee shall bear any costs associated with the care and treatment of such injured species.
8. A post-construction monitoring plan shall be approved by DFG and implemented within one month of initial turbine operation.

Thank you for the opportunity to provide input on the IS/MMD for this renewable energy project. If you have any questions, please contact Ms. Danielle Roach, Environmental Scientist, at droach@dfg.ca.gov or (707) 944-5571; or Mr. Craig Weightman, Acting Environmental Program Manager, at cweightman@dfg.ca.gov or (707) 944-5577.

Sincerely,



Scott Wilson
Acting Regional Manager
Bay Delta Region

cc: Bay Conservation and Development Commission
50 California Street, Suite 2600
San Francisco, CA 94111

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Mail Processing Center
Federal Aviation Administration
Southwest Regional Office
Obstruction Evaluation Group
2601 Meacham Boulevard
Fort Worth, TX 76137

Aeronautical Study No.
2012-WTW-3566-OE

Issued Date: 06/21/2012

Louis Rigaud
Halus Power Systems
2539 Grant Avenue
San Leandro, CA 94579

Initial Study Checklist
Halus Power Systems Wind Turbine
Attachment 10

**** DETERMINATION OF NO HAZARD TO AIR NAVIGATION ****

The Federal Aviation Administration has conducted an aeronautical study under the provisions of 49 U.S.C., Section 44718 and if applicable Title 14 of the Code of Federal Regulations, part 77, concerning:

Structure: Wind Turbine Halus Power Systems Wind Turbine
Location: San Leandro, CA
Latitude: 37-40-19.57N NAD 83
Longitude: 122-09-27.86W
Heights: 9 feet site elevation (SE)
100 feet above ground level (AGL)
109 feet above mean sea level (AMSL)

This aeronautical study revealed that the structure does not exceed obstruction standards and would not be a hazard to air navigation provided the following condition(s), if any, is(are) met:

It is required that FAA Form 7460-2, Notice of Actual Construction or Alteration, be completed and returned to this office any time the project is abandoned or:

- At least 10 days prior to start of construction (7460-2, Part I)
 Within 5 days after the construction reaches its greatest height (7460-2, Part II)

See attachment for additional condition(s) or information.

Based on this evaluation, marking and lighting are not necessary for aviation safety. However, if marking/lighting are accomplished on a voluntary basis, we recommend it be installed and maintained in accordance with FAA Advisory circular 70/7460-1 K Change 2.

This determination expires on 12/21/2013 unless:

- (a) extended, revised or terminated by the issuing office.
- (b) the construction is subject to the licensing authority of the Federal Communications Commission (FCC) and an application for a construction permit has been filed, as required by the FCC, within 6 months of the date of this determination. In such case, the determination expires on the date prescribed by the FCC for completion of construction, or the date the FCC denies the application.

NOTE: REQUEST FOR EXTENSION OF THE EFFECTIVE PERIOD OF THIS DETERMINATION MUST BE E-FILED AT LEAST 15 DAYS PRIOR TO THE EXPIRATION DATE. AFTER RE-EVALUATION OF CURRENT OPERATIONS IN THE AREA OF THE STRUCTURE TO DETERMINE THAT NO SIGNIFICANT AERONAUTICAL CHANGES HAVE OCCURRED, YOUR DETERMINATION MAY BE ELIGIBLE FOR ONE EXTENSION OF THE EFFECTIVE PERIOD.

This determination is based, in part, on the foregoing description which includes specific coordinates, heights, frequency(ies) and power. Any changes in coordinates, heights, and frequencies or use of greater power will void this determination. Any future construction or alteration, including increase to heights, power, or the addition of other transmitters, requires separate notice to the FAA.

This determination does include temporary construction equipment such as cranes, derricks, etc., which may be used during actual construction of the structure. However, this equipment shall not exceed the overall heights as indicated above. Equipment which has a height greater than the studied structure requires separate notice to the FAA.

This determination concerns the effect of this structure on the safe and efficient use of navigable airspace by aircraft and does not relieve the sponsor of compliance responsibilities relating to any law, ordinance, or regulation of any Federal, State, or local government body.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to (877) 487-6867 so a Notice to Airmen (NOTAM) can be issued. As soon as the normal operation is restored, notify the same number.

If we can be of further assistance, please contact our office at (816) 329-2525. On any future correspondence concerning this matter, please refer to Aeronautical Study Number 2012-WTW-3566-OE.

Signature Control No: 163294512-167484894
Donna O'Neill
Specialist

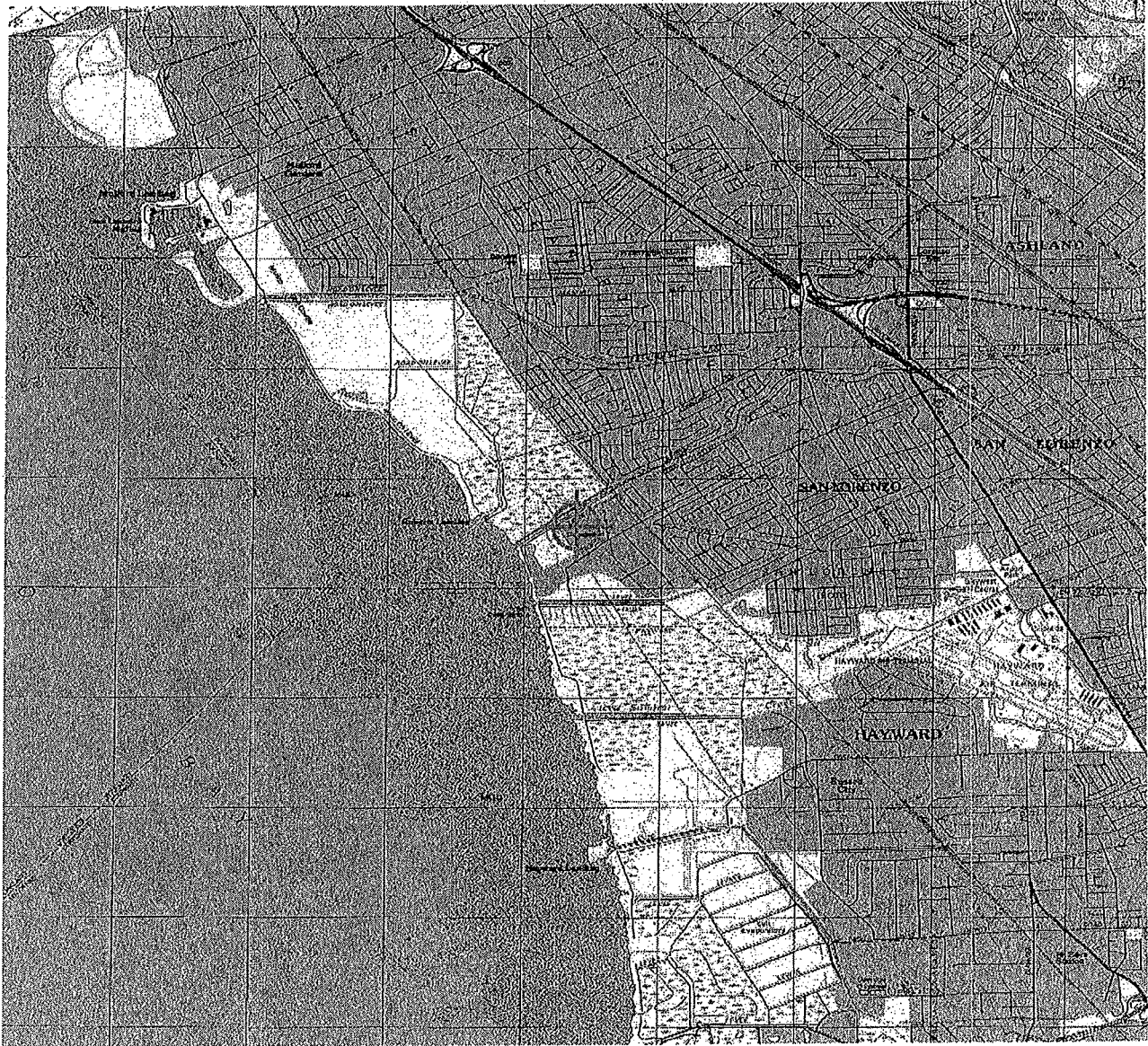
(DNE)

Attachment(s)
Additional Information
Map(s)

Additional information for ASN 2012-WTW-3566-OE

The proposed wind turbine would be in the line of sight for the Oakland ASR-9 (terminal radar system) used by the Northern California Terminal Radar Approach Control (NCT), Oakland (OAK) and Hayward (HWD) Air Traffic Control Towers. The turbine would cause unwanted primary returns (clutter) and primary target drops in the area of the turbine. Air Traffic Control has stated that this would not have a significant adverse effect on their operations at this time.

TOPO Map for ASN 2012-WTW-3566-OE



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EXHIBIT B

**Responses to Comments on
Mitigated Negative Declaration**

**Response to Comments on
Mitigated Negative Declaration
Halus Power Systems
Variance Application
January 29, 2013**

The City prepared a revised and recirculated Mitigated Negative Declaration (MND) dated October 11, 2012 for the Halus application. While responses to comments on a proposed Mitigated Negative Declaration ("MND") are not required by the California Environmental Quality Act ("CEQA"; Pub. Resources Code, § 21000 et seq.), this Response to Comments document is provided to demonstrate the City's careful consideration of the comments in compliance with CEQA. These responses provide the City's good faith, reasoned analysis on the major environmental issues raised in the comments. The MND is available online at: <http://www.sanleandro.org/depts/cd/plan/polplanstudiesceqa/default.asp>

Discussion herein is also provided to set forth and clarify the relevant legal framework established by CEQA, set forth relevant information regarding the Project and the procedural history of the Project application and its environmental review, and to document and establish the bases for the findings and conclusions included in this "Response to Comments" document.

Response To Comments Structure and Contents:

This Response to Comments document is organized into the following sections:

Introduction

Section I: Responses to Comments

A. The Heron Bay Homeowners Association Comment letter including:

- 1. Letter from A. Alan Berger**
- 2. Letter/Report from Paul Taylor Consulting**
- 3. Letter from Benny Lee, President of the Heron Bay HOA**

B. Individual Comment Letters

Section II: Conclusions

Appendices:

- Appendix 1, All Responses to Comments (Section I, annotated)**
- Appendix 2, Photographs dated January 13, 2013 (six photographs)**
- Appendix 3, Excerpt from San Francisco Bay Trail East Bay Map**
- Appendix 4, Charles Bennett Résumé, ESA, Senior Managing Associate**

INTRODUCTION

The City received comments in response to the proposed Mitigated Negative Declaration including:

- A. Official Letters from Heron Bay Homeowners Association in the form of three different letters
 - 1) Letter by A. Alan Berger on behalf of the Association.
 - 2) The Paul Taylor Consulting Report and;
 - 3) Letter from Benny Lee.

- B. In addition, 20 individuals submitted comment letters

All comment letters listed above are attached hereto as Appendix 1 and have been annotated in the margins to depict the responses that pertain to the specific comments. Responses to Comments #1 through 30 are provided in Section I.

SECTION I - RESPONSES TO COMMENTS:

Response 1:

Pursuant to Public Resources Code Section 21064.5, a MND is properly used “when the Initial Study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” A lead agency “shall”—a mandatory term meaning “must”—adopt a negative declaration or mitigated negative declaration instead of preparing an EIR if there is no substantial evidence in light of the whole record that the project, as proposed or revised, may have a significant effect on the environment. (Pub. Resources Code, § 21080(c); CEQA Guidelines § 15070(a); see 1 Kostka & Zischke, *Practice Under the California Environmental Quality Act* (CEB2d Ed, 2012 Update), section 7.2, p. 393.)

Conclusion:

The City of San Leandro in its preparation of a MND has conclusively determined that the proposed project, with the incorporation of the mitigation measures agreed to by the applicant, clearly will not have a significant effect on the environment and that no substantial evidence in the light of the whole record has been presented to the City that the proposed project may have a significant effect on the environment.

Response 2:

Summary Conclusions Regarding Heron Bay Homeowners Association Comments (including those of Attorney A. Alan Berger, Paul Taylor Consulting and Heron Bay Association President Benny Lee)

The City has evaluated the comments of Mr. Berger, Mr. Taylor and Mr. Lee including the reports, findings and opinions therein, and has concluded that a substantial number of the assertions and conclusions made by them are based upon inaccurate information or unsubstantiated claims about the proposed project, its operating characteristics, location and the precise geography of the area. This lack of factual accuracy undermines the ultimate conclusions asserted in their letter and therefore, the City may disregard their comments and conclude that they are not "expert opinion based on fact" and that Mr. Berger, Mr. Taylor and Mr. Lee are insufficiently qualified to render such expert opinions and consequently, the City may conclude that their opinions should not be credited as "substantial evidence" under CEQA (See CEQA Guidelines section 15384).

As a preliminary matter, since Mr. Taylor's letter is presented as expert opinion evidence on all environmental issue areas, and the Association relied on it for the conclusions drawn in their own comments, Mr. Taylor's résumé and experience offered to support his asserted expert qualifications are relevant and important considerations for the City's judgment in concluding whether he is sufficiently qualified to render such expert opinions on various issues, and consequently whether his opinions should be credited as "substantial evidence." The City is entitled to judge the credibility of the witnesses and evidence presented to it determining whether such evidence is reasonable, credible, and of solid value so as to constitute the requisite "substantial evidence."

For example, in the area of biological resources and particularly in the area of potential impacts to wildlife, including shore bird species, Mr. Taylor identifies objections and voices concerns over the findings including in the MND that rely on a report prepared by ESA, a San Francisco-based environmental consulting firm. In evaluating the information and conclusions provided in the MND, the City of San Leandro may consider Mr. Taylor's qualifications in determining whether his opinions are "expert," and may also consider whether his opinions are "clearly erroneous" or are "supported by fact," in determining whether Mr. Taylor's letter qualifies, in whole or in part, as substantial evidence.

Mr. Taylor's résumé (attached to the comment letter) provides information on his academic and professional background. He holds a B.S. in Biology/Chemistry from Livingston University in Alabama; an M.S. in Environmental Sciences from Tulane University in New Orleans and in addition to being a Principal at Paul Taylor Consulting in Los Angeles, CA, is a member of Forensis Group, a placement firm for expert witnesses and consultants in a variety of professional disciplines. Although the résumé lists Mr. Taylor's academic degrees, it does not describe specific experience, expertise or qualifications in the areas of visual analysis, biological resources, noise, geology/soils, hazards and hazardous materials, let alone specific subareas such as bayshore birds, aircraft navigational radar, or shadow effects upon which he opines. For instance, Mr. Taylor challenges the findings of the Mitigated

Negative Declaration related to biological resources; but provides no credentials that would serve to qualify him as an expert in that area. To be a credible expert in assessing the proposed project's potential impacts on biological resources, it would be reasonable to assume that he had relevant training and experience related to the bird species that populate the area near the proposed project. The submitted résumé lists no such training or experience. By contrast, ESA, the firm engaged by the City and the applicant for this project, is a well-regarded San Francisco-based environmental consulting firm with a 25-year history of work that is specific to the San Leandro shoreline. ESA has specific and relevant experience related to the species in the vicinity of the proposed project in that ESA prepared the mitigations plans that resulted in the design of the marshes along the San Leandro shoreline in the 1980's and has had an active and ongoing role in evaluating development and mitigation proposals in San Leandro since that time. The City in concluding that there is no substantial evidence in light of the whole record before it that the project, as revised, may have a significant effect on the environment as to biological resources including shore birds, did so in reliance upon the expertise of ESA, as documented in the MND.

As noted, in evaluating whether to accept the assertions, conclusions, findings and recommendations included in the Association's letter as "substantial evidence in the record," the City of San Leandro must determine whether Mr. Taylor's assertions constitute "expert opinion supported by fact."

The City has evaluated Mr. Taylor's report and the findings and opinions therein, and has concluded that a substantial number of the assertions and conclusions made by Mr. Taylor are based upon inaccurate information about the proposed project, erroneous descriptions of its location and a general lack of knowledge regarding the precise geography of the area, as documented herein. These errors, inaccuracies and lack of knowledge undermine the ultimate conclusions drawn in his report since they are not "expert opinion supported by fact." Specific responses to the biology and other assertions and conclusions from the Association and Mr. Taylor are included below.

Response 3:

The Association letter states "the proposed wind turbine is proposed to be located at the northern boundary of the Halus Power Systems property and the southern boundary of Association homes." This is incorrect.

As shown in the MND, the proposed project is located at a central point on the Halus property, not the northern edge of the property. The Halus property does not abut the Heron Bay property but is separated from it by the existing Alameda County Flood Control land comprising the San Lorenzo Creek.

Response 4:

The City provides the following information to clarify the MND process described in the comment. Halus Power Systems submitted an application to the City of San Leandro for a small wind turbine to be located at 2539 Grant Avenue. The City of San Leandro issued a proposed Mitigated Negative Declaration (MND) on May 22, 2012 and provided notice pursuant to and in compliance with State law and the City's notification policies.

The applicant met with the Heron Bay Homeowners Association at their regularly scheduled meeting on June 20, 2012. Based upon feedback received at the June 20th meeting and written comments on the MND, Halus agreed and the City provided additional information and revised and recirculated the MND, which was dated October 11, 2012. The MND was recirculated for a 30-day review period, with all required public notice, ending November 13, 2012. In addition, a notice of a December 6, 2012 public hearing before the San Leandro Board of Zoning Adjustments (BZA) was provided.

The December 6th hearing was continued to provide additional time to consider the comments provided during the comment period. A BZA meeting public hearing has been set for February 7, 2013 to consider the MND and the project application. The BZA hearing will be fully noticed as required.

Response 5:

The Association's comments regarding the Fair Argument Standard are noted and accurately state CEQA's relevant statutory standard. CEQA and its interpretive case law and guidelines set forth several other principles relevant to the application of this standard. For purposes of CEQA, "substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." (Pub. Resources Code, § 21080(e)(1).) "Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment." (*Id.*, §21080(e)(2).)

In *Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, the Court of Appeal reviewed and reversed a trial court judgment ordering the preparation of an EIR for a 219-lot hillside subdivision project and held the City's approval of a MND for the project was correct and in compliance with CEQA. In rejecting arguments that the subdivision project would have significant aesthetic impacts requiring an EIR, the Court of Appeal distinguished the same cases that have been cited and relied on by the Association and its attorney in their comments here, and the Court of Appeal stated in its analysis (in part): "Under CEQA, the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons." [citations] Furthermore, "California landowners do not have a right of access to air, light and view over adjoining property." [citation]."

It went on to further explain the reasons it rejected the project opponents' arguments of significant adverse aesthetic impacts: "It is important to recognize that there is no evidence that the housing project will impact any public views, vistas or scenic highways. 'That a project affects only a few private views may be a factor in determining whether the impact is significant.' [citing *Ocean View Estates* case] The initial study states, "that there are no scenic views or vistas located in the project vicinity. There is no evidence in the record contradicting this determination. ...". The Court of Appeal went on to cite a case holding that construction of a house with aesthetic impacts on only a few neighbors did not raise concerns affecting "the environment of persons generally" (*id.* at 902-903, citing *Association for*

Protection etc. Values v. City of Ukiah (1991) 2 Cal.App.4th 720), and to *distinguish* the case before it from *both* the *Ocean View Estates* and *Quail Botanical Gardens Foundation* cases (the same cases cited by the Association here) on the basis that the case before it presented no "evidence of adverse impact on a public view, park or trail...." (*Id.* at 903.) Further, it noted the only concerns raised regarding aesthetic impacts were "vague and unsupported by a specific factual basis or any photographic evidence" and concluded: "These vague complaints do not rise to the level of substantial evidence supporting a fair argument that the housing project may have a significant adverse aesthetic impact." (*Id.*)

As indicated by the above authority, to show that the MND is not appropriate and required by CEQA here, the record must contain "substantial evidence supporting a fair argument that the project may have a significant adverse aesthetic [or other environmental] impact." For purposes of CEQA, "substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." (Pub. Resources Code, section 21080(e)(1).) "Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment." (*Id.*, section 21080(e)(2).)

For a fair argument to be supported by substantial evidence, it must be based upon an accurate factual understanding of the proposed project. After review of the Association's and Mr. Taylor's assertions, the City has concluded that the numerous errors, inaccuracies, incorrect references regarding the project description, the project site, its surroundings and biology and the numerous inaccurate conclusions that are not supported by fact, invalidate that a fair argument has been made regarding the project having a significant environmental impact on biological, or any other, CEQA resources.

Response 6:

No substantial evidence has been provided that would support a conclusion that *any* scenic vistas or public views are "compromised" or "destroyed." While CEQA does consider impacts to public vistas, there is no similar provision for impacts to solely private views. The referenced views are private views only, and are not pristine as they are comprised of fully developed, heavy industrial buildings, and uses, which include a sewage treatment plant, PG&E electrical transmission towers and sub station, other utility structures including a cell phone antennae, a junk yard, extended cranes, and numerous industrial buildings. Furthermore, the Association's comment that the MND should not be allowed to rely on the presence of existing power lines and what is already onsite, is directly contrary to CEQA. CEQA Guidelines section 15064(b), for example, states that "... an ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. ..."

The photo simulations provided by the applicant in the MND confirms it is not possible to stand at the southwest corner of Heron Bay and view both the bay waters and the Halus property simultaneously. The Halus property is located to the southeast of the southwest corner of Heron Bay and would be behind a person looking to the bay waters from that vantage point. The MND includes many photographs that simulate the proposed location of

the turbine from the Bay Trail. See MND photos 4-9 of 11 showing that trail users would be facing away from the Bay to see the proposed turbine, and generally looking across and towards existing industrial uses. The area adjacent to Halus on its north side is the San Lorenzo Creek canal, which is maintained by the County flood control district. The area adjacent to Halus is enclosed by locked gates at either end, is not authorized for public use, and is not part of the Bay Trail. The nearest segment of the Bay Trail is at the locked gate near the southwest corner of the Heron Bay site, and as shown in MND photos 9-10 of 11, affords no view of both the bay waters and the project. Public views comprising any scenic vista in the area would commence at the Bay Trail, just beyond the enclosed canal area looking west towards the marsh and baylands. The project site would not be within the scenic vista from this public vantage point. The MND photos and additional photos appended to these responses confirm the industrial nature of the views facing the subject property. Two of the photos were taken from the southwest corner of Heron Bay showing the Halus property and surrounding industrial property. The proposed turbine location is not in a scenic vista as supported by substantial evidence in the MND and record and there is clearly no potential for significant impact to the environment with respect to scenic vistas. The Association letter and the Taylor report provide no substantial evidence to show the turbine is in a scenic vista or significantly impacts public views.

Response 7:

The first part of the statement in Line 16 of Page 9 of the Association letter is accurate (“the applicant did not take photos from private property that was inaccessible to it or the general public”). The remainder of the statement asserts, without providing any photographic evidence to support the assertion, that 25 homes would have private views significantly adversely impacted by the proposed project. No evidence is provided to demonstrate an impact and no evidence is provided that would allow the City to conclude that any alleged “impacts” affecting this number of private views would constitute impacts that “affect the environment of persons in general” so as to potentially constitute significant adverse environmental impacts under CEQA.

The MND demonstrates the proposed turbine would be central to the Halus property, and therefore, given the significant distances between the turbine and the Heron Bay residences (the closest residence is well over 500 feet away from the proposed turbine location) it would not be predominantly visible from the entire row of approximately 25 Heron Bay homes on the southern border of the Heron Bay development. Further, any private views of the turbine from approximately half of this row of homes would be obscured, either totally or nearly so, by an intervening industrial building, the San Leandro Distribution Center building (2505-2515 Grant Avenue) which is approximately 600 feet long and 30 feet high, as well as backyard fences and numerous trees of significant height.

The MND also provided photo simulations, including sample photos from a publicly accessible trail only a few feet away from a Heron Bay fence on the southwest corner, that substantiates the de minimus character of the private view to the proposed turbine from that area.

Response 8:

These statements suggest and lead the reader to believe that that the proposed turbine would be located within approximately 300 acres of protected marsh and creek. This is incorrect. The proposed small wind turbine will be built on land that is zoned for heavy industrial uses and in no way will impact the bay and the marsh. The turbine would be built on private property owned by the Applicant, and which has been occupied by industrial uses for 40 years. The proposed turbine location is not in a scenic vista. The Association letter and Taylor report have provided no evidence to show the turbine is in a scenic vista or significantly impacts public views.

Response 9:

Contrary to the comment, twenty-five (25) homes would not have direct and unimpeded views of the proposed turbine. As the proposed turbine would be located at the center of the Halus property, it would not be visible from the entire row of approximately 25 Heron Bay homes on the southern boundary of the Heron Bay development. Most of the 25 homes along the southern border of Heron Bay would have significantly obstructed views of the Halus property and the turbine, as the adjacent San Leandro Distribution Center building at 2505-2515 Grant Avenue is approximately 600 feet long and 30 feet high and would block most or all of the view for many of these houses. Additionally, as shown in the photos in the MND and these responses, existing private trees, landscaping and fencing at the rear of the homes and County trees and landscaping along San Lorenzo Creek would significantly block the view from the majority of the homes.

Response 10:

The proposed wind turbine includes blades that are approximately 20 feet long and 2 feet wide (area about 50 square feet). A comparison of the proposed turbine to a Cessna 500 aircraft spinning atop a tower on a horizontal axis is inaccurate in the context of realistic and substantive analysis of visual and environmental impacts. A Cessna 500 aircraft has the following approximate characteristics: wing area of 300 square feet; wingspan of 50 feet; total length of 45 feet; height of 15 feet; and a fuselage large enough to seat 8 people. The Association's assertion is provided without any photographic or other evidence, or reference to proportions, mass, surface area and shape. Reliance upon this characterization creates a significant misunderstanding of the nature and dimensions of the proposed project and a misleading and inaccurate portrayal of visual impact. Neither the assertions nor the conclusions are supported by facts.

Response 11:

Mr. Taylor's and the Association's letters incorrectly characterize the location and distance from homes, distance from the Bay Trail, and the number of homes with views of the proposed turbine. The Google Earth aerial photo included in the MND confirms that the Halus property does not abut any of the Association homes and is separated from the homes by the Alameda County Flood Control land including parts of the San Lorenzo Creek. Further, the proposed project site is located near the center of the Halus property, more than 500 feet from the nearest Heron Bay residence. There are approximately 8 residences located roughly 500-600 feet from the proposed turbine. Approximately 10 residences are

located 600-700 feet from the proposed turbine and approximately 50 residences are 700-1,000 feet away from the proposed turbine. The remaining 500+ homes are approximately 1/4 mile or more from the proposed turbine. This incorrect description of distance and the affected homes overstates the number of affected views, the magnitude of visual effect and renders conclusions that are not supported by fact. As shown on the map submitted with the MND the proposed wind turbine location is greater than 350 feet from the Bay Trail.

Response 12:

The Association claims that the turbine would be “in the middle of such protected areas” is incorrect. The proposed turbine would be constructed on land that is zoned for and has been occupied by heavy industrial uses for decades. Any claim that the proposed project would be within a protected area is untrue and unsupported by fact.

Response 13:

While there may or may not be other similarly located wind turbines, the Association has provided no evidence to suggest that there have been proposals that have been denied or rejected near or adjacent to the Bay Trail. The project will not and cannot be “precedent setting” given that pursuant to the City of San Leandro’s Zoning Code, any similar application would require discretionary review by the BZA in the form of a Variance application. The findings required for approval of a Variance ensure that each project would be considered on its merits and each application would be the subject of a public hearing and review process.

Response 14:

While a project’s “purpose” is not the focus of the CEQA process, for purposes of clarification, it should be noted, that Halus’ clients are located throughout the United States and Europe. Few customers, if any, visit the subject property. The primary purpose of the proposed turbine is to allow onsite research and development and onsite testing of new wind turbine components.

Response 15:

The MND included a comprehensive shadow analysis prepared by ESA, a highly qualified environmental consulting firm, which concluded that the proposed project would have no significant shadow or shadow flickering impacts. ESA used the shadow evaluation standards as used in the City of San Francisco (as the City of San Leandro has no similar standards for shadow evaluations). ESA evaluated the worst-case shadow condition that would be created by the proposed turbine which is one hour after sunrise and one hour before sunset on any day of the year, including winter solstice on December 21st (the day of the year with the longest shadows cast). ESA concluded that the turbine would cast no shadows on any of the Heron Bay properties or any other publicly accessible properties. The analysis reflects a very minor amount of shadowing with a very short duration and during an insignificant time period (the winter solstice, December 21st) on an area not designated as either Bay Trail or open space, but is a maintenance access road area for the San Lorenzo Creek. This area, which extends from the southwestern corner of the Heron Bay homes to the southeastern corner of the Heron Bay homes on both sides of the creek, is closed to public access as flood control land. In further evidence that this is not publicly accessible open space, there are a

number of "no-trespassing signs" posted by Alameda County at both ends of the maintenance area citing a \$500 fine for trespassers. See attached Appendix 2, Photographs dated January 13, 2013 "Alameda County Flood Control/No Trespassing."

The MND and these responses comprise substantial evidence that no significant shadowing effects will occur from the project. There is nothing in Mr. Taylor's résumé showing any expertise in shadowing effects or analysis, therefore, his conclusions are not expert opinion supported by facts and are not substantial evidence of a fair argument with respect to shadowing.

Response 16:

The MND included many specifically labeled photographs provided by the applicant that were taken from multiple vantage points on the public trails and adjacent to the Heron Bay backyards on the Southwest corner of that property. The applicant accurately simulated the height of the proposed turbine by initially photographing a crane extended to the turbine height. The photos were carefully and precisely augmented with a simulation of the turbine. This detailed effort confirmed that the scale was accurate. Finally, the proposed project is not within a "scenic vista" but is located in a fully developed industrial area. The Association and Mr. Taylor have provided no evidence nor any fair argument that the proposed project would have a significant environmental impact with respect to shadowing or visual resources.

Response 17:

A comment letter submitted by Mr. Benny Lee is incorporated and adopted by the Association. The Association in "incorporating and adopting" Mr. Lee's opinions used those opinions to support the conclusions drawn in the Association letter. Mr. Lee's role as president of the Heron Bay Homeowners Association is the sole qualification cited for the Association's reliance upon the points raised in his letter. No résumé or citation of experience were submitted to support his qualifications; no evidence established his opinions are intended as expert. Mr. Lee's opinions, and his qualifications to assert those opinions are relevant and important considerations for the City's judgment in concluding whether he is sufficiently qualified to render expert opinions on various issues, and consequently whether his opinions should be credited as "substantial evidence." The City is entitled to judge the credibility of the witnesses and evidence presented to it determining whether such evidence is reasonable, credible, and of solid value so as to constitute the requisite "substantial evidence." The City of San Leandro must determine whether Mr. Lee's assertions constitute "expert opinion supported by fact."

The following are responses to the points raised by Mr. Lee in his letter (and incorporated and adopted into the Association letter):

17-1: CEQA is not an economic protection statute. Landowners surrounding a proposed project do not state a valid CEQA concern when they express fears that the proposed project could adversely affect their property values. (*Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 903, citing *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 157 Cal.App.4th 1184, 1205 [CEQA is "not a fair competition statutory scheme" and "[t]herefore, the

economic and social effects of proposed projects are outside CEQA's purview."].) Further, "A social or economic change by itself shall not be considered a significant effect on the environment." (14 Cal. Code Regs. ["CEQA Guidelines"], section 15382.) Finally, Mr. Lee's comments regarding Halus' economic status relative to any other business or homeowner are not relevant to the discussion of environmental impacts.

The Association makes similar comments to Mr. Lee's on property values (pp. 14-15), to which the above also applies. There is no evidence to support the Association's further comments on urban decay from assertedly unsightly projects.

17-2: Mr. Lee's comments regarding his family's experience with migraines do not rise to the level of substantial evidence supporting a fair argument that the proposed project may have a significant adverse environmental impact or affect persons in general. Mr. Lee's inference that there could be a relationship between the proposed project and the triggering of health effects of persons in general is speculation that is not supported by fact.

17-3: Comments noted. Mr. Lee's observations, opinions and statements regarding concerns that the proposed project may invite other wind turbines is speculative and unrelated to the environmental effect of the proposed project and contains false assertions. While there may or may not be other similarly located wind turbines, no evidence has been provided to suggest that there have been proposals that have been denied or rejected near or adjacent to the San Francisco Bay, or that there would be an increase in future proposals as a direct result of the proposed project. The project will not and cannot be "precedent setting" given that pursuant to the City of San Leandro's Zoning Code, any similar application would require discretionary review in the form of a Variance application. The findings required for approval of a Variance ensure that each project would be considered on its merits and each application would be the subject of a public hearing and review process. Personal opinions regarding the appearance of wind turbines are not a relevant consideration in the City's consideration of environmental effects of the proposed project. Speculation regarding the potential for wind turbines in other locations is not supported by facts. Further his opinion is unsupported by any photographic or other evidence including photographic evidence from relevant public views accessible to and documented by the applicant.

The statement "*There are no metropolitan areas with Wind Turbines propagated with one or many throughout the United States*" is false. San Francisco has several wind turbine installations. The San Francisco Department of Building Inspections (DBI) is currently accepting applications for small wind turbine permits. The City of San Francisco defines small wind turbines as having a rated capacity of 50 kilowatts or less. Permits for wind turbines have been prioritized by DBI as written in the revision of AB-004 which establishes guidelines for exceptions to the equal treatment of permit applicants and that permit applications for work consisting solely of wind power generation systems be given priority assignment for plan review and issuance. Another example of an urban turbine in the US is a large wind turbine (Vestas 225kW) about 350

feet away from the Cleveland Browns Stadium (seating capacity over 73,000) and about 200 feet away from the Great Lakes Science Center in Cleveland, Ohio.

17-4: See Response 17-1. No substantial evidence was provided to support Mr. Lee's claim regarding the potential impact of noise that would result from the proposed turbine.

17-5: The comment that the proposed wind turbine is "directly adjacent to homes and a natural estuary" is not correct. See Response 11 regarding the project description. A full discussion of the noise specifications and operational characteristics of the proposed turbine is included in the applicant's submittal.

17-6: No evidence was provided by Mr. Lee to support the asserted conclusions regarding the potential for risks associated with the construction and operation of a small wind turbine. The proposed turbine will be subject to all applicable building code requirements, and the City's review and approval of a building permit, and any adopted conditions of approval, which will govern its ongoing maintenance and operations and ongoing code enforcement by the City of San Leandro to ensure that the turbine operates safely and complies with City requirements. Reference to the potential success or failure of any business is speculation that isn't supported by evidence provided by the commenter. A single small wind turbine installation is unlikely to transform the parcel to which it is attached to a degree that would encumber the property with undue liability in case of bankruptcy or abandonment.

17-7: See Response 14. Also, the relative merits of cost savings and/or alternative energy saving options are not relevant to a discussion of the environmental impacts of the proposed project.

The City carefully considered Mr. Lee's comments and has determined that they do not constitute substantial evidence of a fair argument on any of the asserted impacts.

Response 18:

The ESA report, upon which the City relied in preparing the Mitigated Negative Declaration, includes references to specific studies and methods upon which this conclusion was reached. The Association and Mr. Taylor provided no credible evidence that would contradict the findings in the ESA report. Furthermore, as noted previously, there is no evidence that Mr. Taylor is an expert on biological resources, including avian species or their habitats.

Response 19:

The particulars of in-flight mating patterns of any avian species are irrelevant to the analysis of potential collisions between birds and turbines. The ESA report correctly focuses on the potential for collision of all special status species that were identified as having potential to nest, forage, or otherwise move through the vicinity of the marsh. Mitigation measures developed with the guidance of the California Department of Fish and Wildlife (CDFW) formerly the California Department of Fish and Game, were incorporated into the project to further reduce the impacts of the low potential for collisions. The Northern Harrier is not a Federal or State Threatened and/or Endangered Species, but a State Species of Special

Concern. The Department submitted no comments on the MND and no expert biological evidence has been submitted to support the Association's assertions.

Response 20:

The ESA report acknowledges the unavailability of direct comparisons to small wind turbines adjacent to the Bay, but provides information from other turbines and published results from elsewhere as the basis for the assessment of this project.

The Association has provided no evidence for their claim nor have they asserted any expert qualifications in the area of biological resources. The photos of various birds provided in the Taylor Report are illustrations and definitions that are readily available from online or other sources and provide no evidence to their existence in the vicinity of the project, nor do they demonstrate any potential significant impact that would contradict the findings of the ESA report. While it is considered an important habitat area for birds and other wildlife, and is managed by the City for the purpose of conservation and recreational use, the San Leandro Shoreline Marshlands are not a bird sanctuary. The U.S. Fish and Wildlife Service administers seven National Wildlife Refuges in the San Francisco Bay National Wildlife Refuge Complex. The roughly 30,000-acre Don Edwards San Francisco Bay National Wildlife Refuge in the South Bay is the closest of these National Wildlife Refuges to the East Bay. More information on the San Francisco Bay National Wildlife Refuge Complex can be found on the U.S. Fish and Wildlife Service website.

Under the Bird Checklists of the United States and San Francisco Bay and San Pablo Bay National Wildlife Refuges web pages of the US Department of the Interior/US Geological Survey website it states "*The San Francisco Bay is the largest estuary on the west coast of the United States. Its 1600 square miles of wetlands and open water are home to about 800,000 water birds at any given time and to millions during peak migration.*" The marsh area near Heron Bay comprises a small increment (less than 1 square mile) of these approximately 1600 square miles. The Association does not provide any evidence that there could be anywhere close to '*nearly one million birds*' in the small marsh area near the Halus property. Additionally, the marsh area location is adjacent to a highly developed industrial and residential area, and not within the San Francisco Bay National Wildlife Refuge system. The Association presented no evidence that the 300 acres (actual number is 406 acres) of the San Leandro Shoreline Marshlands constitutes an area that "would be affected by the presence of the turbine". Therefore the conclusions urged by the Association are not support by fact.

More information can be found on the US Dept. of the Interior website:
<http://www.npwrc.usgs.gov/resource/birds/chekbird/r1/sfbay.htm>

Response 21:

The City initially circulated a Mitigated Negative Declaration and Initial Study in May 2012. The California Department of Fish and Wildlife (CDFW) responded with a letter dated June 29, 2012 wherein they commented on the proposed project and recommended adoption of certain avoidance and minimization measures. Subsequent to that date, a CDFW staff biologist Danielle Roach conducted an onsite review at the Halus property and stated in a subsequent email dated January 11, 2013 when asked if she received the revised MND *"I did receive the Recirculated MND at the Regional office sometime in October. I reviewed the document and saw that you included the measures we had spoken about in person and in phone calls, and since you will be involved in an adaptive management plan with CDFW (we have a new name now) throughout the life of this project, I did not feel that additional comments were necessary."*

All of CDFW's recommended mitigations were included in the revised and recirculated MND, which is the only MND currently under consideration. CDFW stated its satisfaction with the MND and submitted no comments or additional recommendations.

Response 22:

The updated Taylor report (page 7 & 8) makes assertions regarding potential impacts related to hazards and hazardous materials including a comment regarding the "extremely large" size of the radar signature for wind turbine blades. Mr. Taylor's résumé includes no references to training, expertise or qualifications regarding radar or airport/airplane operations, and no other evidence to qualify him as an expert on this subject. Furthermore, the City notes that consistent with Mitigation Measure 3 in the MND, the United States Federal Aviation Administration (FAA), the agency authorized to review wind turbine applications, has issued a "Determination of No Hazard to Air Navigation" on June 21, 2012 for the project, which is on file in the project materials and available for review at the City planning department during normal business hours. Moreover, in that determination, Air Traffic Control stated that the project would not have a significant adverse effect on their operations. Mr. Taylor's assertions are not supported by the facts. Further, Mr. Taylor incorrectly claims that the location of the proposed wind turbine is less than 500 feet from the nearest Heron Bay residence. All Heron Bay residences are in excess of 500 feet from the proposed turbine location.

The FAA imposed no conditions on the project in their determination. However, the FAA will require a Notice of Actual Construction or Alteration be completed and returned to their office should the project be abandoned or within 5 days after the construction reaches its greatest height as a routine matter. The FAA required no marking or lighting for the turbine given its proposed location and relatively low height.

An example of a wind turbine in similar proximity to an airport is a turbine that Halus supplied to the Cuyahoga County Fairgrounds, located only 3.7 miles from the Cleveland Hopkins International Airport in Cleveland, Ohio. Additionally, that turbine is much larger than the proposed turbine and is a 500kW unit on a 60-meter (197 feet) tower. The total

height of the Cuyahoga County Fairgrounds wind turbine is 2.5 times taller than the proposed project at over 265 feet versus 100 feet for the proposed wind turbine.

Another example (still from the Halus client list) is a wind turbine supplied by Halus Power Systems to Pearl Road Auto in Cleveland, which is 6.9 miles from the Cleveland Hopkins International Airport in Cleveland, Ohio. This 175 foot tall turbine is also much taller than the proposed turbine. The Halus Power Systems property is 7.82 miles from the Oakland International Airport. The existence or absence of a public benefit is not determinative of a significant impact under CEQA.

Response 23:

The proposed project is consistent with all applicable noise standards and requirements of the City of San Leandro. No evidence was provided to support the Association's claims regarding the potential impact of noise that would result from the proposed turbine, and nothing in Mr. Taylor's résumé shows any expertise in acoustics. San Leandro land use policies address noise impacts and restrict noise levels at property boundaries. San Leandro General Plan Chapter 6 contains a Noise section on pages 6-16 to 6-27 and 6-43 to 6-45. Table 6-1 on page 6-23 has the Noise Compatibility Standards for San Leandro Land Uses and addresses noise impacts and restricts Exterior Noise Exposure for Industrial and Manufacturing land within 500 feet of a residentially zoned area to 65 dBA. As noted in the MND, potential noise levels are expected to be well below this threshold. The project noise specifications provide information that was intended to be conservative by providing noise level data related to a much larger turbine (Vestas 225kW model) than the one proposed (Vestas 50kW). The smaller turbine will generate even lower sound levels. The evidence in the record and reasonable inferences from it show that the proposed turbine will not exceed 55dBA at the Halus property boundary line nearest the Heron Bay Homes, or any part of the property boundary line, and therefore its noise effects are well within the City's noise standard policies. The record supports the MND conclusions on the potential noise impacts; no substantial evidence has been submitted showing a fair argument on this subject.

Responses to Taylor Report

Mr. Paul Taylor of Paul Taylor Consulting submitted an extensive letter dated November 9, 2012 (referred to above as the Taylor Report and attached hereto as part of Appendix 1) in response to the Mitigated Negative Declaration. In addition to Responses 1 through Response 23, the following responses address the comments provided in the Taylor Report that have not already been addressed.

Response 24:

Mr. Taylor's description overstates the actual size and dimensions of the proposed turbine tower, effectively doubling them. The turbine tower dimensions are approximately 6 foot at the base and 3 feet at the top. His description is not supported by fact. The proposed small wind turbine is approximately 20 feet shorter than the nearby existing PG&E power lines and is narrower in profile. The PG&E power line towers are approximately 16 feet at the base.

Response 25:

See Response 1. Based upon the review of the application, the MND, the comments and these responses and the other documentation in the record, the City has concluded that a Mitigated Negative Declaration is appropriate as there is no substantial evidence in light of the whole record that the project, as revised, may have a significant effect on the environment.

The comment grievously misstates the nature and role of MNDs under CEQA, describing them as a short cut designed to avoid an EIR. Mitigation Negative Declarations are a well-established, long-standing process under CEQA. The City's MND complies with all applicable substantive and procedural requirements for MNDs as set forth in CEQA and the CEQA Guidelines. Information about the potential impacts of the project was disclosed through the MND and circulated for public review and comment. In this case, the City went beyond CEQA requirements, and prepared responses to comments on the MND. The environmental analysis and information on the project will be considered at a public hearing, in full compliance with CEQA and the City zoning ordinance.

Response 26:

There are no authorized public trails along the southern boundary of the Heron Bay properties. The Association of Bay Area Governments website displays the official Bay Trail map of the East Bay (attached hereto as Appendix 3, Excerpt from San Francisco Bay Trail East Bay Map), and shows the Grant Avenue parking lot access to the Bay Trail. This parking lot is also shown in several of the photo simulations submitted with the application and included in the MND. Photo 1 is taken from the Grant Avenue parking lot access to the Bay Trail. Photo 2 is taken walking north from the parking lot along the Bay Trail and the existing junk yard property and PG&E power lines are visible in the photo to the east. Photo 3 is taken as the Bay Trail turns roughly 90 degrees to the west towards and along the PG&E substation and towards the Bay. The Bay Trail does not continue eastbound along the San Lorenzo Flood Canal between the Heron Bay and Halus properties. There are no current or future planned Bay Trail extensions on either side of the San Lorenzo Creek at any point between the Heron Bay property and the Halus Power Systems property, and no authorized public use of this county flood control area. The Bay Trail is a planned recreational corridor that, when complete, will encircle San Francisco and San Pablo Bays with a continuous 500-mile network of bicycling and hiking trails. More information and Trail maps can be found at www.baytrail.org. No part of the Bay Trail adjoins the Halus property; the property is easterly of the trail away from the marshes and bay waters.

Response 27:

The existence or absence of wind turbine siting criteria is not a concern under CEQA.

Response 28:

Comment noted. No evidence has been provided by Mr. Taylor to indicate that the proposed project would result in any habitat degradation nor has Mr. Taylor established any expertise on the subject. See Response 1.

Response 29:

The Association has provided no evidence to support a conclusion that these impacts would result in contradiction of ESA's findings. The ESA report considers the effects of the location and operation of the proposed turbine as a central focus of the analysis, including the height, power rating, and rotor sweep area. It specifically considered the potential effects of the turbine on birds with different flight characteristics, and evaluated the risk of nest or home range abandonment in the context of other pre-existing sources of disturbance in the vicinity, such as transmission line towers, recreational trail use, and off-leash dogs.

Response 30:

As stated in Response 27, the existence or absence of wind turbine siting criteria is not a concern under CEQA. However, the 500 feet setback requirement proposed by Mr. Taylor will be met under the proposed project, as the turbine would be located a minimum of 500 feet from any residence.

Response 31:

The application submittal materials identify a number of significant public benefits that would result from the proposed project. Those public benefits include local green/high tech jobs, research and development investment that creates local revenues, and compliance with state and local mandated policies which promote green / wind energy projects to reduce greenhouse gasses, reduce dependence on foreign energy sources and reduce the overall consumption of fossil fuels. In any case, public benefits, or lack thereof is not determinative of a significant impact under CEQA.

B. Individual Comment Letters

The persons listed below submitted individual comment letters. The individual letters have been annotated to direct the reader to the appropriate responses above.

1. John and family
2. Qui Chau
3. Rose Ng
4. Wenqiang Ye and family
5. Mrs. Wong
6. Jenny Chen
7. Stephanie L'Archuleta
8. Ms. Min Mei Huang, Mr. Jiming Duan, Ms. Jennifer Duan
9. Hong Dalisay
10. Rod Harryman
11. Frederick and Kimmerly Simon
12. Roland Phillips
13. Misha Wyatt
14. Carlos P. Ocampo
15. Mary Lavodnas
16. Tony Ferreira
17. Enkargian Arslan
18. Katherine Lan
19. Mitch Huitema
20. Howard Kerr

Section II: Conclusion

This Response to Comments document fully illustrates that, despite the number of comments provided by the public as part of the review of the Mitigated Negative Declaration, the project is one that is fully compliant with all requirements of the City, the FAA and the State Department of Fish and Wildlife. The proposed use is permitted and complies with all applicable zoning standards, with the exception of its height which is the subject of the variance request. The project will not conflict with any scenic vista, nor will it have any significant impacts to public views. Contrary to the many erroneous statements by the Heron Bay Association and their consultant, Paul Taylor, the proposed project is located easterly of the shoreline so that the proposed turbine would be *behind* any person taking in the view of the Bay. Further, as stated above, the project site is an industrial property zoned by the City's to allow the most intensive industrial land uses.

The City of San Leandro in its preparation of a MND has conclusively determined that the proposed project, with the incorporation of the mitigation measures agreed to by the applicant, clearly will not have a significant effect on the environment and that no substantial evidence in the light of the whole record has been presented to the City that the proposed project may have a significant effect on the environment.

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7 Attorneys for
8 HERON BAY HOMEOWNERS ASSOCIATION

COMM. DEVEL. DEPT.

NOV 14 2012

SAN LEANDRO
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*Electronic version
received yesterday,
November 13, 2012
GP*

9 CITY OF SAN LEANDRO

10 COMMUNITY DEVELOPMENT DEPARTMENT

11 PLANNING DIVISION

12
13 IN RE:

14 THE CITY OF SAN LEANDRO'S
15 PROPOSED INTENT TO ADOPT A
16 MITIGATED NEGATIVE DECLARATION
17 FOR HALUS POWER SYSTEMS WIND
18 TURBINE AT 2539 GRANT AVENUE, SAN
19 LEANDRO, CALIFORNIA 94579

20 **AMENDED PUBLIC COMMENTS OF
21 HERON BAY HOMEOWNERS
22 ASSOCIATION AND INDIVIDUAL
23 OWNERS/MEMBERS OF HERON BAY
24 HOMEOWNERS ASSOCIATION IN
25 OPPOSITION OF THE CITY OF SAN
26 LEANDRO'S INTENT TO ADOPT A
27 MITIGATED NEGATIVE
28 DECLARATION FOR HALUS POWER
SYSTEMS WIND TURBINE LOCATED
AT 2539 GRANT AVENUE, WITHIN
THE CITY OF SAN LEANDRO.**

BZA Hearing Date: Dec. 6, 2012

25 The following comments and legal argument is being submitted on behalf of the Heron Bay
26 Homeowners Association and individual owners/members of the Association in opposition to the
27 City of San Leandro's published Intent to Approve a Mitigated Negative Declaration for a Halus
28 Power Systems Proposed Wind Turbine to be located at 2539 Grant Avenue, San Leandro,

COMMENTS IN OPPOSITION TO INTENT TO APPROVE A MITIGATED NEGATIVE DECLARATION - 1

1 California. For all future reference in this document, the Heron Bay Homeowners Association
2 and individual owners/members of the Association will be referred to as "the Association," the
3 City of San Leandro will be referred to as "the City" and Halus Power Systems will be referred
4 to as "Halus" unless otherwise stated. The Heron Bay Homeowners Association previously filed
5 on July 31, 2012, a document entitled "Public Comments of Heron Bay Homeowners
6 Association and Individual Owners/Members of Heron Bay Homeowners Association in
7 Opposition of the City of San Leandro's Intent to Adopt a Mitigated Negative Declaration for
8 Halus Power Systems Wind Turbine Located at 2539 Grant Avenue within the City of San
9 Leandro." Attached to that submittal and made a part thereof by reference was an expert report
10 and opinion by Mr. Paul Taylor of Paul Taylor Consulting. Mr. Taylor is a renowned
11 environmental scientist and CEQA specialist. That document was previously referred to as "the
12 Taylor report."
13

14 Subsequent to the filing of the earlier public comments of the Association, the City
15 continued the then scheduled public BZA hearing several times without stating a reason for the
16 continuances. Said continuances were apparently for the purpose of allowing Halus to file an
17 amended or supplemental filing supporting their argument for approval of the MND proposed by
18 the City. Halus has since filed amended documents and the public hearing by the Board is now
19 scheduled for December 6, 2012. Unfortunately, Halus and the City did not see fit to use the
20 several months granted them by virtue of the unexplained continuances to prepare and file an
21 Environmental Impact Report (EIR) as demanded by California statutes and the Heron Bay
22 Association, but rather used their time to attempt to address the shortcomings in the original City
23 findings and Halus submittals as pointed out by the Taylor report. The amended filings and the
24 City's stated intention to approve the MND are still woefully deficient and fail to satisfy the legal
25 standards demanded by the California Environmental Quality Act and cited case law. The
26 simple fact of the matter is that nothing short of a full EIR will suffice and the residents of Heron
27 Bay and the people of the City of San Leandro deserve no less than full compliance.
28

The Association has again asked Mr. Paul Taylor of Paul Taylor Consulting to review and

comment on all of the filings by Halus and the City's response to same. A copy of his report is dated November 9, 2012 and is entitled "Updated Halus Wind Turbine Negative Declaration Analysis Review." A true copy of that report is marked as Exhibit A to these comments and made a part hereof by reference as if fully set forth herein. Heron Bay Homeowners Association submits their Amended Comments and the Amended Paul Taylor report, their original Comments filed on July 31, 2012 and the original Paul Taylor report attached thereto and such oral comments as may be presented at the hearing on December 6, 2012 in support of their opposition to the City's intention to accept a MND. To make it perfectly clear, the Association absolutely objects to any approval of the MND and demands that the BZA and the City of San Leandro order Halus to prepare and submit a full EIR in compliance with California statute and case law.

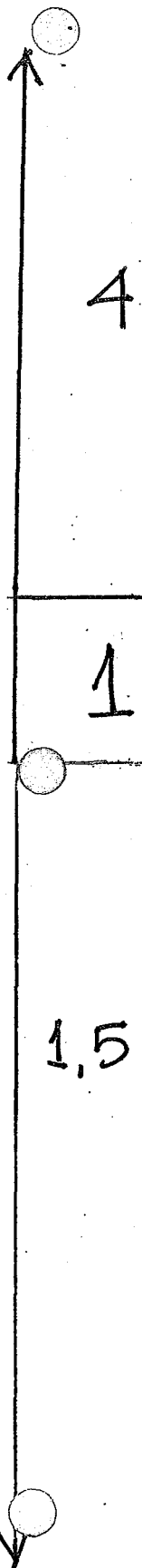
I. Preliminary statement.

The Association is comprised of 629 homes (451 single family homes and 178 shared court homes) located entirely in the City of San Leandro. The Association's homes are the northern neighbors to the industrial complex and storage yard maintained by the Petitioner Halus Power Systems. The proposed wind turbine is proposed to be located at the northern boundary of the Halus Power Systems property and the southern boundary of Association homes. Prior to this period of public comment, the City of San Leandro notified 4-6 homes located closest to the proposed project of the City's intent to allow a mitigated negative declaration. This notice met the minimum requirements of State law but certainly did not meet nor satisfy the needs and interests of the Association and its many members and owners. A public hearing of interested Association members called by the Board of Directors of Heron Bay was held in June 2012. The Board of Directors of the Association attended that open forum meeting along with representatives of the City of San Leandro Department of Development Services, a representative of the City Council and the owner of Halus Power Systems. Subsequent to this meeting, the City notified the Association that the time to file public comments in objection to the intent to adopt a Mitigated Negative Declaration had been extended to July 31, 2012. The

1 Association, and several interested homeowners, filed their opposition comments to the proposed
2 City action in a timely fashion, notwithstanding their objection to the City's denial of their
3 request for a 120-day continuance. Subsequent to July 31st, the City continued the Board
4 hearing several times without stating any reason for that action. Apparently said continuances
5 were at the bequest of Halus in order to allow them to file amended documents responsive to the
6 criticism contained in the Heron Bay HOA opposition. Subsequent to the amended filings by
7 Halus, the City has continued with their intent to allow the MND and has reset the public hearing
8 before the BZA for December 6, 2012. The Association, having once again been denied a
9 request for an additional 30-days to file their opposition comments, notwithstanding that Halus
10 was given more than four months to file additional documentation, files these comments in
11 opposition to the proposed MND. To be perfectly clear, the Association and its owner/members
12 continue to strongly object to the proposed adopted of a mitigated negative declaration and will
13 take this matter to the City Council and the appropriate Courts should this MND be approved.
14 The Association demands that an EIR be required for this project.

15
16 **II. Procedural Standards of Review.**

17 In its earlier comments, the Association stated the procedural standards for review.
18 However, since Halus has failed to file an EIR and the City has failed to demand an EIR, we
19 restate the very clear legal requirement for the EIR at length herein for the convenience of the
20 Board and the City. The purpose of the Association's comments is to insure that the City does
21 not allow this ill-conceived project to proceed forward on the basis of a Mitigated Negative
22 Declaration. A brief history of the CEQA requirements as it relates to this project are identified
23 in the amended Taylor report at page 1-3 and those statements are incorporated herein. Section
24 21064.5 of the California Public Resources Code (the California Environmental Quality Act) sets
25 the standards for the use of a Mitigated Negative Declaration. That section states: " 'Mitigated
26 negative declaration' means a negative declaration prepared for a project when the initial study
27 has identified potentially significant effects of the environment, but (1) revisions in the project
28 plans or proposals made by, or agreed to by, the applicant before the proposed negative



1 declaration and initial study are released for public review would avoid the effects or mitigate the
2 effects to a point where clearly no significant effect on the environment would occur, and (2)
3 there is no substantial evidence in light of the whole record before the public agency that the
4 project, as revised, may have a significant effect on the environment.”

5
6 The significant language in this section is the following language “... would avoid the
7 effects or mitigate the effects to a point where clearly no significant effect on the environment
8 would occur...” (emphasis added), and “there is no substantial evidence in light of the whole
9 record before the public agency...” (emphasis added). Based on the language of this operative
10 statute and the uncontroverted case law interpreting it, the comments of the Association and the
11 scientific evidence presented by the Taylor report, it is clear that the Mitigated Negative
12 Declaration should not be adopted by the City of San Leandro.

13 The landmark case of Ocean View Estates Homeowners Association, Inc. v. Montecito
14 Water District (2004) 116 Cal.App.4th 396, 10 Cal.Rptr.3d 451 directly dictates the path that the
15 City should follow in the Halus application. In Ocean View a homeowners association filed a
16 petition for a writ of mandate to compel a water district to prepare an environmental impact
17 report for a project to cover a reservoir with an aluminum roof. The district found that there was
18 a potential significance to the environment from flooding but the district found no significant
19 aesthetic impact. The district did not order an EIR based on their “checklist” and findings but
20 rather allowed the project to go forward with a Mitigated Negative Declaration (hereinafter
21 referred to as “a MND” unless otherwise stated). After the district and the trial court denied the
22 HOA petition, the Court of Appeal reversed and ordered the district to order a full EIR.

23 The court stated that an EIR provides detailed information about the likely effect a
24 proposed project may have on the environment, lists ways in which significant effects might be
25 minimized and indicates alternatives to the project (Public Resources Code, section 21061). An
26 EIR is required whenever there is a “fair argument” that significant impacts may occur.” So the
27 standard to be imposed by the City, as defined by the courts, is whether or not a fair argument
28 has been presented that would indicate that significant impacts might occur. It is not necessary

1 that interested parties demanding an EIR prove conclusively, beyond a reasonable doubt or even
2 by a preponderance of the evidence that significant impacts may occur. It is only necessary that
3 the interested party make a fair argument that there could be significant impacts. It is then the
4 function of the EIR to determine if whether or not there are significant environmental impacts.
5 (See also Quail Botanical Gardens Foundation, Inc. v. City of Encinitas (1994) 29 Cal.App.4th
6 1597, 1602, 35 Cal.Rptr.2d 470). The comments and facts as stated by the Association and in
7 the original and in the amended Taylor report clearly constitute a fair argument and the City must
8 order the EIR in order to determine the full impact of the environmental impact. The Ocean
9 View case is particularly significant because it argues the danger of granting a MND in cases
10 where a fair argument has been presented. The court stated: **"Because a negative declaration
11 ends environmental review, the fair argument test provides a low threshold for requiring
12 an EIR."** The City may not conclude that the low threshold has not been attained in the present
13 case. Ocean View also stood for the proposition that evidence may be presented that would
14 suggest that a project might have a **significant negative aesthetic impact**. One of the questions
15 then would be would the project have a substantial adverse affect on a scenic vista. A review of
16 Figure 1 attached to the updated Taylor report, Exhibit A, clearly indicates that the presence of
17 the wind turbine would seriously compromise, if not destroy, the pristine scenic views of the
18 protected east marsh and the San Lorenzo creek. One can stand on the corner of the Southwest
19 corner of Heron Bay, in the closest location to the proposed turbine, and easily view the bay
20 waters and it takes no great imagination to see that the turbine will constitute an eyesore. One
21 that damages the near perfect scenic view of the marsh, the creek and the bay. These
22 considerations alone would dictate the preparation of an EIR. It may be argued by the applicant
23 that opinions of homeowners do not constitute scientific evidence. The Ocean View case
24 eliminated this argument by stating, "Opinions that the cover will not be aesthetically pleasing is
25 not the special purview of experts. Personal observations on these nontechnical issues can
26 constitute substantial evidence."
27

28 The case of Bakersfield Citizens for Local Control v. City of Bakersfield (Panama 99

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1 Properties) (2004) 124 Cal.App.4th 1184 also confirmed the substantial evidence standard. It
2 stated that "substantial evidence is defined as enough relevant information and reasonable
3 inferences from this information that a fair argument can be made to support a conclusion, even
4 though other conclusions might also be reached." In other words using the fair argument
5 standard, an EIR should be ordered even if the ultimate conclusion is that there are not
6 significant environmental impacts if substantial evidence is presented that would dictate that an
7 EIR be required. The Bakersfield case also discussed and approved the concept of urban decay
8 in considering whether or not to require an EIR and it also allowed individuals to present
9 evidence obtained from their own personal knowledge.

10
11 The case of The Pocket Protectors v. City of Sacramento (Regis Homes of Northern Cal.,
12 Inc.) (2004) 124 Cal.App.4th 903 involved a project submitted on a MND. In this case the court
13 discussed the principles and purpose of CEQA. The court stated: "The foremost principle under
14 CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the
15 fullest possible protection to the environment within the reasonable scope of the statutory
16 language... We have repeatedly recognized that the EIR is the heart of CEQA." The court also
17 affirmed that public participation is an essential part of the CEQA process. The court reaffirmed
18 "With certain limited exceptions, a public agency must prepare an EIR whenever substantial
19 evidence supports a fair argument that a proposed project may have a significant effect on the
20 environment... Significant effect on the environment means a substantial, or potentially
21 substantial, adverse change in the environment." The Pocket Protector case also affirmed that a
22 "The fair argument standard is a 'low threshold' test for requiring the preparation of an EIR." In
23 the Halus matter, clearly the original and amended Taylor report and the comments and
24 observations of the Association meet any low threshold requirement for requiring an EIR. This
25 court also confirmed "relevant personal observations of area residents on nontechnical subjects
26 may qualify as substantial evidence for a fair argument. So might expert opinion if supported by
27 facts, even if not based on specific observations as to the site under review... Where such expert
28 opinions clash, an EIR should be done." Under the authority of this case, even if the applicant

1 produces evidence of no environmental impact, which Halus has not successfully done, the
2 report of Paul Taylor alone should demand an EIR, even if the expert opinions clash. In this
3 regard the court said: "It is the function of the EIR, not a negative declaration, to resolve
4 conflicting claims, based on substantial evidence, as to the environmental effects of a project."
5 This is another case that confirmed the rule that non-technical, area resident's opinions should be
6 considered on aesthetic issues. The court stated: "As on other CEQA topics, the opinions of area
7 residents, if based on direct observation, may be relevant as to aesthetic impact and may
8 constitute substantial evidence in support of a fair argument; no special expertise is required on
9 this topic." Therefore on the topic of aesthetics, the opinions of the Association and local
10 residents must be considered in addition to the opinions expressed in the original and updated
11 Taylor reports.

12
13 The case of Architectural Heritage Assn. v. County of Monterey (2004) 122 Cal.App.4th
14 1095 was a challenge to the adoption of a MND by the County who wanted to tear down the old
15 Monterey courthouse. The court stood for the proposition that CEQA embodies the state's
16 policy that the long-term protection of the environment shall be the guiding criterion in all public
17 decisions. **The court cited the California Supreme Court in recognizing that the Court has**
18 **repeatedly recognized that the EIR is the heart of the CEQA.** Accomplishment of the high
19 objectives of that act requires the preparation of an EIR whenever it can be fairly argued on the
20 basis of substantial evidence that the project may have significant environmental impact. The
21 Supreme Court stressed the importance of preparing an EIR in cases in which the determination
22 of a project's environmental effect turns upon the resolution of controversial issues of fact and
23 forms the subject of intense public concern. It is hard to imagine more intense public concern
24 than the City's expressed intention to approve a MND has caused.

25 Finally, the case of Sierra Club v. California Dept. of Forestry & Fire Protection (2007)
26 150 Cal.App.4th 370, 59 Cal.Rptr.3d 9 establishes the fact that great weight is to be given to
27 expert testimony in evaluating the fair argument standard to be used. Under the guidelines of
28 this case, therefore, great weight must be given to the opinions of Paul Taylor, one of the

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1 recognized experts in the field of environmental protection. In support of Paul Taylor's
2 expertise, the Association marks as Exhibit B to these comments the curriculum vitae of Mr.
3 Taylor, and makes it a part hereof by reference as if set forth at length herein. A review of Mr.
4 Taylor's CV highlights his educational and professional experience and his preeminence in the
5 field of environmental protection.

6 **III. Specific Issues of Environmental Concern.**

7 The Association specifically adopts all of the comments and recommendations contained in
8 the updated Taylor report, Exhibit A to this document. The following represent specific
9 highlights of that report on which the Association would comment.

10
11 A. Aesthetics. As the Taylor report discusses on page 3, the City finds less than
12 significant impact on scenic vistas because of the existing adjacent industrial uses and zoning.
13 Also because the turbine is similar or less height than existing PG&E high tension wires.
14 Apparently the City is influenced by the additional filings of Halus including 11 photo-shopped
15 views into the project site. Unfortunately, the subject photos simulations are all taken from
16 public trail and bay views. None of them are taken from the home sites of the approximately 25
17 homes that would be directly affected by the proposed wind turbine. As stated in the updated
18 Taylor report, the size, scale, format and perspective of the photo simulations are inadequate to
19 afford any fair or independent analysis of the project impacts to scenic vistas or existing visual
20 character or quality. This analysis completely ignores the obvious scenic visual impact of the
21 turbine on the homes of Heron Bay that are directly across from the turbine, the impact on the
22 protected area of the east marsh and the San Lorenzo creek and its relationship to San Francisco
23 bay. In analyzing the impact on vistas, one cannot picture themselves in the actual projected site,
24 admittedly industrial, and ignore the areas on the immediate and adjacent vicinity. As stated as
25 many as 25 homes in the Association would have a direct and unimpeded view of the turbine
26 from their back yards and rear windows. The approximately 300 acres of marsh and creek have
27 been protected and cherished for a long time. To place the turbine in the proposed location
28 would have it be the centerpiece and the eyesore of the entire area surrounding the east marsh. It

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1 would be the first thing anyone's eye would travel to as there are no other turbines in the area or,
2 for that matter, surrounding any city or county touching the San Francisco bay. The impact of
3 this 100-foot turbine in the middle of the beautiful, protected areas of the bay and marsh cannot
4 be underemphasized. To ignore that consideration demonstrates the flawed concept of granting
5 the MND. It is unfair to compare the turbine to the existing PG&E power lines as the power
6 lines predated the development of the Association and the protected marsh areas. High power
7 wires are common throughout the bay area and offer no shock or surprise to any resident. One
8 would question, however, if power lines were planned to be installed at this time if they would
9 be approved. It is highly doubtful. But Halus should not be allowed to rely on what is already
10 on site; rather the merits of their proposal must be evaluated on its own environmental impact.

11
12 As the updated Taylor report points out there are no similarities in visual aesthetic
13 impact in the PG&E tower profiles, aerial mechanization, moving member distractions or scenic
14 vista intrusion. The proposed turbine has a 2000 square foot sweep area. As Taylor states, this
15 would have the same effect as a Cessna Citation 500 spinning like a pinwheel at the top of a 100
16 foot tower less than 500 feet from homes in the Association and directly adjacent to the protected
17 marsh areas. The public trails and parks form an integral part of the unique Bay Trail, East Bay
18 recreation system which has provided hiking, jogging, bicycling, skating opportunities and the
19 observation of more than 100 species of migrating birds since 1989. To conclude that the
20 presence of a 100 square foot turbine essentially in the middle of such protected areas would be
21 tragic at best. It is interesting to note that no 100-foot horizontal axis, tubular towers or wind
22 turbines have been previously allowed within any scenic vistas of the Bay Trail. To allow this
23 100-foot aerial advertising tower would be to start a precedent that will not be easily reversed.

24 The City must consider Taylor's conclusion that the turbine may create a potentially
25 significant impact to occupied, off-site structures due to daytime shadow casting effects. It is
26 well established that towers of this height and size may create "shadow flickering" that may
27 substantially affect the use and enjoyment of the owners of the adjacent homes. Certainly under
28 the cases cited, the City must at least order an EIR that would investigate the potential of

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1 environmental impact of this variety. The City must conduct a wind project shadow impact
2 assessment as part of an EIR. The City must demand an independent Visual Impact Analysis
3 using computer simulations on current color photos showing the proposed turbine in its location
4 at scale from various points of view among the adjoining Heron Bay homes and the Bay Trails.

5
6 It is important to note that other jurisdictions have adopted ordinances recognizing the
7 effects of shadowing on the environment. The City of San Francisco has adopted an ordinance
8 prohibiting new structures over 40 feet in height from casting shadows over public open space.
9 Certainly the City of San Leandro should not adopt a de-facto policy that would be less
10 restrictive than that of San Francisco, a city famous for protecting its scenic vistas. The
11 Association urges the City to adopt a "wind turbine siting criteria" rather than approve this
12 particular turbine without sufficient study, thereby setting a dangerous and permanent precedent.

13 The Association is aware that Benny Lee, the president of the Heron Bay Homeowners
14 Association, has independently sent written comments listing six separate concerns that he has
15 with the proposed project. The Association hereby incorporates and adopts each and every point
16 raised by Mr. Lee in his comments. On this particular subject, the Association specifically
17 adopts Mr. Lee's points number 3 and 4. As Mr. Lee points out, allowing this installation will
18 single out the community as allowing the first turbine on the bay shoreline. It can only lead to a
19 slippery slope of ugliness and uncontrolled and unwarranted development on some of the most
20 cherished areas of the bay lands. The project will clearly add environmental insult and injury to
21 Heron Bay homeowners, their property values and family enjoyment. The City should and must
22 require an EIR to fully consider all of these potentially damaging areas.

23 B. Biological Resources. The Association adopts the findings of Paul Taylor, Exhibit
24 A, pages 5-6 in reference to biological resources. A project may impact biological resources
25 through the loss or destruction of individual bird species or through the degradation of sensitive
26 habitats. Anyone who has ever walked the public trails or visited the protected area in question
27 has to be aware of the extent and variety of migrating birds and other native birds in the areas of
28 the marshes, in the direct proximity of the proposed project. The City finds that an

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1 Environmental Sciences Associates (ESA) memorandum concludes that the risk of bird fatalities
2 from a single wind turbine is not statistically significant. The Association would note that the
3 loss of a single bird habitat due to an unnecessary project that serves no useful purpose other
4 than advertising for the applicant is too many. Taylor notes that the aerial twisting, spinning and
5 noise from a wind turbine will disturb and alter avian flight patterns and nesting habits in
6 proximity to the project. The ESA report makes no mention of the nearly one million birds that
7 rest and nest in the 300 acres of marsh land that would be affected by the presence of the turbine.

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8 The ESA report does not mention the in-flight mating patterns of the California Least Tern, a
9 federal and state endangered species. It does not mention the Northern Harrier's in flight
10 exchange of prey with their mates, also a protected species. It does not address impact on the
11 Western Burrowing Owl that flies in circular patterns and engages in in-flight courtship. The
12 ESA report admits that it does not have enough evidence or research on migration or mating
13 patterns to objectively address this issue. There is no explanation how they arrived at the
14 artificially low figure of 1 bird killed every 6 1/2 years but such an estimate would strain

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15 credibility. The City cannot compare any other area in California to the largest bird wildlife
16 habitat in the East Bay. The bird mortality estimates do not apply to the presence of a wind
17 turbine next to a bird sanctuary. Pictures of all of the above species, which may be dramatically
18 affected by the proposed turbine, are again attached as group Exhibit C to these comments, made
19 a part hereof by reference and incorporated herein. The photos constitute a small percentage of
20 the bird species that may be affected by the proposed turbine.

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21
22 The City Mitigation Measures are not fully consistent with the June 29, 2012 California
23 Department of Fish and Game's letter mitigations. It is inconceivable that the City would allow
24 this project without a strict compliance with the clear directives of the Department of Fish and
25 Game. It is further inconceivable that the City would allow this project to move forward without
26 an EIR investigation of the effect of the project at least on these specific species. Remember the
27 legal standard is a fair argument. The Association does not have to prove that these species will
28 be involved, just that there is evidence that they could be affected. This fact alone should

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1 generate an order for an EIR.

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3 C. Geology/Soils. The Association adopts the comments contained in the updated
4 Taylor report, Exhibit A, pages 6-7, in this section as their own and offers no additional
5 comments.

6 D. Hazards & Hazardous Materials. The Association adopts the comments contained
7 in the updated Taylor report, Exhibit A, pages 7-8, in this section. As contained in the Taylor
8 report, research has demonstrated that wind turbine blades have an extremely large radar
9 signature that can disrupt aircraft navigational radar. As the Heron Bay project lies in close
10 proximity to Oakland International Airport, this finding presents a clear and present danger to the
11 residents and should be investigated and included as part of an EIR. As stated by Mr. Taylor,
12 "the City must acknowledge and address potential added aircraft navigational radar impacts of
13 the proposed Halus Wind Turbine Project where no public benefits are provided." There is little
14 doubt that should an air catastrophe occur, and should disaster be traced back to interference
15 from the proposed wind turbine, that the City would be liable for all resultant damages as the
16 result of their refusal to demand a full EIR pursuant to state law. Can anyone from the City or
17 from Halus name any other wind turbine currently in use or under construction in similar
18 proximity to an active, international airport? We sincerely doubt that they could so demonstrate.
19 There is also no argument to the point that this turbine will provide any public benefit. This
20 project benefits exactly no one in the City of San Leandro other than Halus.

21 E. Noise. The Association adopts the comments contained in the updated Taylor
22 report, Exhibit A, pages 9-10, in this section. The comments in the Taylor report relative to
23 noise intrusion are technical and clearly qualify as fair argument under the standards of the cases
24 cited in this brief. In summary Taylor states that horizontal axis wind turbines generate
25 significant noise and vibration. There is no City acoustical analysis that would show noise or
26 vibration impact levels inside the homes closest in proximity to the turbine. Furthermore there
27 are no City studies that would evaluate the resultant noise impact on the trails or marsh areas.
28 The Halus provided manufacturer's noise specifications dated November 1996, more than 16

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1 years old, are neither current nor relevant to the Halus-modified wind turbine. The Association
2 demands that as part of an EIR that a computer analysis be performed per Community Noise
3 Equivalent Levels (CNEL) or County noise ordinance compliance standards. The study should
4 provide project noise levels at adjacent residential and recreational receptors from a computer
5 modeling of sound in decibels. Noise contours at 5 dBA levels should be plotted over a scaled
6 site plan or aerial photo capturing the locations of the turbine noise source and proximate
7 residential and recreational receptors. As stated by Mr. Taylor, a common limit, adopted by
8 other jurisdictions, for significant wind turbine noise impacts to adjacent residential land use is
9 an increase of 10 dBA above existing ambient residential noise levels. For the City to proceed
10 with the MND in spite of the criteria and specifications set by other relevant jurisdictions
11 pertaining to noise intrusion, without a scintilla of supporting scientific evidence, flies in the face
12 of the California code.

14 F. Property Values and Economic Hardship. All studies of wind turbines as they
15 relate to property values indicate that property values will decline for both permanent and
16 temporary periods. Any individual looking to purchase a home in the Heron Bay area would be
17 immediately impacted by the presence of a ten-story wind turbine in their back yards. Such a
18 presence could only cause further stress and hardship on the residents of San Leandro, both in
19 potential sales and in the refinancing of their homes. The City has the duty and obligation to
20 protect the resident's property values as best they can. It would be unconscionable for the City
21 to ignore potential property value impact on its residents in order to satisfy the advertising needs
22 of one two year old business owner. An EIR must be ordered to include a property value
23 evaluation. Declining property values can lead to the abandonment of homes, decline in upkeep,
24 the presence of squatters and accompanying crime. This type of urban decay has a domino effect
25 on all surrounding properties. The lowering of property values, and the concurrent abandonment
26 of homes, as the result of an unsightly wind turbine, can certainly lead to urban blight and this
27 phenomenon should be studied. The residents of Heron Bay, particularly those 25 homes facing
28 the proposed Halus project, have already accepted that their property values may be affected by

17-1

1 the presence of the referred to electrical power lines and the adjacent industrial area. They have
2 accepted those facts and have built that realization into their economic decisions to purchase
3 their homes where located. However, it is abundantly clear that the presence of the 100-foot
4 turbine will significantly, adversely affect those home values. A potential buyer could not help
5 but notice the presence of a singular, large turbine within a few hundred feet of the subject
6 homes. One might look across the channel and not notice the power lines, which are a common
7 occurrence in the bay area, but no potential buyer could fail to notice and comment on the
8 presence of the 100-foot turbine. No one could rationally state that the presence of such a
9 mechanical eyesore would serve to increase the property values. The negative impact is clear to
10 all.

17-6

11
12 G. Risk of Failure and Abandonment. As stated succinctly by Mr. Lee in his
13 comments, the City has no specific policy and no experience in evaluating the seismic and wind
14 load risks of a free standing ten story wind turbine in an area of bay fill. Failures could well
15 include fires, explosions and rotating blades breaking loose from the podium structure and falling
16 more than ten stories. Certainly, at the very minimum, an EIR should establish failsafe
17 procedures that would be in effect for all of the above potential disasters. There also appears to
18 be no plan in effect in the event that Halus would abandon the project and the site or file
19 bankruptcy. This risk has certainly become more obvious in recent times as evidenced by the
20 Solyndra disaster. In this event of bankruptcy or abandonment, the site would be burdened with
21 a decaying and unmaintained wind turbine which would pose a direct danger to the residents and
22 the surrounding areas. As a bankrupt corporation would have no incentive to remove or even
23 maintain the turbine, the City should require a deposit or fund from Halus that could be used to
24 remove the turbine in the event of abandonment.

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25 IV. Conclusion.

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26 The Association urges the City of San Leandro to abandon their intention to grant approval
27 of this project and a code variance based on a Mitigated Negative Declaration. The entire
28 premise of the project, i.e., that it is green, is misplaced. While it is admirable that the City

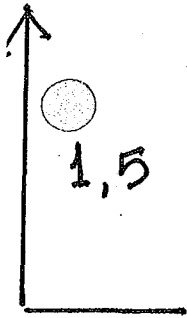
1 strives to be more "green" and encourages green projects, the proposed wind turbine hardly
2 satisfies that purpose. The amount of power allegedly generated by this one, used, old
3 technology turbine serves only Halus. They would save less than \$1,000 in power usage and yet
4 may cause untold amount of damage to the environment and surrounding areas. The sad fact of
5 the matter is that this project has very little to do with being green. The real purpose of the
6 project is to provide advertising of the Halus product to any interested customers. We are quite
7 sure that it would be advantageous to Halus to be able to take a customer into their back yard and
8 show them a working wind turbine made from used, recycled parts rather than drive them to
9 Suisun City or wherever else they have a similar product in operation. The proposed project is
10 nothing more than aerial advertising. No power generated by this turbine will ever be sold to the
11 electrical grid because the output would be insignificant. The only "green" consideration of this
12 proposed turbine is that Halus is a company marketing a green product. This, in itself, does not
13 make the proposed turbine green. Would the City then allow any other industrial business in the
14 area to erect their own ten-story turbine? Doubtful. Would the City allow a ten-story moving
15 parts billboard for advertisement of a green business? Doubtful. Any yet that is exactly what is
16 being proposed. However, the residents of Heron Bay and the surrounding areas and the
17 residents of greater San Leandro who use and respect the protected marsh and habitat areas
18 should not suffer for the corporate benefit of one business. Any type of risk analysis would
19 clearly demonstrate the folly of such a venture.

21 Heron Bay has clearly demonstrated a fair argument for an EIR in the above and in the
22 comments of its owner/members. The City already allowed Halus an additional four months,
23 after the opposition filed by Heron Bay and its residents, to file additional documents in support
24 of their application. During that time they could have produced an EIR or at least agreed to
25 prepare an EIR. Instead they manipulated the information previously presented with no new
26 scientific evidence or sustainable support for the variance. For the City to ignore the fair
27 arguments raised, not order an EIR and proceed with a MND will result in an almost sure
28 reversal by the courts and will involve the City in prolonged and expensive litigation. The body

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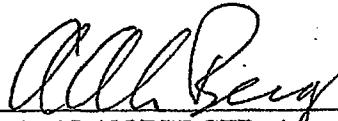


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of California law almost universally calls for action on the side of caution, that is, the insistence on an EIR in all questionable cases. Heron Bay has met the standard set by numerous cases and the City should and must reverse their intent to proceed on a Mitigated Negative Declaration. An EIR must be ordered before the Halus project may continue.

Dated: Nov. 13, 2012

LAW OFFICES OF A. ALAN BERGER



A. ALAN BERGER, Attorney for Heron Bay Homeowners Association

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Taylor Report

EXHIBIT A

PAUL TAYLOR CONSULTING

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November 9, 2012 Update

Updated

Halus Wind Turbine Mitigated Negative Declaration Analysis Report

Introduction

Paul Taylor Consulting (PTC) environmental science and regulatory consulting has been engaged by the Heron Bay Homeowners Association (HOA) in San Leandro, California to analyze a revised October 11, 2012 *Mitigated Negative Declaration* (MND) prepared by the City of San Leandro Planning Department (City) as Project PLN2012-00006 pursuant to the California Environmental Quality Act (*Public Resources Code Section 21000 et seq.* and CEQA Guidelines *California Code of Regulations Section 15000 et seq.*). As CEQA Lead Agency, the City supports the revised MND findings with a CEQA *Initial Study Checklist* dated October 11, 2012, Halus and their ESA Consultant's May 10, 2012 *Technical Memorandum* concerning wind turbine impacts to birds, ESA's Sept. 20, 2012 *Technical Memorandum* evaluating wind turbine shadows, Halus' Nov. 28, 1996 Vestas Model V29 wind turbine noise specifications, March 12, 2012 Project site plans and Oct. 10, 2012 photo simulations, a June 21, 2012 Federal Aviation Administration "determination" letter, as well as various Federal, State, County and City environmental regulatory requirements, and City staff determinations.

2 PTC relies upon current, reputable scientific references and published environmental science research, recent and direct Project site reconnaissance and City CEQA Lead Agency policies, practices and work products. PTC's task is to analyze the technical accuracy, adequacy and specific scientific bases for findings and conclusions in the City's MND and related records for the Project. PTC will report CEQA/MND errors, omissions, inaccuracies, speculation and inconsistencies. PTC will recommend additional scientific investigations, issues resolutions and precedent wind turbine siting criteria. PTC will also amplify HOA and public recreational stakeholder concerns, and rebut City findings where appropriate.

Project Description

Halus Power Systems, a San Leandro supplier of re-manufactured wind turbines, has applied to the City of San Leandro for a Zoning Variance to exceed the 60 foot height limit on their industrial property allowing an 80-foot-tall (100 feet to the full blade sweep height), single, 50 kilowatt horizontal axis wind turbine electric power generator to be located on their property at 2539 Grant Avenue in the I-G Zoning District.

Applicant Halus Power Systems states the purpose and justifications for the proposed Project wind turbine to be: 1) research and development purposes as part of the company's ongoing efforts to increase operational and energy efficiencies of the turbines it re-manufactures; and 2) energy generated by the turbine will offset the company's demand for non-renewable energy for their operations. (ESA *Technical Memo*, May 10, 2012) As proposed, the Project requires a discretionary action by the City, which requires environmental review and public disclosures under the California

Environmental Quality Act and Guidelines (CEQA).

The Project wind turbine operating specifications are indicated in **Table 1** below. The turbine would be erected atop a tubular tower, with a maximum blade sweep height of approximately 100 feet and a ground clearance under the blade of 51.5 feet. The turbine will achieve full power at wind speeds of 37.6 mph with a turbine rotational speed of approximately 44 rpm. The turbine's operational cut-in wind speed is 7.4 mph, with a cut-off wind speed of 62 mph. An electronic wind vane mechanism allows the turbine to rotate on its horizontal axis to face maximum windward force directions.

Table 1
Halus Project Wind Turbine Specifications

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Wind Turbine Model: Vestas V17 90 kilowatt-rated; horizontal turbine axis on tubular tower
Electric Power Output: 50 kilowatt-rated with Halus modifications
Total Wind Turbine Weight: Approx. 4 tons
Total Operating Height: 100 ft.
Tubular Tower Height: 73.82 ft.
Tubular Tower Diameters: Base approx. 12 ft., top approx. 6 ft.
Reinforced Concrete Tower Foundation: Approx. 20 ft. x 20 ft. slab
Turbine Rotor Blades: 3
Turbine Rotor Hub Height: 76 ft.
Rotor Blade Sweep Diameter: 44 ft.
Blade Tip Ground Clearance: 51.5 ft.
Blade Swept Area: 2,000 square ft.

Sources: Halus Power Systems 2012, PTC July 2012, and ESA *Technical Memo*, May 10, 2012.

The final page of this report is **Figure 1** depicting the Halus Proposed Wind Turbine Location, and Project vicinity residential, industrial and public recreational land-uses in aerial color photo perspective. The ESA-derived **Figure 1** annotation data for the Halus wind turbine vary slightly from entries in **Table 1** above.

Mitigated Negative Declaration Analysis

The CEQA statute provides that Mitigated Negative Declarations (MNDs) are used "when the Initial Study has identified potentially significant effects on the environment, but 1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and 2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment." (CEQA Section 21064.5)

An Initial Study formalizes the City Lead Agency preliminary analysis to determine whether an Environmental Impact Report or Negative Declaration must be prepared. Most commonly, the Initial Study is based upon a "Checklist" which illuminates the various environmental impacts which may result from the development project. The Checklist, however, is only part of the Initial Study. The Initial Study also must explain the reasons for supporting the Checklist findings and note or reference the source or content of the data relied upon in its preparation and determinations.

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Mitigated Negative Declarations are a project applicant's expediting short cut to avoid the time and

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six-figure (\$) expense of preparing and processing a full CEQA Environmental Impact Report (EIR) – including Draft EIR and Final EIR with Response to Comments disclosures. The abbreviated MND processing route also avoids the controversies and delays that can result from the requisite EIR analysis of “alternatives to the proposed project” and “cumulative environmental impacts.”

The following is an analysis of the technical accuracy, adequacy and specific scientific bases for findings and conclusions in the revised City’s Initial Study Checklist and resultant MND where five “potentially significant impact” factors are addressed. These Project impact factors are: Aesthetics, Biological Resources, Geology/Soils, Hazards & Hazardous Materials and Noise. Analysis of the five impact factors that follow is presented in the same order and name in which they appear in the City’s Initial Study Checklist dated Oct. 11, 2012. Where appropriate, PTC will provide a point-by-point rebuttal of City findings.

Aesthetics

Aesthetics, views, shading and nighttime illumination issues are related elements in the visual or scenic environment. Aesthetics generally refer to the identification of visual resources and the quality of what can be seen, or overall visual perception of the environment. Views refer to visual access and obstruction, or whether it is possible to see a focal point or panoramic view from an area. Shading issues are concerned with effects of shadows cast by existing or proposed structures on adjacent land uses. Nighttime illumination addresses the effects of a proposed project’s exterior lighting upon adjoining uses.

Potentially significant impacts addressed in City’s Initial Study Checklist followed by PTC Rebuttal:

- a. Would the Project have a substantial adverse effect on a scenic vista – **City finds Less than Significant Impact** due to existing adjacent industrial uses and zoning, Project wind turbine similar or less than height of existing PG&E high-tension utility towers. Halus provides a “Photo Simulation” depicting 11 views into the Project site before and after wind turbine construction as evidence of no significant Project impacts to existing scenic vistas.

3, 6, 7, 9, 11
Rebuttal – The Checklist should find the Project a *potentially significant impact* to both private and public Aesthetics -- degrading scenic vistas and the existing visual character where there is no mitigation. Figure 1 herein depicts the Project location adjacent to a large, fully-occupied residential subdivision known as Heron Bay. As many as 25 Heron Bay homes would have direct rear views into the Halus Project property and the proposed 100-ft. high wind turbine. Halus’ selective photo simulations of 11 locations all are taken from public Bay Trail views, without consideration for the direct rear views from Heron Bay residents into the Project site. Moreover, the size, scale, format and perspectives of the photo simulations are inadequate to afford any fair or independent analysis of Project impacts to scenic vistas or existing visual character or quality.

17-1
Heron Bay homeowners accept that existing adjacent electric power utility and drainage facilities are necessary for the greater community good. These homeowners also accepted that there are existing, southeasterly-adjacent, low-rise general industrial-zoned land uses. However, all of these facilities and uses negatively affect their home investment values and impair their marketability, neighborhood visual character and lifestyle enjoyment. The new, intrusive, unanticipated adjacent 10-story high Halus wind turbine will add further environmental insult and injury to the Heron Bay private property owners.

10, 11, 22

Existing PG&E high-tension power line towers are approximately 16 feet higher than the operating height of the proposed Halus Project wind turbine. However, there are no similarities in visual aesthetic impact in their structural tower profiles, aerial mechanization, moving member distractions or scenic vista intrusion. The PG&E towers have static, maximum one-foot profiled, lattice structural steel construction as opposed to the single, modular wind turbine tower with visual profiles varying from a base of approximately 12 foot width, to top 6 foot width, to a ten-story high whirling and twisting turbine blade with a sweep diameter of 44 feet -- covering a 2,000 square foot area. This 2,000 square foot area is the visual impact equivalent of seeing a Cessna Citation 500 corporate jet spinning like a pinwheel at the top of 100 foot tower less than 500 feet from homes in the Heron Bay neighborhood and less than 350 feet from the Bay Trail and San Lorenzo Creek waterfowl habitat.

16, 26, 6

In addition, the Project wind turbine will have *potentially significant impact* to public scenic vista Aesthetics for which there is no mitigation. Co-extensive with the Heron Bay homes southeastern and southwestern boundaries are public trails and parks that are an integral part of the unique Bay Trail, East Bay recreation system. Begun in 1989, the Bay Trail provides easy accessible recreational opportunities for outdoor enthusiasts, including hikers, joggers, bicyclists and skaters. It also offers a setting for wildlife viewing and environmental education, and it increases public respect and appreciation for the entire San Francisco Bay ecosystem. The Bay Trail provides important transportation benefits such as commuting alternatives for cyclists and connections to numerous public transportation facilities. The Bay Trail offers access to commercial, industrial and residential neighborhoods; points of historic, natural and cultural interest; recreational areas like beaches, marinas, fishing piers, boat launches, and over 130 parks and wildlife preserves totaling 57,000 acres of open space. The Bay Trail's policies specifically seek to protect sensitive natural habitats such as the estuarine marsh supporting waterfowl in San Lorenzo Creek that separates Heron Bay homes from the Halus Project site with parallel trails on each creek bank. (*Association of Bay Area Governments, Website July 2012*).

13, 17-3

The proposed Halus wind turbine Project would be unprecedented in the public Bay Trail system as no 100-ft. horizontal axis, tubular tower, wind turbines have been permitted or constructed in or within scenic vistas of the Bay Trail. The City would be setting perilous land use precedent in approving the Halus Project zoning variance.

Additional Investigation

In order to fully analyze and disclose evidence for City decision makers, the public and Heron Bay homeowners the following additional studies are necessary to satisfy CEQA requirements and limit City liabilities:

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Conduct an independent Visual Impact Analysis using computer simulations on current color photos showing the proposed Halus wind turbine in its location at scale from various points of view among the proximate Heron Bay homes and Bay Trails adjacent to the Project site. Presentation exhibits should be no smaller than 11 inches x 17 inches in landscape format.

- b. Would the Project substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway -- **City finds No**

Impact due to existing adjacent industrial uses and zoning, the Project wind turbine is similar or less than the height of existing PG&E high-tension utility towers. There would not be a substantial adverse effect on scenic resources. **Finding noted.**

- c. Would the Project substantially degrade the existing visual character or quality of the site and its surroundings – **City finds Less than Significant Impact** due to wind turbine located in an area that is already subject to industrial uses. The existing visual character is of industrial uses. Open space to the northwest is already compromised with the PG&E high-tension utility towers. The proposed wind turbine would have a similar impact. Halus provides a “Photo Simulation” depicting 11 views into the Project site before and after wind turbine construction as evidence of no significant Project impacts to existing scenic vistas.

3, 6, 7, 9, 10, 11, 13
16, 17-1, 17-3, 22, 26

Rebuttal – Refer to Section a. above.

- d. Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area – **City finds No Impact** due to wind turbine would not create a new source of light or glare. Halus provides ESA’s Sept. 20, 2012 *Technical Memorandum* evaluating wind turbine shadows.

15
Rebuttal – While the Proposed Halus Project does not alter illumination or glare in views of the area, the Checklist should find the Project a *potentially significant impact* to public “open space” in the form of Bay Trails northwest from the Project site according to the ESA Sept. 20, 2012 *Technical Memorandum* evaluating wind turbine shadows. ESA’s shadow analysis Figure 2 therein indicates that the existing Bay Trail open space segment between the Project site and Heron Bay homes would receive Halus wind turbine shadowing before, during and after 8:30 a.m. on December 21. The City and community could benefit from “wind turbine siting criteria” precedent of its neighboring jurisdictions. Accordingly, a City of San Francisco ordinance prohibiting new structures over 40 ft. in height from casting shadows over public open space should be applied to the Halus Project in a *potentially significant impact* finding.

Additional Investigation

27
In order to fully analyze and disclose evidence for City decision makers, the public and Heron Bay homeowners the following additional studies are necessary to satisfy CEQA requirements and limit City liabilities:

City should consider adopting “wind turbine siting criteria” precedent of its neighboring jurisdictions.

Biological Resources

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A project may impact biological resources through the loss or destruction of individuals of a sensitive species or through degradation of sensitive habitat. Habitat degradation may occur through grading or excavation, increases in water or air pollutants, increased noise, light or vibration, interruption of fresh or salt water supplies, reduction in food supplies or foraging areas or interference with established wildlife movement patterns on or between habitat areas. Projects that create long-term or episodic impacts to natural areas, such as by generating toxic fumes or fugitive dust, could also result in degradation or destruction of a natural habitat. New development, construction, roadways and agricultural use all have the potential to lower or remove

natural resource values of natural open space systems.

Potentially significant impacts addressed in City's Initial Study Checklist followed by PTC Rebuttal:

- a. Would the Project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate sensitive or by special status species in local or regional plans, policies or regulations or by California Dept. of Fish and Game or U.S. Fish and Wildlife Service -- **City finds Potentially Significant Impact Unless Mitigation Incorporated** due to determinations in an Environmental Science Associates (ESA) Technical Memorandum dated May 10, 2012 that the calculated risk of bird fatalities from a single wind turbine operation were not statistically significant. The City has also required Halus to comply with eight mitigation measures specified in a June 29, 2012 California Department of Fish and Game letter commenting on the Halus Project.

19, 21, 29
Rebuttal -- It should be noted that the aerial twisting, spinning and noise from the Halus wind turbine will disturb and alter avian flight patterns and nesting habits in proximity to the Project. The City "Mitigation Measures" for potential impacts to biological resources are not fully consistent with the June 29, 2012 California Department of Fish and Game letter mitigations.

- 3, 6, 7, 9, 11** b. **City finding Less than Significant Impact.**

Rebuttal -- Refer Section a. above.

- 3, 6, 7, 9, 11** c. **City finding No Impact.**

Rebuttal -- Refer Section a. above.

- 3, 6, 7, 9, 11** d. Would the project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native nursery sites -- **City finds Less than Significant Impact** due to wind turbine site has no resident or migratory fish among industrial land uses.

Rebuttal -- Refer Section a. above.

Geology/Soils

Geologic processes that result in geologic and soil hazards include: surface rupture, ground shaking, ground failure, tsunamis, seiches, landslides, mudflows, and subsidence of the land. Because the region is generally considered to be geologically active, most projects will be exposed to some risk from geologic hazards, such as earthquakes. Thus, significant geologic impacts exceed the typical risk of hazard for the region.

Potentially significant impacts addressed in City's Initial Study Checklist followed by PTC Rebuttal:

- a. **City finding Potentially Significant Impact Unless Mitigation Incorporated. Finding noted.**

- b. City finding *No Impact*. Finding noted.
- c. City finding *No Impact*. Finding noted.
- d. City finding *No Impact*. Finding noted.
- e. City finding *No Impact* adopting Mitigation Measure #1: The City of San Leandro has incorporated the 2009 International Building Code into its municipal building code (Title 7, Chapter 7-5). The Project Applicant would be required to comply with all applicable State and City regulations to address potential geologic hazards associated with the proposed project, including ground shaking and liquefaction. Geotechnical and seismic design criteria must conform to engineering recommendations in accordance with the seismic requirements of the 2009 California Building Code (Title 24) and any amendments adopted in the San Leandro Municipal Code. Additionally, because the project site is in a liquefaction Seismic Hazard Zone, the Project Applicant will be required to comply with the guidelines. Finding noted.

Hazards & Hazardous Materials

Hazardous materials generally are chemicals, which have the capability of causing harm during an accidental release or mishap, and are characterized as being toxic, corrosive, flammable, reactive, an irritant or strong sensitizer. The term "hazardous substances" encompasses every chemical regulated by both the U.S. Dept. of Transportation's (DOT) "hazardous materials" regulations and the U.S. Environmental Protection Agency's (EPA) "hazardous waste" regulations, including emergency response. Hazardous wastes require special handling and disposal because of their potential to damage public health and the environment. Activities and operations that use or manage hazardous or potentially hazardous or explosive substances could create a hazardous situation if an accidental explosion or release of these substances occurred. Individual circumstances, including the type of substance, quantity used or managed, and the nature of the activities and operations, affect the probable frequency and severity of consequences from a hazardous situation. Federal, state, and local laws regulate the use and management of hazardous or potentially hazardous or explosive substances.

Potentially significant impacts addressed in City's Initial Study Checklist followed by PTC Rebuttal:

- a. City finding *Less than Significant Impact* as to creating a significant hazard to the public.

Rebuttal – The City should find *Potentially Significant Unless Mitigation Incorporated* due to the known probability of wind turbine structural blade failures and fragmentation – so-called "rotor failure." The risk of wind turbine blade break-ups and projectile fragment hazards is known to be as high as one in one hundred per year. Thus, planning jurisdictions have established land use setbacks to separate people and property from the hazards of rotor failure. (*California Energy Commission*, Nov. 2006)

The Heron Bay homes are less than 500 ft. from the proposed Halus wind turbine, and thus are exposed to the rotor failure risk from the Halus wind turbine. A 500-ft. setback, or separation, of the Halus wind turbine from the adjacent Heron Bay homes must be a minimum mitigating revision in the Project to comply with Mitigated Negative Declarations provisions, i.e. "... 1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for

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public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and 2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment." (CEQA Section 21064.5)

Additional Investigation

City should consider adopting "wind turbine siting criteria" precedent of its neighboring jurisdictions. Alameda County has a wind turbine setback requirement of three times the proposed structure height, or 500 ft., whichever is greater from the structure's property line.

- b. **City finding** *Less than Significant Impact. Finding noted.*
- c. **City finding** *Less than Significant Impact. Finding noted.*
- d. **City finding** *No Impact. Finding noted.*
- e. **City finding** *Less than Significant Impact* adopting Mitigation Measure #2: Halus Power Systems shall secure approval of Alameda County Airport Land Use Commission and the Federal Aviation Administration (FAA) prior to building permit approval of the wind turbine. The FAA issued a June 21, 2012 "Determination of No Hazard to Air Navigation" letter concerning the Halus Project with conditions.

Rebuttal – FAA determined "The proposed wind turbine would be in the line of sight for Oakland ASR-9 (radar terminal system) used by the Northern California Terminal Radar Approach Control (NCT), Oakland (OAK) and Hayward (HWD) Air Traffic Control Towers. The wind turbine would cause unwanted primary returns (clutter) and primary target drops in the area of the turbine. ..."

- f. **City finding** *No Impact. Finding noted.*
- g. **City finding** *Less than Significant Impact. Finding noted.*
- h. **City finding** *No Impact. Finding noted.*

Additional Investigation

Concerning the above-referenced FAA and Alameda County Airport Commission permits to approve the Halus wind turbine construction and operation, research has shown that wind turbine blades have an extremely large radar signature which can disrupt aircraft navigational radar. The City must acknowledge and address potential added aircraft navigational radar impacts of the proposed Halus Wind Turbine Project where no public benefits are provided.

Noise

Environmental noise is measured in decibels (dB). To better approximate the range of sensitivity of the human ear to sounds of different frequencies, the A-weighted decibel scale (dBA) was devised. Because the human ear is less sensitive to low frequency sounds, the A-scale deemphasizes these frequencies by incorporating frequency weighting of the sound signal. When the

A-scale is used, the decibel levels are represented by dBA. On this scale, the range of human hearing extends from about 3 dBA to about 140 dBA. A 10-dBA increase is judged by most people as a doubling of the sound level. To account for the fluctuation in noise levels over time, noise impacts are commonly evaluated using time-averaged noise levels. The Community Noise Equivalent Level (CNEL) represents an energy average of the A-weighted noise levels over a 24-hour period with 5 dBA and 10 dBA increases added for nighttime noise between the hours of 7:00 p.m. and 10:00 p.m. and 10:00 p.m. to 7:00 a.m., respectively. The increases were selected to account for reduced ambient noise levels during these time periods and increased human sensitivity to noise during the quieter periods of the day.

Potentially significant impacts addressed in City's Initial Study Checklist followed by PTC Rebuttal:

- a. Would the Project expose people to or generate noise levels in excess of standards established in the local general plan or noise ordinances or applicable standards of other agencies – **City finds *Less than Significant Impacts*** referencing: "manufacturer's noise specifications" consistency with General Plan's "normally acceptable" residential noise level of 55 dBA.

Rebuttal – The Halus-provided "manufacturer's noise specifications" dated November 28, 1996 for a Vestas Model V29, 225 kilowatt wind turbine is neither current nor relevant to the proposed Halus-modified Vestas Model V17, 90 kilowatt wind turbine. Horizontal axis wind turbines such as Halus proposes generate significant noise and vibration. The City provides no acoustical analysis to show noise or vibration impact levels at or inside the Heron Bay private homes adjacent to the Halus Project site. No comparative noise standards are provided to disaggregate inside from outdoor residential noise impact levels, nuisance noise compliances at the public use Bay Trails and related park areas, or existing local ambient residential noise levels. PTC understands that Heron Bay homes were built with added acoustical attenuation windows and wall insulation in recognition of their proximity to Oakland International Airport three miles north and the Hayward Executive Airport two miles south from Heron Bay homes. The City MND and Initial Study reference wind turbine noise levels, but do not show substantial evidence of the actual levels off site. Numerical noise standards compliance at residential and recreational noise receptors must be demonstrated.

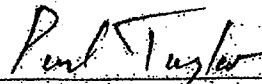
Additional Investigation

In order to fully analyze and disclose evidence for City decision makers, the public and Heron Bay homeowner the following additional studies are necessary to satisfy CEQA requirements and limit City liabilities:

Conduct computer analysis per Community Noise Equivalent Level (CNEL) or County noise ordinance compliance standards. Provide Halus Project noise levels at adjacent residential and recreational receptors from computer modeling of sound in decibels (dBA). Noise contours at 5 dBA intervals should be plotted over a scaled site plan or aerial photo capturing the locations of the Halus wind turbine noise source and proximate residential and recreational noise receptors.

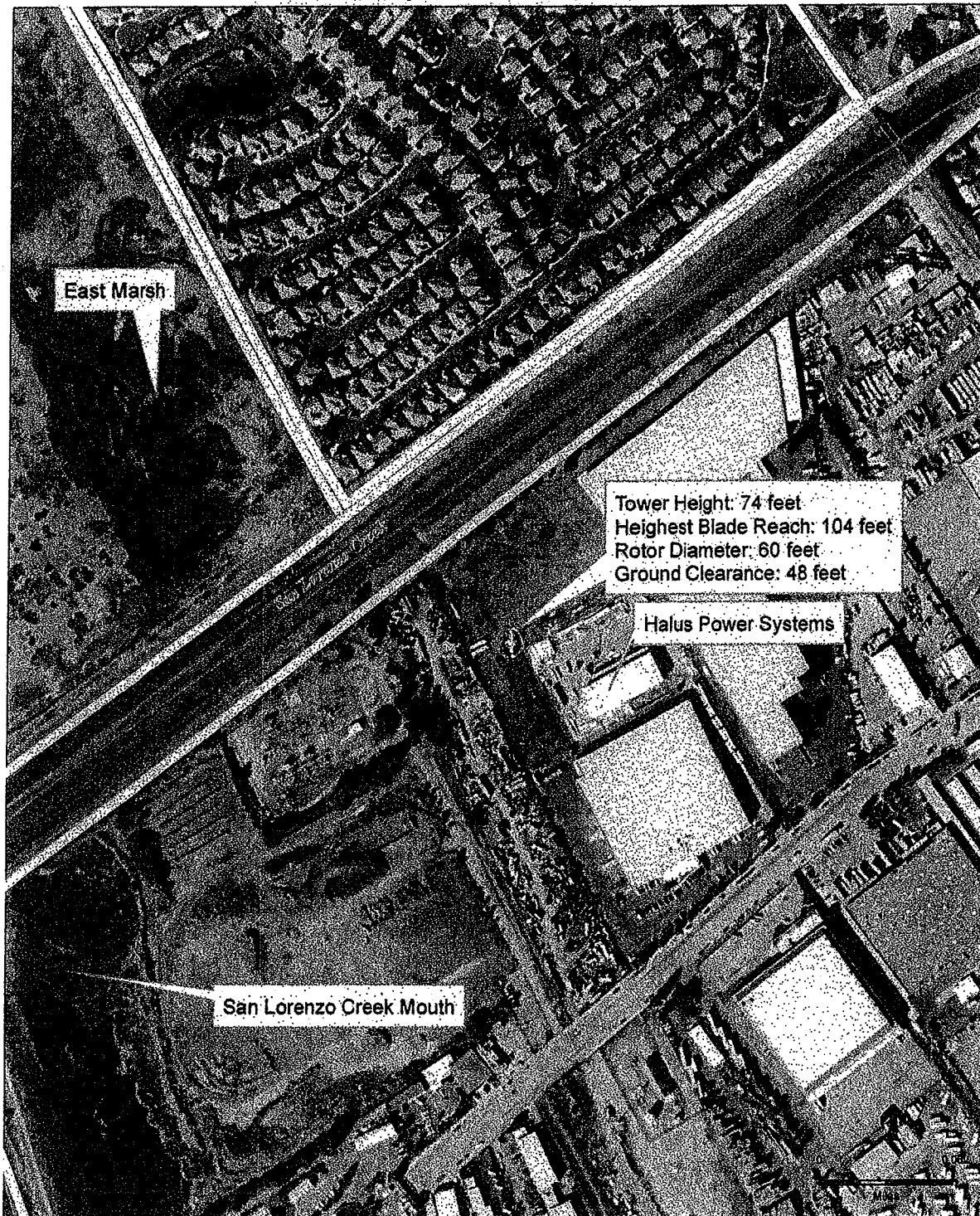
The City and community could benefit from adopting "wind turbine siting criteria" precedent of other jurisdictions. A common limit for significant wind turbine noise impacts to adjacent residential land uses is an increase of 10 dBA above existing ambient residential noise levels.

PTC 07-12 File


Paul Taylor, B.S., M.S.
Principal Environmental Scientist

The following and final page of this Report is **Figure 1** depicting the Halus Proposed Wind Turbine Location, and Project vicinity residential, industrial and public recreational land uses in scaled aerial color photo perspective.

↓ Heron Bay Homeowners ↓



SOURCE: Microsoft Virtual Earth

Halus Power Systems

Figure 1
Proposed Turbine Location

Public Trails and Parks

Paul Taylor's Résumé

EXHIBIT B

ForensisGroup

Technical, Engineering, Construction, Medical & Scientific Experts

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Paul Taylor, B.S., M.S., R.E.A., Principal RESUME

SUMMARY

Corporate environmental science and regulatory consultant to real estate, commercial, industrial and public clients, and law firms. Expertise and proven success in the following areas:

- Executive Leadership and Diligence in Professional Business Planning and Practice;
- Principal Company Management in Communications, Technology and Production;
- Public Policy, Government and Corporate Regulatory Affairs Compliance and Issues Resolution;
- Strategic Research, Analysis and Planning, and Liability and Litigation Avoidance;
- Multidisciplinary Team Director and Public Policy Editorial.

A reputation for technical competence, professional integrity, aggressive advocacy and skillful, effective communications in all media.

EXPERIENCE

Present Principal, PAUL TAYLOR CONSULTING, environmental science and regulatory consultants to real estate, commercial, industrial and public clientele, with specialty in EIRs, EISs, wetland and wildlife permitting and mitigation plans, siting analyses, litigation support and expert testimony. Practice experience throughout Southern and Central California.

2004-2005 Principal Planner, PCR Services Corp., Santa Monica and Irvine.
Mr. Taylor was planning and CEQA manager for urban infill and large raw land developments in the fast-paced and complex Southern California market, with particular emphasis on environmental impact reports, mitigation strategies and entitlements processing. Projects located in Los Angeles, Riverside, San Bernardino and Kern Counties. Project Team leadership, consultants management and communications, and regulatory permitting are his strong points.

1991-2004 Founder and Managing Principal, TAYLOR & COMPANY, Los Angeles.
Mr. Taylor's executive experience, academic training, business and professional practice have emphasized a multidisciplinary approach in management and issues resolution. He has over 20 years experience, and provides principal project management with primary responsibilities in regulatory compliance strategy development, project permit programs and expediting, environmental impact report (CEQA EIR) and statement (NEPA EIS)

Taylor, Paul - FG O.V. Page 1 of 4

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preparation and processing, environmental assessments and audits, land use analyses, water and wildlife resource mitigation plans and agreements, wetland and mining permits, recycling/solid waste management, litigation support, and expert testimony. As Principal-in-charge, Mr. Taylor personally represented each client in administrative and judicial

proceedings.

1988-1991 Director of Regulatory Affairs, Meredith/Boli & Associates, Inc.; Los Angeles, Santa Cruz, and Chicago.

Responsible for managing and directing feasibility studies, environmental research, and engineering investigations for industrial, commercial, residential, and waste management projects. Provided regulatory analysis, management and technical support on a variety of projects including site assessments, EISs, EIRs, endangered species habitat conservation plans (Section 10), wetlands permits (Section 404), waste recycling methodologies, regulatory compliance advisement, overall project permitting, forensic ecology, hearing presentations, and litigation support.

1985-1988 Manager of Environmental Services, Engineering Service Corp., Los Angeles, Santa Clarita and Palm Desert.

Responsible for managing and directing multi-disciplinary studies in preparation of EIRs for industrial, residential, and commercial developments. Provided regulatory compliance strategies and expedited agency approval for multi-use, raw land developments in Southern California.

1977-1984 Senior Project Manager, Nelson & Co., Inc. Engineers and Architects, New Orleans.

Responsible for environmental engineering studies for foreign and domestic, industrial and public projects. Responsible for industrial site selection studies in coastal and river systems. Manager of permit acquisition programs, and environmental issues resolution for major industrial facilities in sensitive environments in the US, Africa, South America, and the Pacific Rim.

1975-1977 Environmental Scientist, Burk and Associates, Inc., New Orleans.

Responsible for environmental impact assessments of industrial, commercial and recreational projects involving water pollution, sewerage facilities, noise pollution and aesthetic impacts.

1973-1975 Research Assistant, Tulane University Medical School, New Orleans.

Responsible for designing and conducting medical research laboratory experiments in endocrinology and microbiology. Researchers at this laboratory received the *Nobel Prize in Medicine* in 1977.

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EDUCATION/TRAINING

M.S. Environmental Sciences, Tulane University, New Orleans, Louisiana;
B.S. Biology/Chemistry, Livingston University, Alabama;
Marine and Coastal Sciences Curricula, University of Alabama, Gulf Coast Research Laboratory;
Environmental Law Curriculum, Tulane University Law School;
Communications and Journalism Studies, Loyola University;
Hazardous Waste Management Workshop, University of Maryland;
California Environmental Quality Act Workshop, University of California at Irvine;
Environmental Policy Negotiations and Resolutions, Massachusetts Institute of Technology;
Los Angeles County Bar Assn. Member in Environmental Law Continuing Legal Education
(inactive);
PC Windows, MS Word/Works, and Excel Proficient.

PROFESSIONAL CREDENTIALS

California Community College Lifetime Instructor's Credential in Ecology and Water Quality (1985)

PROFESSIONAL REGISTRATIONS

Registered Environmental Assessor in the State of California, R.E.A. No. 00850 (inactive)

ORGANIZATIONS/AFFILIATIONS

Founder and Director of *Land Trust Imprimatur* environmental accreditation program
Past President of West Los Angeles Homeowners Association
Associate Member, Los Angeles County Bar Association (inactive)
Institutional Affiliate of The Ecotourism Society (inactive)
Member of the Screen Actors Guild (inactive)

PUBLICATIONS

Mr. Taylor has authored and contributed to hundreds of scientific and regulatory reports on a variety of environmental matters. Mr. Taylor has supported, and actively participated in, numerous administrative and judicial proceedings, including expert court testimony.

Mr. Taylor has authored dozens of public policy news and analysis articles, and has been published in *The Wall Street Journal*, *Los Angeles Times*, *The Los Angeles Daily News*, *The Los Angeles Business Journal*, *San Francisco Chronicle*, *Investors Business Daily* and *The Washington Times*.

Mr. Taylor has also been published at noted public policy news websites such as "Media Matters" and "Common Conservative."

Mr. Taylor has been an on-air Guest Commentator and an environmental issues advisor with nationally

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syndicated radio talk shows.

PRESENTATIONS

Mr. Taylor has been a Guest Lecturer for the University of California at Los Angeles Environmental Management curriculum.

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Mr. Taylor conducts a *Speaker Program* on environmental policy for trade groups, business associations, law firms and corporate gatherings.

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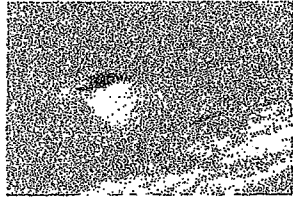
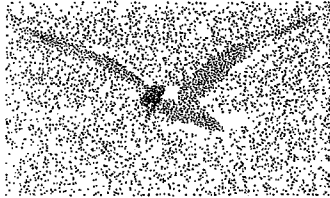
Pictures of Birds

EXHIBIT C

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California Least Tern

A Federally & State Endangered Species
Living on our San Leandro Shoreline



California Least Terns have been listed as endangered since 1970.

California Least Terns nest on beaches, mudflats, and sand dunes. Adults have short, forked tails and short yellowish legs. They have a distinctive triangular black cap across the eyes to the beak, and a white forehead and underparts. Their backs and tops of their wings are pale gray. The outer edges of their wings are black. Their bills are golden with a black tip.

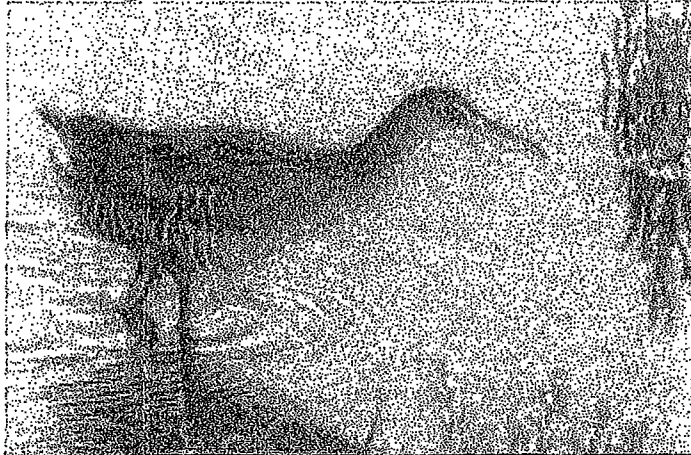
Primary foraging sites for these opportunistic feeders are shallow estuaries, bays, and lagoons. They hover until they spot prey and then plunge into the water to grab a fish without fully submerging.

Courtship is an elaborate ritual that takes place near an exposed tidal flat or beach. In a ritual called the "fish-flight display," a male flies around with a small fish in his beak, often pursued by a female looking for a fishing mate. The chases are spirited and vocal as the birds weave high in the sky and make paired aerial glides, descending swiftly in close unison.

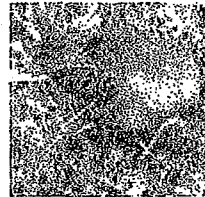
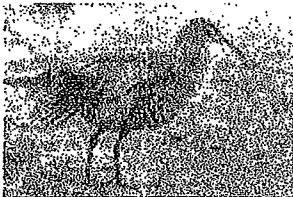
2.19.20

California Clapper Rail

A Federally Endangered Species
Living on our San Leandro Shoreline



2.20



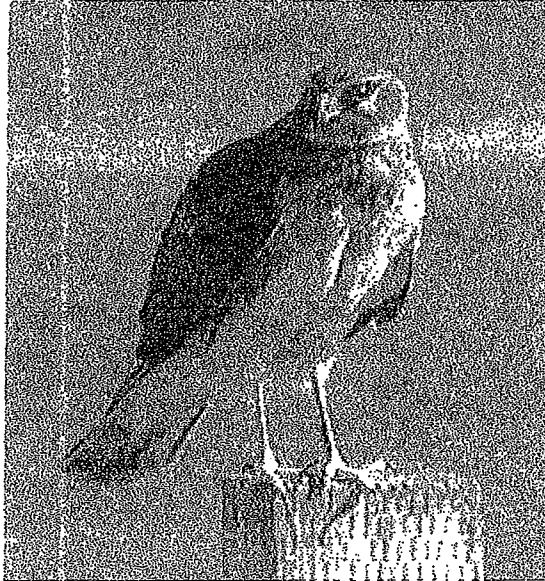
The California Clapper Rail is close to the brink of extinction.

The California Clapper Rail is a squat, short-necked, and long-legged bird with a modest streak. Appearing mostly brownish in color from afar, when seen up-close it becomes apparent that the bird has an intricate beauty: a rust-colored breast, brown streaks along its olive wings, and black-and-white bars on its flanks not only make it a wonderful sight, but also help the species hide in the pickleweed and cordgrass that typify its preferred habitats.

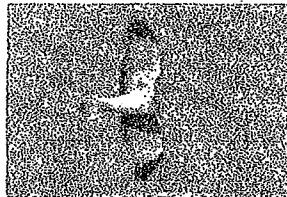
Once common in coastal salt marshes in northern and central California, the California Clapper Rail has declined precipitously in both range and number. Only 15% of the San Francisco Bay's original marshland remains today, and much of it is highly fragmented and altered. Since 1970, the California Clapper Rail has seen population increases but also in some years heartbreaking, somewhat unexplained declines.

Northern Harrier

A Federally Endangered Species
Living on our San Leandro Shoreline



2,19,20



Northern Harrier populations diminished with wetland destruction.

The slender-bodied Northern Harrier has a long tail and wings, yellow legs, owl-like facial discs, a conspicuous white rump patch, and yellow eyes. Adult males have blue-gray and white underparts. The females are more brown and tan. The Northern Harrier is medium-sized, with females typically larger than males.

Northern Harriers hunt for small mammals while flying over open habitats. The species is often called the "marsh hawk" because it inhabits open marshlands. It got the name "harrier" due to its habit of raiding or harrying its prey. A female, after receiving prey in flight from the male, will not return directly to the nest but will make several false landings to confuse predators.

Western Burrowing Owl
A Species of Special Concern
Living on our San Leandro Shoreline



2.19.20



In 2003, due to large declines of Western Burrowing Owls, California conservationists petitioned to list them as Endangered Species. Though unsuccessful, conservationists continue work on behalf of these owls.

The Western Burrowing Owl is small, long-legged, and yellow eyed, without ear tufts. It is white around the eyes and under the cheeks. Its body is mostly brown with white spots. These owls build their nests underground and are active both day and night (diurnal).

Their flight pattern involves rapid ascents (~30 m), hovering for 5-10 seconds, then rapid descents (~15 m). Males also fly in circular patterns. These owls' elaborate courtship involves cooing, bowing, and short flights.

People harm Western Burrowing Owls, destroying the ecosystem around them via wind turbine collisions, burning, and heavy equipment crushing.

Subject: FW: Proposed Halus Wind Turbine Tower
Date: Monday, July 30, 2012 11:39:41 AM PT
From: EPenaranda@sanleandro.org
To: Louis Rigaud, quinn@quorum-inc.com

From: Penaranda, Elmer
Sent: Monday, July 30, 2012 11:39 AM
To: 'benny.lee'
Subject: RE: Proposed Halus Wind Turbine Tower

Benny --

The City is in receipt of your email. It will be provided to the Board of Zoning Adjustments (BZA). Thank you for your comments.

Sincerely,
Elmer Penaranda
Planning Services Division
City of San Leandro

From: benny.lee
Sent: Sunday, July 29, 2012 9:16 AM
To: Penaranda, Elmer
Cc: wind@pas-inc.com
Subject: Proposed Halus Wind Turbine Tower

Dear San Leandro Community Development Department:

Please do not grant the variance for the Halus Wind Turbine Tower because of the following reasons:

1. Financial hardships for homeowners from declining property values while Halus is consistently profitable year after year in worst economy of last 70 years.

17-1

The economic conditions of the past few years have tremendously devaluated property values and all studies of Wind Turbines on the impact on property values show decline for both prolonged and temporary periods. Any decline on property values even if temporary can potentially end 'in progress' equity, refinancing and loan modification for homeowners. Those not 'in progress' and looking to get equity, refinancing and loan modification may lose this opportunity when values decling. For some, this hardship can lead to financial devastation and possibly bankruptcy with loss of home. All information and publications on Halus has shown that the company has performed exceptionally well year over year in one of the worst economies of the last 70 years having grown 170% since 2009; many other companies have closed shop while Halus continues to prosper. Not providing the variance will not provide hardships to Halus business and consequently has no impact to homeowner property values

2. Real health issues severely taking away quality of life.

132

~~My wife and son have been genetically predisposed with the most severe effects from migraines. In the~~

17.2
○
most severe incidents blackout with a collapse occurs and less severe incidents resulting in nausea, vomiting, and intolerable pain. If medication is not applied timely prior to the migraine, the medication will not work. The medication is a prescription barbiturate cocktail which also leaves them non-functioning due to the intense narcotic effects. Science has not determine what triggers migraines; however, it is well documented that cyclic sounds, distortional lighting, and combinations of the two (much like that from Wind Turbines) also trigger migraines - my wife and son will attest to this. For this reason alone, I believe that no Wind Turbine Tower should ever be installed near residential communities or areas commonly used by diverse groups of people; the health risk to quality of life for those with severe migraines is a hardship no one should be imposed with.

3. Adversely impacting bay shoreline natural aesthetic view with first of kind installation by bay shoreline which may set precedence inviting others to do the same and thereby removing it's natural beauty.

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1,6,7,
8,9,10,
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○
I work in South San Francisco's Oyster Point Business Park and have a clear view of the beautiful East Bay Shoreline where I live. I see no Wind Turbines at all. Putting a Wind Turbine will not only single out our community as the first installation of a Wind Turbine on the bay shoreline, but it may invite others to do the same. This will distort the beauty of our shoreline much like the ugliness of driving by the Altamont Pass. I recall from more than 30 years ago on the Altamont Pass seeing one Wind Turbine, then six, then dozens, then hundreds, and now thousands; this would damage the beauty of the bay shorelines forever should we begin with one. There are no metropolitan areas with Wind Turbines propagated with one or many throughout the United States; the reason is simple - they are aesthetically unpleasing which is why they are installed in unpopulated or rural areas. Even if just this one Wind Turbine is installed and policy restricts other installations, is the San Leandro Community Development Department or the Board of Zoning and Adjustments looking to be only discriminate to homeowners who reside in and around Heron Bay? And what about those who use the bay trail along with those who enjoy the view of the bay shorelines from across the Bay or those who view from the San Leandro Hills; are they to have their view distorted by the Halus Wind Turbine Tower as a new landmark? For the reason of preserving one of San Leandro's best treasures, the bay trail shoreline nature preserve, the variance should be rejected and policies against Wind Turbines should be considered.

1,6,7,8,
9,10,11,
12,13,14
17-1,17-4
17-5,
23
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4. Imposes a new unnatural view to homeowners which would have altered their original purchase decision. This is not the same as existing electrical towers nor is it the same as a cell phone tower. This is a tower with a large spinning turbine with giant fan blades covering an area from 48 feet to 104 feet in height.

I visited Heron Bay 14 years ago when searching for a new home with my family and marvelled at the beauty of the bay trail shoreline. While I had reservations on the power lines on the possible health impacts to my wife and child, the distance for the house we selected was sufficient enough to not trigger their migraines. I saw no Wind Turbine Tower nor would I have predicted that such an object would be considered. The same goes for the homeowners with a direct line view to Halus' property; they didn't choose to buy into a community with a Wind Turbine so they should not be given this added burden. A Wind Turbine Tower is not like an electrical tower or a cell phone tower as it has moving parts where the blade tips can travel at speeds up to 95 mph (calculated for 60' rotor at 44 rpm per ESA document), produce cyclic sounds and causes wind vacuum distortional sounds.

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5. No defined wind turbine policies in City of San Leandro with public input since this wind turbine is directly adjacent to homes and a natural estuary.

17-6

The City of San Leandro and the Community Development Department has no specific policy and no experience with the risks for Wind Turbine Towers. My research has found that the risk does exist where catastrophic failure can occur regardless of built-in safeguards. Catastrophic failure includes fires, explosions, and large fan blades breaking with large debris flying over a half mile. Questions for this policy should impose upon a business having mandatory 24x7 monitoring and fail-safe execution of safety control protocols in the event of a catastrophic failure which includes but not limited to explosion. Also, mandatory financial capital reserve impound on the business/entity for removal of wind turbine in the event it becomes unused, Halus ends its business at the location, no maintenance occurs on the Wind Turbine, or Halus fails to meet mandatory safety and environmental compliance audits; we don't want the shoreline to be blighted by dead Wind Turbines.

While this is not an endorsement to support the Wind Turbine, clearly, the City of San Leandro and the Community Development Department has not considered these policies and compliance for Wind Turbines which should be a bare minimum requirements to comply with public safety and environmental justice demands.

6. Halus' underlying purpose and intent.

17-7

Halus owner Mr. Louis Rigaud stated in the Heron Bay HOA meeting on June 20, 2012 that he does not want to pay his PG&E bills and he wants to use the onsite installation of the refurbished Wind Turbine tower to market his business.

6,7,8,9,
10,11,12,
13,14

With respect to paying his PG&E bills, these wind turbines are outdated and are no longer supported which provides Halus an edge in purchasing these devices inexpensively; however, they are indeed refurbishing outdated technology which is no longer supported. While my intent is not to disparage Mr. Rigaud, his choice for the installation of an outdated Wind Turbine Tower is so that he saves money at the expense of the community and environment without fully realizing this. His savings from PG&E would be roughly over \$1,000 a month but at the expense of homeowners and the environment to the tune of possibly tens of millions of dollars in property devaluation and adverse health effects. A much more feasible approach yet costlier would be to install solar panels, also green technology, on his roof; a green technology expert hired by the Heron Bay HOA calculated that 20% coverage of his roof surface area by solar panels would achieve the same power as the proposed Wind Turbine. A Heron Bay HOA board members met with Mr. Rigaud where he discussed his business which includes Solar Panel installations; however, his predominant business is Wind Turbines. Had Halus' petition was for Solar Panels which would still be green technology, the concerns would likely be less significant since no moving parts are used and the Solar Panels would be installed on his roof not visible to residents nor trail users.

Regarding using the installation of the Wind Turbine Tower to market his business, the San Francisco Business Times published an article on October 25, 2010 where Mr. Rigaud quoted that he had no sales staff and had run just one advertisement in his Halus' seven year history yet his business has customers in 25 states coast-to-coast. He had no onsite installation of a Wind Turbine Tower in those seven years and it appears that it had no adverse impact to his business whatsoever. Truly marketing his business would be to run advertisements, leverage customer testimonials, and develop his sales process.

We should ask for this first in kind installation of a Wind Turbine Tower on the bay shoreline, who are the audience and what is the message being presented? The message would definitely be perceived by those who can see it as Wind Turbine Towers throughout the bay shoreline absent of environmental impact. The bay shoreline is home to the largest bird estuary in the San Francisco Bay Area which covers over three dozen federally protected and endangered species. If we as a community are to act

environmentally responsible to prevent disruption of our precious bay ecosystem, we should for this reason reject the variance and move towards a policy on Wind Turbines in the city of San Leandro.

Summation:

17-7

Halus intent of saving over \$1,000 per month is no justification to impose financial hardships on homeowners. Studies on new Wind Turbines by homes within a mile circle have suggested property value drops of 10% to 30% which for Heron Bay alone would be anywhere between \$50,000 to \$150,000 per home or \$30 million to \$150 million for the community.

17-2

For those who have severe migraines such as my wife and son, the installation of a Wind Turbine will introduce migraine triggers which will take away more from their quality of life. This is not a less than significant impact being imposed upon those afflicted with migraines.

6

The fact is that we're not adding another electrical tower to the bay shorelines so why would it be okay to add something so different as a tower with a turbine engine with large spinning blades and tips that move as fast as 95 mph. It will be visible from the bay trail, around the community, within areas of San Leandro, and from the Hayward/Castro Valley/San Leandro/Oakland Hills. Across the bay, no one can see the electrical towers due to its frame profile but a wind turbine will be clearly visible.

17-6

The City of San Leandro has no policy and no experience with Wind Turbines to treat it as just another tower. While the risk may be remote for catastrophic failure, the risk does exist particularly since there's no mandated maintenance compliance requirements, no 24x7 constant risk monitoring and no absolute fail-safe controls particularly since the proposed Wind Turbine is next to a large community.

20,13
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While Halus' business is serving a noble niche in the green energy market, the installation of a Wind Turbine Tower so close to thousands of homes and next to the bay shoreline environmental preserve is irresponsible. Such an installation would signify to others that preservation of our bay shoreline environment is not needed. The Altamont Pass started with one Wind Turbine in the late 1970's and now about 5,000 exist. It's now home to many wind farm graveyards because many of these companies have come and gone. Halus' business is in refurbishing outdated and unsupported Wind Turbines; in other words, these Wind Turbines are supported only by one company (Halus) and shares the same risk of becoming unsupported should that company cease to exist.

In summation, I urge for the variance for the Wind Turbine Tower to be rejected and a policy for the City of San Leandro with public input to be considered.

Regards,

Benny Lee

Subject: FW: Halus Wind Turbine Tower
Date: Monday, July 30, 2012 10:39:20 AM PT
From: EPenaranda@sanleandro.org
To: Louis.Rigaud, quinn@quorum-inc.com

Elmer Penaranda
Senior Development Project Specialist
Office of Business Development
City of San Leandro

From: Penaranda, Elmer
Sent: Monday, July 30, 2012 10:35 AM
To: 'ly5354'
Subject: RE: Halus Wind Turbine Tower

John and family -

The City is in receipt of your email. It will be provided to the Board of Zoning Adjustments (BZA).

Sincerely,
Elmer Penaranda
Planning Services Division
City of San Leandro

From: ly5354 [<mailto:ly5354@yahoo.com>]
Sent: Tuesday, July 24, 2012 6:09 PM
To: Livermore, Kathleen; Liao, Thomas; Penaranda, Elmer
Cc: wind@heronbayhoa.org
Subject: Halus Wind Turbine Tower

Hi all,

18, 19 Please help us protect the birds living in the wet land and our neighborhood, and stop Halus from installing the Wind Turbine tower.

We'd like the way it is now - no, no, no Wind Turbine.

Thank you!

John and family (6 people)
Heronbay home owners

Subject: RE: Halus Wind Turbine Tower
Date: Monday, July 30, 2012 10:38:54 AM PT
From: EPenaranda@sanleandro.org
To: quister4@yahoo.com

Qui Chau -

The City is in receipt of your email. It will be provided to the Board of Zoning Adjustments (BZA). Thank you for your comments.

Best regards,
Elmer Penaranda
Planning Services Division
City of San Leandro

From: Qui Chau [mailto:quister4@yahoo.com]
Sent: Thursday, July 26, 2012 4:46 PM
To: Penaranda, Elmer
Cc: wind@heronbayhoa.org
Subject: Halus Wind Turbine Tower

Dear Mr. Elmer Penaranda:

I am writing this letter to express my concern of the construction of the wind turbine at Halus Power Systems in San Leandro, CA. The wind turbine will be built so close to our community which is a high populated residential area. It will pose potential risk to our human life, pets, and wildlife due to noise and equipment error. Also, the structure of the turbine with its height, dimension, and appearance will definitely have a huge impact on our environment and home value.

As a member and official of our city official, please re-evaluate this project considering the magnitude of potential risks to our health and to our way of life.

Sincerely,

Qui Chau
2252 Gavia Ct
San Leandro, CA 94579

1,2,3,
5, 7,
9,10,
17-1

Subject: RE: Halus Wind Turbine Tower
Date: Monday, July 30, 2012 11:37:18 AM PT
From: EPenaranda@sanleandro.org
To: rose@itmindset.com

Rose Ng -

The City is in receipt of your email. It will be provided to the Board of Zoning Adjustments (BZA). Thank you for your comments:

Best regards,
Elmer Penaranda
Planning Services Division
City of San Leandro

From: rose [mailto:rose@itmindset.com]
Sent: Saturday, July 28, 2012 11:57 PM
To: Penaranda, Elmer
Cc: wind@pas-inc.com
Subject: Halus Wind Turbine Tower

To Whom It May Concern:

I am opposed to this Halus Wind Turbine Tower Project regardless of any variance applied. My reasons are simple.

1. Personal Health Issues
2. Property Value Decline
3. Shoreline Aesthetic Change
4. Safety Risks

1. Personal Health Issues

I have recurring severe migraine headaches which can lead to severe debilitating nausea or unconsciousness. These migraines generally occur in random but are also triggered with exposure to consistent cycling sounds or visual disturbances. This migraine affliction is genetic as my son experiences the symptoms with the same outcomes. My migraine prescription contains a barbiturate cocktail which stops the pain but leaves me with the inability to function due to the narcotic side effects. I have no doubt that the cycling sounds or the motions from this proposed wind turbine will trigger migraines. While I've been told that there's no science behind health effects from Wind Turbines, consequently there is no science behind what triggers migraines. I can assure you that it is very real and it takes away from my life. I don't want this added health risk which will take away more time from my life. It is not fair for this project to be imposed upon people with my health issues.

17-2

2. Property Value Decline

I've read many studies stating that property values for homes next to new turbines would drop significantly. Having worked over 20 years in the lending industry, I can state that drops in home equity value even temporary can surely end the homeowner's ability to get the loan. In this economy, this could drive some to financial ruin including loss of home or it could stop some from sending their kids to college. Whatever the outcome, changes in equity value will have a devastating financial impact to many homeowners. For this reason alone, the variance or the project should not be allowed at the

17-1

expense of homeowners.

3, 7, 8, 9, 11, 12
3. Shoreline Aesthetic Change

My family chose Heron Bay because of the beautiful shoreline and environmental preserve. While some things may obscure the natural beauty, adding a Wind Turbine will change its look forever. It may invite many other Wind Turbines along the shoreline. If future policy restricts no more Wind Turbines, then the hardship of this one falls to Heron Bay alone; this would make an unjust burden on one community and forever damaging the beautiful shoreline and environmental preserve that all Heron Bay homeowners did not buy into. If this is such an important project, please have the city of San Leandro consider selling some of the Marina-Shoreline property by the Marina for Halus to install a Wind Turbine there. I have no doubt that communities in San Leandro and prospective stakeholders around the bay area would protest. A change in the shoreline's natural aesthetics with one added Wind Turbine demands for full environmental impact report.

1
4. Safety Risks

22, I've watched videos where these wind turbines have gone out of control and some cases self-destructed. One thing was clear, their fail-safe controls failed, they were not constantly monitored 24x7, and they were no where near homes. In one instance, the wind turbine blades spun many times faster than it was supposed to when the safety controls failed and the turbine exploded sending the pieces of the turbine and blades flying more than one half mile. The fact that this wind turbine tower is proposed so close to homes should be a red flag with respect to the city's lack of policy on Wind Turbines. And what's next if the unexpected happens? I believe the city and Halus will be subject to severe lawsuits. What do we do with the mangled Wind Turbine? Is there a policy to remove the dead Wind Turbine?

17, 16-7 In summary, considering health issues such as migraines, property value decline that can devastate a family's finances, and changing the bayside shoreline aesthetics, the variance for the tower height should not be permitted. Halus as a company is not suffering financial hardships as the business has been growing year over year without fail; however, allowing a variance or even permitting the erection of a Wind Turbine at the expense of homeowners and their properties is unjust. Halus' website notes that they also install solar panels which would be a more responsible action for his business if he does not wish to pay his PG&E bills as he boldly stated at the Heron Bay HOA meeting. Yes, it costs more, but there would be virtually no impact.

The city should consider a policy regarding installations of Wind Turbines and solicit public input.

Sincerely,

Rose Ng
San Leandro Resident
2238 Mariner Way
San Leandro, CA 94579

Subject: RE: Halus Wind turbine Tower
Date: Monday, July 30, 2012 10:42:27 AM PT
From: EPenaranda@sanleandro.org
To: jeff_w_je@yahoo.com

Wenqiang Ye -

The City is in receipt of your email. It will be provided to the Board of Zoning Adjustments (BZA). Thank you for your comments.

Regards,
Elmer Penaranda
Planning Services Division
City of San Leandro

From: jeff ye [mailto:jeff_w_je@yahoo.com]
Sent: Thursday, July 26, 2012 5:24 PM
To: Penaranda, Elmer
Cc: wind@pas-inc.com
Subject: Halus Wind turbine Tower

Wenqiang Ye
2301 Diamond Bar Ct,
San Leandro, CA 94579

To Whom It May Concern:

Dir Sir/Ma'am:

I am the home owner of the address above and I am writing to you to express my whole family's concerns about the proposed Halus Wind turbine Project in my neighborhood.

1, 17-1,
17-5,
23, 18

We have lived in this comminute peacefully for more than ten years. Like everyone else, we enjoyed the quality lives, quiet and healthy environment, and many others. We believe that to keep the community this way is very important. Recently, the city of San Leandro tried to put the wind turbines in our community not only to damage our environment, but to put wild birds' lives and some people's lives in danger. We have never seen any wind turbine installed in such high density of communities anywhere in America. As you may know, the wind turbines decrease nearby home values. The noise from the wind turbine is known to cause discomfort and annoyance to almost everyone. If something happened to the wind turbines as such fire, blades falling off, and many other possible malfunction, it can put all the people nearby and all house nearby in terrible danger. As a resident of this beautiful city, we have the responsibilities to maintain the environment and to prevent any harmful actions from any company. We strongly ask you to join us and to take actions to stop this senseless project from happening. Please let the Mayor Cassidy of San Leandro, the San Leandro city council Members, the San Leandro Board of Zoning Officials, etc know that this project is not good for our city, not good

for our environment, and not good for all the wild animals including many in danger birds. Thank you!

Sincerely Yours,

Wenqiang Ye and family

San Leandro Resident

Subject: FW: Halus Wind Turbine Tower
Date: Monday, July 30, 2012 10:48:03 AM PT
From: EPenaranda@sanleandro.org
To: Louis Rigaud, quinn@quorum-inc.com

From: Penaranda, Elmer
Sent: Monday, July 30, 2012 10:48 AM
To: 'Shirley Wong'
Subject: RE: Halus Wind Turbine Tower

Mrs. Wong -

The City is in receipt of your email. It will be provided to the Board of Zoning Adjustments (BZA). Thank you for your comments.

Regards,
Elmer Penaranda
Planning Services Division
City of San Leandro

From: Shirley Wong [<mailto:penielu2@yahoo.com>]
Sent: Friday, July 27, 2012 2:37 PM
To: Penaranda, Elmer
Cc: wind@pas-inc.com
Subject: Halus Wind Turbine Tower

Dear Ms. Elmer Penaranda,

6, 19,
3, 17-1,
17-2, 13

We decided to move to Heron Bay because of the scenic view. As we like to ride our bikes on the trail, we do not want to see a wind turbine. Also we think that the turbine will endanger the birds that live on the shoreline.

We also think it is too close to our residential area. It will decrease our home values, produce noise, and cause discomfort. There are too many unknown factors that may harm the environment, property, and human health.

In addition, this may open the door for more wind turbines that will not be good for the beauty of the bay and the bay trail.

Please stop this project.

Sincerely,
Mrs. Wong
San Leandro Resident & Bay Trail User

Subject: RE: We are against the Halus Project!
Date: Monday, July 30, 2012 10:57:37 AM PT
From: EPenaranda@sanleandro.org
To: Baysidemed2003@aol.com

Jenny Chen -

The City is in receipt of your email. It will be provided to the Beard of Zoning Adjustments (BZA). Thank you for your comments.

Sincerely,
Elmer Penaranda
Planning Services Division
City of San Leandro

From: Baysidemed2003@aol.com [mailto:Baysidemed2003@aol.com]
Sent: Friday, July 27, 2012 4:28 PM
To: Cassidy, Stephen; Gregory, Michael; Reed, Ursula; Souza, Diana; Starosciak, Joyce; Cutter, Pauline; lee@shininglee.com; chouston3917@yahoo.com; rmendieta@att.net; janeannabelee@sbcglobal.net; toogr8ftm@sbcglobal.net; pg.daly@sbcglobal.net; anetpalma@comcast.net; Prola, Jim; ggas@goldengateaudubon.org; mwelther@goldengateaudubon.org; Livermore, Kathleen; Liao, Thomas; Penaranda, Elmer
Cc: sfbaynwr@fws.gov; secretary@resources.ca.gov; director@dfg.ca.gov; wind@pas-inc.com
Subject: re: We are against the Halus Project!

To whom it may concern:

We moved to the Heron Bay community 3 years ago from east coast. After looking all over the Bay Area we chose to buy this house, mainly because of the beautiful trial and wildlife Habitat behind the community.

We are very disappointed that the city is going to approve a 110 feet tall wind turbine right at the nature Trial. What happened to the city construction regulation we have which is limit the height of such objective to 80 feet (or something close to that #)?

I use the trial everyday and can see the bay from my house. Last Sunday morning I sat at my back yard and counted how many people passed by my house: 27 between 8:30am to 10:30am. That means all of the people passed by my house will have to walk right by this wind turbine, potentially. I live at the end of the trial and believe if I counted from the beginning of trial the number is much higher. when was last time any of your city officers came to walk on this trial? how will you feel to see a moving object so close to you? this is not a industrial area, it is bad enough we have these electricity towers here, we have metal recycling company here making noise late at night, why do you want to add another piece ugly moving object here, even it is against city regulation? what city will gain by approving this project? have you even considered how our hundreds of residents feel? if there is one injury caused by this wind turbine, who is going to be responsible? Accident does happen!

6,19
20

Also this wind turbine is so close to this wildlife refuge area, do you know the impact to our birds population and species? why do we have to take the chance?

8,12

We paid premium price for our home because of the nature beauty. Overall market value has been dropped down 20% since we moved here. But we are still happy because where we are, market changed but our nature beauty has not, until this project came along. We are totally against any projects that will change this park and surrounding area. We will do whatever it takes to preserve this last prime nature land in our area!

17-1

Please help us to stop this project!

Best regards,

Jenhy Chen

2386 Pacifica Ct
San Leandro, CA 94579
Tel: 510-878-2738

Subject: RE: Halus Wind Turbine
Date: Monday, July 30, 2012 11:27:21 AM PT
From: EPenaranda@sanleandro.org
To: estefanita@aol.com

Stephanie L'Archuleta -

The City is in receipt of your email. They will be provided to the Board of Zoning Adjustments (BZA). Thank you for your comments.

Best regards,
Elmer Penaranda
Planning Services Division
City of San Leandro

From: Stephanie L'Archuleta [mailto:estefanita@aol.com]
Sent: Saturday, July 28, 2012 8:49 AM
To: Penaranda, Elmer
Cc: wind@pas-inc.com
Subject: Halus Wind Turbine

Dear Mr. Elmer Penaranda,

18, 19, 20
2, 5, 6

I am seriously concerned about potentially disastrous effects on our San Leandro and entire Bay Area Shoreline. The Halus Company seeks a zoning variance to build a 104 foot tall wind tower, with over 40 feet radius rotating blades, immediately adjacent to the largest (~300 acres) East Bay Shoreline Wildlife Habitat, where over 3 dozen federally and state endangered birds reside. The close proximity of this wind tower to these precious and fragile birds, is a direct threat to their survival.

17-3, 6

This single wind tower, not only threatens San Leandro protected habitat, but is precedent setting. It will be the first wind tower on the Bay Area Shoreline. Once it is built, it is just a matter of time before many more wind towers are built all around the Bay, littering our pristine Bay Area Shoreline with white, towering wind mills, and destroying our magnificent wildlife ecosystems. Future builders would easily cite prior approval of the Halus Wind Tower, with its closeness to endangered species' protected havens, to justify the unbridled erection of more perilous wind blades. Our lovely Bay Area shoreline panorama will be at great risk of looking like the Altamont Pass. Please don't let this destruction begin in our beautiful Heron Bay wetlands.

3,

I am not against wind energy. I am against poorly located wind towers that directly risk the lives of defenseless, imperiled, and voiceless aerial species. The Halus turbine will be built in a designated industrial zone, with about 300 acres of protected habitat to its immediate west, and densely populated residential areas abutting to its north.

1, 20,
17-1, 17-3

The City of San Leandro has not required a full Environmental Impact Report (EIR). Instead, the City Council has accepted a cursory biological report (less than 20 pages long) to rationalize allowing the wind tower at the shoreline. I have read this report, which inadequately addresses the unique features of a wildlife habitat area where over a million birds rest and nest throughout the year. The City Council also ignored the wind tower's eyesore quality, negative impact on home values, and potential Bay Area wide precedents. In addition, human health and safety issues were not studied at all. Regarding human safety, in some countries, zoning laws require over 4000 feet wind tower setbacks from homes.

1, 17-3

Please don't let this project proceed without a full EIR. Given all that is at stake for the City of San Leandro and the entire Bay Area Shoreline, I hope you agree that it is both reasonable and unquestionably necessary to require full EIR completion regarding the proposed Halus Wind Turbine Project. A full EIR ensures that San Leandro can credibly establish the most well-informed and objective decision regarding a first of its kind wind turbine.

With sincere gratitude for your consideration.

Stephanie L'Archuleta
Concerned San Leandro Resident & Bay Trail User

Subject: RE: Halus Wind Turbine Tower
Date: Monday, July 30, 2012 11:30:11 AM PT
From: EPenaranda@sanleandro.org
To: mmhuang@hotmail.com

Ms. Min Mei Huang, Mr. Jiming Duan, and Ms. Jennifer Duan ~

The City is in receipt of your email. It will be forwarded to the Board of Zoning Adjustments (BZA). Thank you for your comments.

Best regards,
Elmer Penaranda
Planning Services Division
City of San Leandro

From: Min Mei Huang [mailto:mmhuang@hotmail.com]
Sent: Saturday, July 28, 2012 5:07 PM
To: Livermore, Kathleen; Liao, Thomas; Penaranda, Elmer
Cc: wind@heronbayhoa.org
Subject: Halus Wind Turbine Tower

7/28/2012

Subject: Halus Wind Turbine in San Leandro

Dear Kathleen Livermore, Tom Liao and Elmer Penaranda,

My concerns about the Halus Wind Turbine Project are:

My house is located next to the creek near the Grant Ave. San Lorenzo.

When I bought and moved into this house ten years ago, the biggest attraction to me was the natural life surrounding with wild life habitat.

20,18 The Halus Project is located immediately next to my house. This really upsets my family. It will not be compatible to the largest East Bay Protected Wildlife Habitat with over three dozen federally protected endangered bird species. I worry that the turbine will endanger the birds that live on the shoreline.

6,11 This wind turbine project is an eyesore to the San Leandro Bay Trail. As I walk down to the bay trail, I do not want to see a wind turbine, which may open the door for more wind turbines that will not be good for the beauty of the bay and the bay trail.

17-2,
17-1,22

It is too close to densely populated residential neighborhoods, has unknown health and safety effects, decreases nearby home values, and wind turbines have caught on fire which could be easily spread throughout the grasslands. Wind turbines have been associated with Wind Turbine Syndrome. We don't want San Leandro to be the test case for this potential health threat.

I am for green energy, but I stand with everyone against poorly located Wind Towers that needlessly risk the lives of defenseless and endangered bird species and may pose unknown risks to human health and safety.

Please stop this Wind Turbine project near our Heron Bay residential area.

Thank you very much for kind attention and favorable considerations.

Sincerely,

Ms. Min Mei Huang, (wife)

Mr. Jiming Duan, (husband)

Miss Jennifer Duan (daughter)

15682 Anchorage Drive, Heron Bay, San Leandro, CA 94579

Subject: RE: Halus Wind Turbine Tower
Date: Monday, July 30, 2012 11:35:07 AM PT
From: EPenaranda@sanleandro.org
To: larahv@hotmail.com

Hong Dalisay -

The City received your email. It will be forwarded to the Board of Zoning Adjustments (BZA). Thank you for your comments.

Best regards:
Elmer Penaranda
Planning Services Division
City of San Leandro

From: Lara Dalisay [mailto:larahv@hotmail.com]
Sent: Saturday, July 28, 2012 10:55 PM
To: Livermore, Kathleen; Liao, Thomas; Penaranda, Elmer
Cc: wind@pas-inc.com
Subject: Halus Wind Turbine Tower

To Whom it May Concern,

Please do not allow the Halus Wind Turbine Project to move forward in the Heron Bay area or anywhere near our precious costal bay regions.

20 My husband and I moved to Heron Bay a year ago and have enjoyed the natural bird habitat and open wildlife preserve. By having the Halus wind turbine project to move forward would be a threat to the bird sanctuary for the birds as well as set precedence for other Wind Turbine companies to come and build in our area. Soon our area will look like Altamont Pass.

Also, I have heard that the Halus company takes old wind turbines and refurbishes them. I don't feel safe knowing that they might fail and break apart with parts flying in the area. I normally support green efforts but not at the risk of our wildlife birds and safety.

I ask that you not consider Halus Wind Turbine Project as a business we should have in our community and think of what is best for the neighborhood community and wildlife preserve.

Sincerely,
Hong Dalisay
2301 Pacific View Court
San Leandro, CA 94579

Subject: RE: Halus Wind-turbine Project
Date: Monday, July 30, 2012 11:44:06 AM PT
From: EPenaranda@sanleandro.org
To: Rodh5252@aol.com

Rod Harryman -

The City is in receipt of your email. It will be forwarded to the Board of Zoning Adjustments (BZA). Thank you for your comments. Your petition can be emailed or mailed to me at the City.

Sincerely,
 Elmer Penaranda
 Planning Services Division
 City of San Leandro
 835 East 14th Street
 San Leandro, California 94577

From: Rodh5252@aol.com [mailto:Rodh5252@aol.com]
Sent: Sunday, July 29, 2012 10:35 PM
To: Cassidy, Stephen; Gregory, Michael; Reed, Ursula; Souza, Diana; Starosciak, Joyce; Cutter, Pauline; lee@shininglee.com; chouston3917@yahoo.com; rrendieta@att.net; janeannabelee@sbcglobal.net; toogr8fltm@sbcglobal.net; pg.daly@sbcglobal.net; anetpalma@comcast.net; Prola, Jim; ggas@goldengateaudubon.org; mwelther@goldengateaudubon.org; Livermore, Kathleen; Liao, Thomas; Penaranda, Elmer
Cc: sfbaynwrc@fws.gov; secretary@resources.ca.gov; director@dfg.ca.gov; wind@pas-inc.com
Subject: Re: Halus Wind-turbine Project

To whom it may concern:

We were (first of July) called by the Heron Bay Homeowners Association to discuss and review proposed plan by Halus Co. to build a 108 foot tower (windmill) within a few hundred feet of nature trails and the Protect Wildlife Habitat.

14,20 Presenting the project and introducing the President of Halus were three staff members of San Leandro City. They presented Halus as a green company that was doing R&D for the wind turbines they sell. Not true! They are a low tech scrap dealer. They buy used turbines that were manufactured by large corporations, such as GE, etc. These turbines are being replaced by newer and more efficient technologies. Halus buys these used turbines very cheap. Once refurbished they do have a useful life for customers that want to be energy self-sufficient at a reasonable cost. Their primary customers are farmers, ranchers, and residence that live in rural areas. Halus wants to build the windmill where proposed to use the energy for its company. That may be true, however, the real reason for building it where proposed is strictly for marketing purposes. Having it close to his facility and near a Protect Wildlife Habitat and residential area,

certainly gives the impression of wind-turbines being environmentally friendly.
Great marketing!

I walk the trail every day. During my walks I got over 150 signatures from people I spoke to that signed the petition to be submitted to the city council requiring an environmental impact study for the project. None of the people that signed the petition were aware of the project. None were for it and some were outraged that the city would allow such a project. The majority of people were from all over San Leandro, many from Hayward and Oakland.

To my knowledge the city only contacted 4 homeowners that live within 350 feet of the project. This Protected Wildlife Habitat and its trails are used by hundreds of people, maybe thousands annually. The council should have run announcements in the local paper to alert those that use the trails; they could have provided the city with important feedback.

I'm not sure what the city of San Leandro was trying to accomplish but they almost succeeded granting a permit for something that should have never been considered. I was one of approximately 40 homeowners that attended a meeting one day before the city was granted approval for Halus to proceed with the wind turbine project.

Halus has presented themselves as a green company that is doing R&D to improve the technology of wind turbines. Further, they plan on using the energy generated from the windmill to supply their company with green efficient electricity. This is true. Halus is a low tech scrap dealer. They buy old tech wind turbines refurbish them and resale them to customers that want energy self sufficiency. These customers are located in rural America; farmers, rancher small business and homes in a country setting.

Halus, I'm sure, is successful as there is a need for wind turbines. However, he would be unable to provide the name one city or customer that has installed a 110 foot tower within a few hundred feet of a nature trails, Protected Wildlife Habitat or, a densely populated residential area such as Heron Bay.

For the city council or its staff to even consider such an approval for the Halus project is irresponsible.

Reasons for granting a permit to Halus:

1. Good for their business

Reasons for not granting permits:

- 29 1. To close to Protected Wildlife Habitat
- 29 2. Flyway for ducks and geese
- 17-1 3. Affect the property values
- 17-2 4. Unknown health effects on humans in close proximity.
- 29 5. Many endangered species could be negatively effected
- 6. Does not fit with the natural environment, eyesore
- 17-3 7. Opens the door for other ill conceived projects that would negatively impact the residence and the environment

Thank you in advance for your consideration of the above.

Rod Harryman
2386 Pacifica Ct
San Leandro, CA 94579
Tel: 510-878-2738
Cell: 443-254-4945

Subject: RE: Public Comment on Proposed Halus Wind Turbine Project

Date: Tuesday, July 31, 2012 10:29:51 AM PT

From: EPenaranda@sanleandro.org

To: fredandkim1996@att.net

CC: KLivermore@sanleandro.org, TLiao@sanleandro.org

Frederick and Kimmerly Simon

The City has received your email. It will be provided to the Board of Zoning Adjustments (BZA). Thank you for your comments.

Sincerely,
Elmer Penaranda
Planning Services Division
City of San Leandro

-----Original Message-----

From: fred simon [mailto:fredandkim1996@att.net]

Sent: Tuesday, July 31, 2012 9:10 AM

To: Penaranda, Elmer

Cc: Livermore, Kathleen; Liao, Thomas

Subject: Public Comment on Proposed Halus Wind Turbine Project

Dear Mr. Elmer Penaranda,

My wife and I are writing this response to be included in the official public comment on the Halus Wind Turbine proposed for construction in San Leandro. We are seriously concerned about the potential negative effects on the residents of San Leandro and their property, as well as the Bay Area Shoreline and Wildlife. We are also concerned about the inadequate environmental documentation and public review time given for a project of this magnitude; the first of its kind in the entire Bay Area shoreline and within such close proximity to Bay Area residential homes.

My wife and I are supportive of green energy to protect our families and planet from pollution; however, the specific green energy project must be fully evaluated for its potential negative impacts to people and the surrounding habitat prior to implementation.

We request the City of San Leandro require the Halus Company to complete a Full Environmental Impact Report to adequately address the potential negative effects on the residents of San Leandro and their property, as well as the Bay Area Shoreline and Wildlife. We oppose the proposed Hauls Wind Turbine Project as presented to the residents of San Leandro.

Regards,

Frederick and Kimmerly Simon
15670 Atlantis Ave.
San Leandro, CA 95479

Subject: RE: Grant St. Wind Turbine
Date: Tuesday, July 31, 2012 4:12:02 PM PT
From: EPenaranda@sanleandro.org
To: sirrolandphillips@gmail.com

Roland Phillips -

The City is in receipt of your email. It will be provided to the Board of Zoning Adjustments (BZA). Thank you for your comments.

Regards.
Elmer Penaranda
Planning Services Division
City of San Leandro

From: Roland Phillips [mailto:sirrolandphillips@gmail.com]
Sent: Tuesday, July 31, 2012 10:51 AM
To: Penaranda, Elmer
Subject: Grant St. Wind Turbine

1,2,5
29

I do not believe the memorandum from ESA to Louis Riguad provides strong enough evidence that the construction of a wind turbine will **not** have a significant effect on the avian species of the area.

The summary section of that memorandum states that: "the turbine's location create a limited biological risk." Then, it goes on to state that: "Based upon the **comparison** of the proposed project with available data, it is estimated that the small turbine would result in 0.152 bird deaths per year."

1,2,5,
29,19,
25

The report never mentions what "available data" was used to arrive at this 0.152 figure. This indicates that the data from another location, not site specific, was used. I do not find it plausible that the 0.152 figure is a reliable estimate.

Essentially, the report does not provide convincing evidence that the turbine will not have a significant effect on avian life in the area. Particularly, in light of the fact that the summary also states: "Unfortunately, there is a shortage of information on bird and bat behavior, migratory bird routes, and ways in which topography, weather, time of day, and other factors affect bird and bat mortality."

I do not understand how there can be a shortage of information, and a three-figure-decimal-estimate possibly equate.

Subject: RE: Halus Wind Turbine Tower
Date: Tuesday, July 31, 2012 4:15:42 PM PT
From: EPenaranda@sanleandro.org
To: mwyatt79@yahoo.com
CC: KLivermore@sanleandro.org, TLiao@sanleandro.org

Misha Wyatt -

The City is in receipt of your email. It will be forwarded to the Board of Zoning Adjustments (BZA). Thank you for your comments.

Elmer Penaranda
Planning Services Division
City of San Leandro

From: M. Wyatt [mailto:mwyatt79@yahoo.com]
Sent: Tuesday, July 31, 2012 2:15 PM
To: Livermore, Kathleen; Liao, Thomas; Penaranda, Elmer
Subject: Halus Wind Turbine Tower

Dear Kathleen, Tom and Elmer,
As a thirteen year resident of Heron Bay and San Leandro, I'm writing you about my concern for the upcoming project entitled, "Halus Wind Turbine Tower." When I discovered this pending project, my immediate response was to do research. Do my dismay, there was little objective information about it, how it would impact my residential community, affect the natural preservation efforts or recreational activities in the area.

17-1,
25

This is somewhat disarming, because I support ecologically friendly activities on multiple levels. However, this project doesn't appear to have unbiased scientific and economic cost benefit analysis available. Therefore, I am requesting before any approval to proceed there is a proper environmental impact that includes a cost benefit analysis (business, residential and recreational), risk and liabilities, mitigation efforts, short and long term evaluations and any historical data on building such a structure within a residential and recreational area.

If you wish to contact for any reason relating to the "Halus Wind Turbine Tower", please call me at 415.735.7813 or via email.

Regards,

Misha Wyatt
Heron Bay Resident

CARLOS P. OCAMPO
2340 Riverside Ct.,
San Leandro, CA 94577

27 July 2012

Chair Catherine Viera Houston
Vice Chair Rene Mendeita
Jane Ann Abelee
Phillip Daly
Janet Palma
Lee Thomas
Board of Zoning and Adjustments
835 E. 14th Street, San Leandro, CA 94577

Subject: Halus Wind Turbine in San Leandro

Dear Chair Catherine Viera Houston
Vice Chair Rene Mendeita
Jane Ann Abelee
Phillip Daly
Janet Palma
Lee Thomas

I am writing to you because of the disadvantages of having a **Wind Turbine** in our neighborhood in San Leandro

I respectfully request your support for the City of San Leandro to require a full Environmental Impact Report (EIR) of the Proposed Halus Wind Turbine Project. Thus far, San Leandro City Council members have denied concerned San Leandran's requests to complete a full EIR.

My concerns about this project includes the following disadvantages:

1. **The strength of the wind is not constant and it varies from zero to storm force. Meaning that wind turbines do not produce the same amount of electricity all the time. There will be times when they produce "no electricity" at all.**
2. **Many people feel that the countryside should be left untouched, without these large structures being built. The landscape should left in its natural form for everyone to enjoy.**
3. **WIND TURBINES ARE noisy. Each one can generate the same level of**

23,

noise as a "family car" travelling at 70 MPH.

2

4. Many people see large wind turbines as unsightly structures and not pleasant or interesting to look at especially in a populated neighborhood like ours. They disfigure the countryside and are generally ugly.
5. When "**WIND TURBINES**" are being manufactured some pollution is produced. Therefore wind power does produce some pollution.
6. Large wind farms are needed to provide entire communities with enough electricity. For example, largest single turbine available today can only provide enough electricity for 475 homes, when running at full capacity. **HOW MANY BE NEEDED TO A TOWN OF 100,000 PEOPLE??**

Please let Mayor Cassidy of San Leandro, the San Leandro City Council Members, the San Leandro Board of Zoning Officials, etc know that you wholeheartedly support requiring a full EIR from the Halus Company regarding the Proposed Wind Turbine Tower in San Leandro before the July 31, 2012 comment period deadline.

Sincerely Yours,

San Leandro Resident
Resident, Bay Trail User, Concerned Bay Area Resident

MAYOR'S OFFICE

AUG 31 2012

CITY OF SAN LEANDRO

Mary Lavodnas
39030 Levi Street
Newark, CA 94560

San Leandro City Officials,
835 East 14th Street
San Leandro, CA 94577

Re: The Proposed Halus Wind Turbine in San Leandro

Dear San Leandro City Officials,

17-3

I am strongly against the proposed Halus Wind Turbine. It will be the first wind mill on the Bay Area shores that will give birth to a multitude of wind turbines all around the Bay. I do not want to open the door to our natural Bay Area beauty turning into hideous wind farm blight. Once that happens, who would ever want to walk their dog in the second Altamont Pass?

3, 20

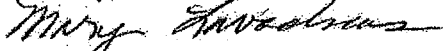
I walk my dog in the San Leandro Bay Trail right next to where this tower is planned to be. There are thousands upon thousands of graceful and precious birds flying there. I can't imagine that the birds would be safe with blades whirling around in their flight paths. I certainly don't want to be around the gruesome scene when one of those adorable birds collides with wind mill blades. In fact, if this wind mill is built, I can't imagine ever using the San Leandro Bay Trail again because of how ugly the tower will be and the potentially obscene bird mutilation I may witness.

17-6

Plus, I don't believe these wind towers are safe being so close to people and wildlife. If it catches on fire, no one can put out such high flames. So, the wind could easily carry embers to the marshland and homes nearby. There is only 1 road out of that neighborhood, so a fire would just be a total catastrophe.

I urge you to stop this wind tower from ever being built!

Sincerely,



Mary Lavodnas
Bay Trail Walker

MAYOR'S OFFICE
AUG 01 2012
CITY OF SAN LEANDRO

Tony Ferreira
2232 Charter Way
San Leandro, CA 94579

Dear Mayor and City Council Members:

As I walk the bay trail, I do not want to see a wind turbine. Also, I think

20

that the turbine will endanger the birds that live on the shoreline.

17-3

Also, this may open the door for more wind turbines that will not be good for

the beauty of the bay and the bay trail.

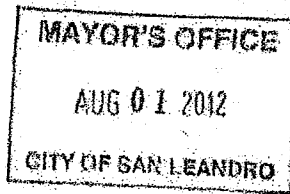
Please stop this project.

Sincerely,



Tony Ferreira
San Leandro Resident & Bay Trail User

Enkhargai Arslan
2232 Charter Way
San Leandro, CA 94579



Subject: Halus Wind Turbine

Dear Mayor & San Leandro B.Z.A.:

3.17-1

I think it is too close to our residential area. Also, it will decrease our home values, have noise and discomfort.

17-2

There are too many unknown factors that may harm human health, property, and environment.

It will just not look good on the shoreline with the lovely wildlife and wetlands that they belong to.

Sincerely,

A handwritten signature in cursive script, appearing to read "Enkhargai Arslan", written over a horizontal line.

Enkhargai Arslan
San Leandro Resident & Bay Trail User

MAYOR'S OFFICE

AUG 01 2012

CITY OF SAN LEANDRO

Dear City Officials:

My concern about this project are:

20

The Halus Project immediately next to the largest East Bay Protected Wildlife Habitat with over three dozen federally protected endangered bird species.

17-1,

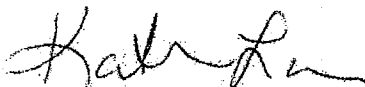
18

It is eyesore to San Leandro Bay Trail. It is too close to densely populated residential neighborhood, have unknown health and safety effects, decreases nearby home values, wind turbines have caught fire, which is easily spread through the grasslands. Wind turbines have been associated with Wind Turbine Syndrome. We don't want San Leandro to be the test cases for this potential health threat.

2

I am for green and wind energy, but I stand with everyone against poorly located Wind Towers that needlessly risk the lives of defenseless and endangered bird species and may pose unknow risks to human health and safety.

Sincerely,



Katherine Lan
1307 Overlook Ct
San Leandro, CA 94579

Halus Project Mitigation Measures 111112.txt

From: Mitch Huitema [mitch@misfit.com]
Sent: Sunday, November 11, 2012 3:05 PM
To: Penaranda, Elmer
Subject: Halus Project Mitigation Measures

I am writing to say that I feel that the Planning Department has done an excellent job investigating the Halas Project.

It appears that the mitigation measures laid out cover all of the important bases. Thank you for completing a well researched investigation into the potential environmental impacts.

wind turbines have proven to be a successful way to create power without the significant negative impacts associated with traditional power generation. It is in our best interests to move toward using green energy solutions such as wind turbines, and the mitigation measures listed do respond to and account for the only scientifically proven environmental impacts associated with wind turbines.

Thanks for taking the time to do a great job on this.

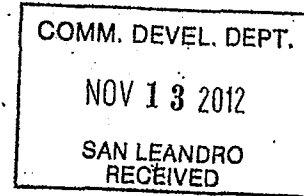
Mitch Huitema

HOWARD W. KERR

15388 NORTON STREET
San Leandro, CA 94579-2129

PHONE (510) 352-1000
FAX (510) 614-7240

Elmer Penaranda
San Leandro Community Development Dep't.
835 E. 14th Street
San Leandro, CA 94577



I am firmly in favor of the Halus proposal for installation of a wind turbine, and I fully recommend Zoning approval by the BZA.

As a 61 year homeowner and resident in nearby Washington Manor, and an original proponent of housing development at Heron Bay, I urgently recommend approval of the proposed Halus wind turbine on their own industrial site on Grant Avenue.

Common sense and available research indicate no adverse impact upon the "nearby" residents. This project is also vital to the facility to test and prove some of the technical controls manufactured on site.

This is a good project proposal and it is a great new asset to San Leandro's industrial base and job base.

Howard Kerr, Former SL Councilman and Vice Mayor
Boardmember and past President of Washington HOA
15388 Norton Street
San Leandro, CA 94579-2129



Halus Wind Turbine Project – Alameda County Flood Control-San Lorenzo Creek

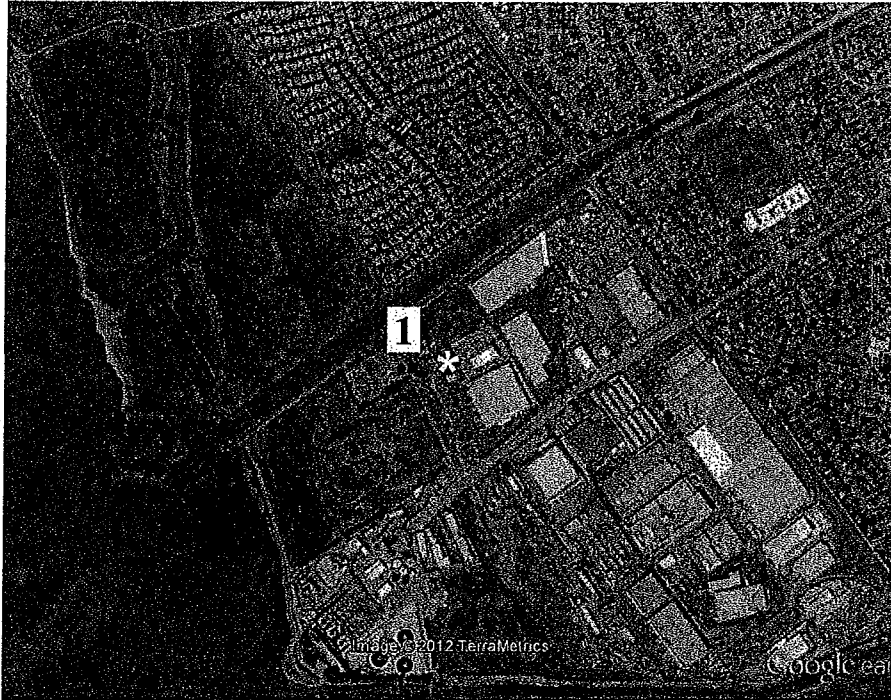


Photo Location 1 (asterisk marks turbine location)



Photo 1: Southwestern side of Heron Bay and no-trespassing notice on South side of Alameda County Flood Control/San Lorenzo Creek.



Photo Location 2 (asterisk marks turbine location)



Photo 2: Southwestern corner of Heron Bay Property and no-trespassing notice. North side of Alameda County Flood Control/San Lorenzo Creek.



Photo Location 3 (asterisk marks turbine location)



Photo 3: Southwestern end of Heron Bay Property and no-trespassing notice. Views significantly blocked by fencing and trees. North side of Alameda County Flood Control/San Lorenzo Creek.

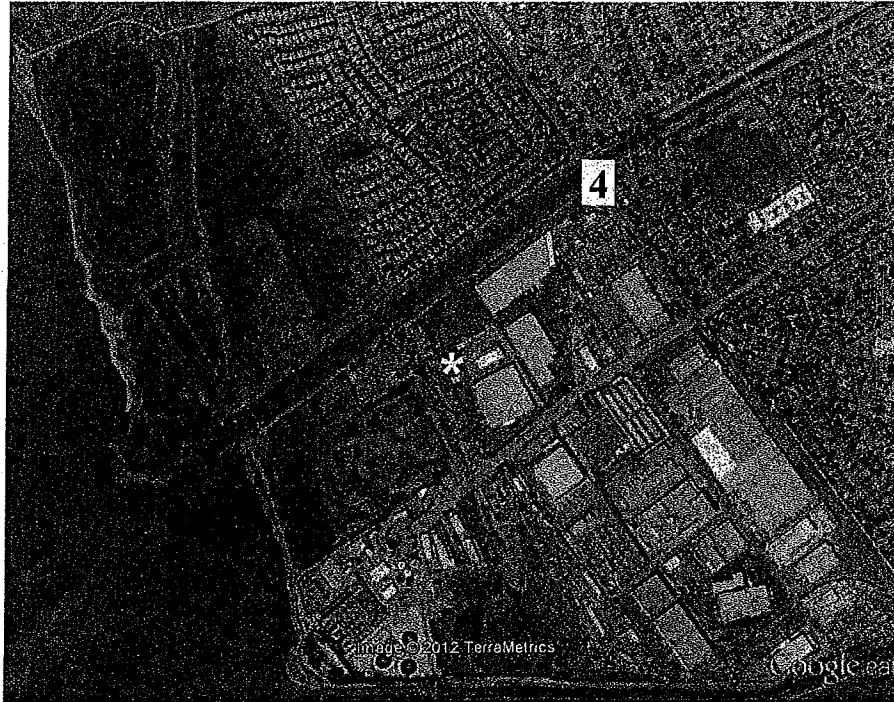


Photo Location 4 (asterisk marks turbine location)



Photo 4: Southeastern end of Heron Bay Property and no-trespassing notice. South side of Alameda County Flood Control/San Lorenzo Creek. Most views from row of 25 homes blocked by trees and fence.



Photo Location 5 (asterisk marks turbine location)



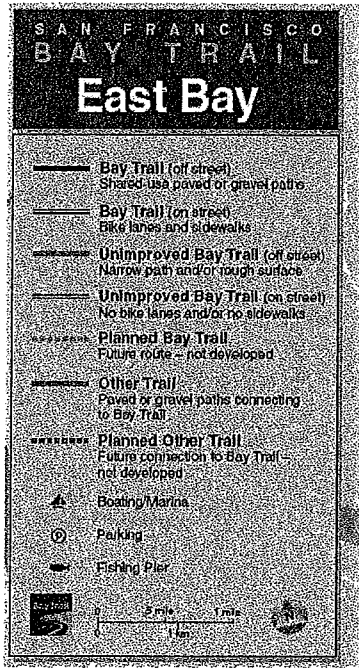
Photo 5: Southeastern corner of Heron Bay Property (west of rail road tracks) and no-trespassing notice. North side of Alameda County Flood Control/San Lorenzo Creek



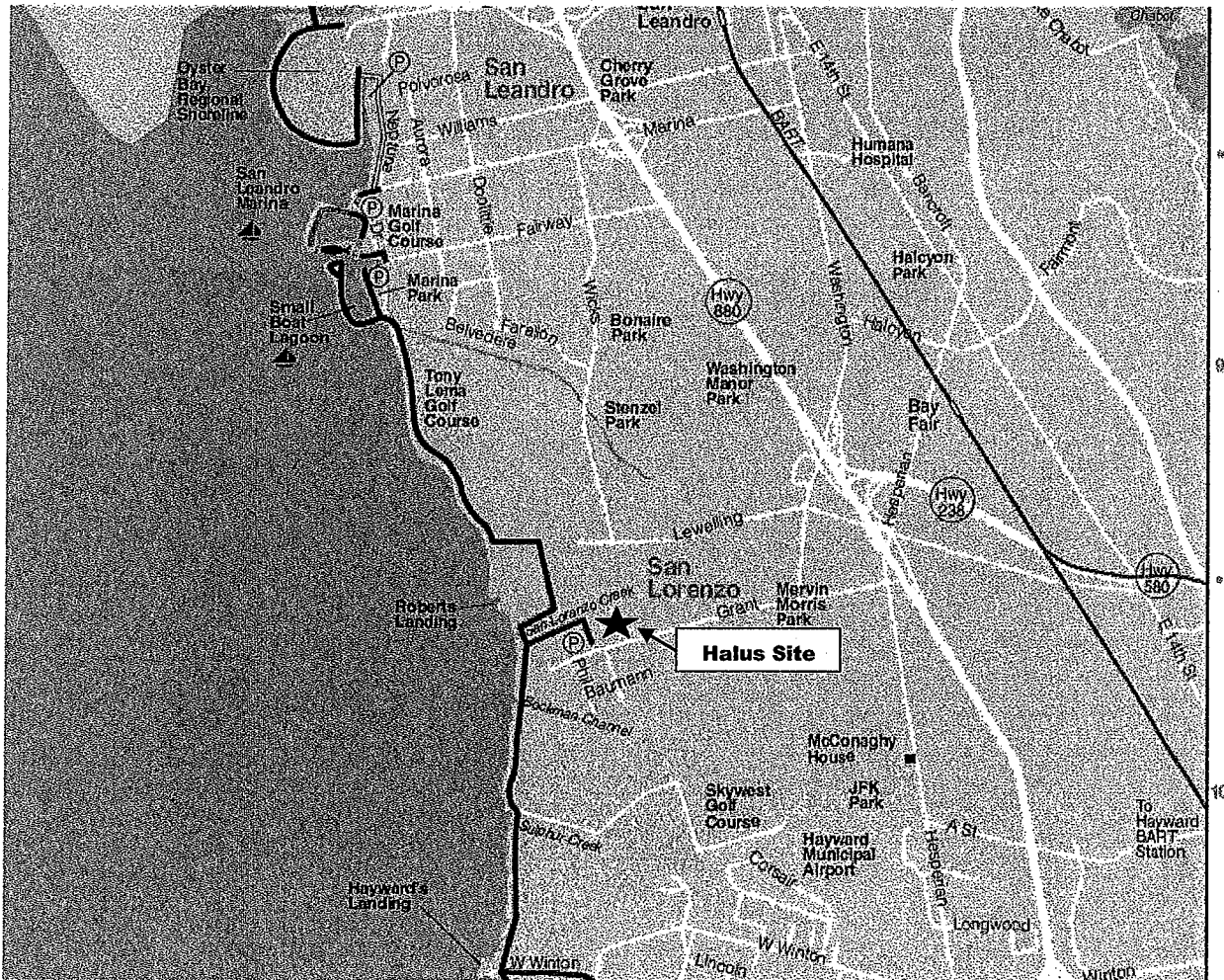
Photo Location 6 (asterisk marks turbine location)



Photo 6: Southeastern corner of Heron Bay Property (west of rail road tracks).
North side of Alameda County Flood Control/San Lorenzo Creek



Response to Comments
Mitigated Negative Declaration
Halus Power Systems
Appendix 3



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CHARLES B. BENNETT (CHUCK)

Senior Managing Associate

Chuck has 41 years of experience in applied environmental studies and project management at ESA. At ESA since its beginning, Chuck serves as consultant and directs work in applied technical studies, impact analysis and environmental impact report/statement (EIR/EIS) preparation. He has directed and contributed to more than 300 CEQA/NEPA impact studies and 500 technical studies in air quality, wind effects of high-rise buildings, health and safety, noise, vibration, visual effects and electromagnetic hazard. He has directed studies of more than 50 major industrial and public works projects, such as Water Pollution Control Plants; sewage solids handling facilities; modifications to an earth fill dam; flood control works; quarries; refineries, pipelines and industrial developments. Chuck's recent CEQA and NEPA studies have focused on telecommunications projects, major hospital master plans and facilities, energy projects, including refineries with cogeneration facilities, electric transmission and distribution facilities, and on wind effects of high-rise buildings. He serves as Project Director, Project Manager, Lead Technical Investigator, and Senior Technical Consultant at ESA. His specialized wind and shadow experience includes:

Education

B.S., Mechanical
 Engineering, Stanford
 University

41 Years Experience

Publications

Published technical articles in the fields of acoustics, wind effects, particulate transport and control, quality control, probabilistic search methods, computer-graphics applications, mathematical analysis of probabilistic games, and radiation phenomena.

Wind Studies. Chuck has directed more than 250 wind-tunnel tests for high-rise buildings proposed in San Francisco, Oakland, Los Angeles, Sacramento and other California cities. For most, he analyzed and reported the effects of building-generated winds on people in nearby public spaces. He was a technical advisor to the San Francisco Department of City Planning during development of their ordinance to limit wind effects of high-rise buildings on sidewalks and public open spaces. Recently, he analyzed wind effects on pedestrians and spectators at Piers 27-29 for the new Cruise Ship terminal and the America's Cup 34 races. He also considered adverse effects of shore-side development on winds in board-sailing areas of San Francisco Bay.

He consults with building owners and architects on the design and implementation of measures to mitigate problem wind conditions in urban settings and advises planners and landscape architects in the development of landscaping suitable to the existing wind and shading conditions around proposed new or existing urban structures.

He also conducts wind-tunnel studies to measure the effectiveness of new or existing heating, boiler and fume hood exhaust systems in safely dispersing toxic air emissions in public spaces.

Solar Shading - Shadow Studies. Chuck directed several hundred solar shading studies related to open spaces and pedestrian use areas for high-rise offices and other building projects. These studies had different objectives; many were required by cities for the analysis of environmental impact, while others were to inform building owners or to assist the project architects in the design of the buildings and/or layout of amenities and landscape features. In addition to pedestrian comfort issues, such studies also can inform solar collector placement and identify potential shadow effects on homes or on historic structures and gardens. He served as technical resource and advisor to the San Francisco Department of City Planning and consulted on the City's ordinance that regulates the shadow effects of high-rise buildings on dedicated public open spaces. He worked with staff to develop appropriate methods to present shadow information to the City Planning Commission and to the public. He advised the Department on the sources of error in the shadow modeling process and recommended improvements to the calculation and reporting protocols.

EXHIBIT C


Staff Report

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City of San Leandro
Community Development Department
Planning Services Division
Staff Report

DATE: February 7, 2013

TO: Board of Zoning Adjustments

FROM: Elmer Penaranda, Planner 

SUBJECT: **PLN2012-00006;** Variance to construct an 80-foot tall, single wind turbine where the blades will extend an additional 20 feet from the structure for a maximum height of 100 feet. Structures up to sixty (60) feet in height are permitted in the IG Zoning District and a variance to height is required for exceeding 60 feet. The proposed turbine would be an accessory use to the primary manufacturing/research and development use of the site; 2539 Grant Avenue; Alameda County Assessor's Parcel Numbers 80G-910-15; L. Rigaud, Halus Power Systems (applicant and property owner).

SUMMARY & RECOMMENDATION

The applicant proposes to construct an 80-foot tall, single wind turbine where the blades will extend an additional 20 feet from the structure for a maximum height of 100 feet. The turbine will operate at times when wind conditions are suitable and the blades will rotate at a maximum of 44 revolutions per minute (rpm). An avian study was performed and due to various existing and operational conditions, and types of species of birds and bats, the proposed single wind turbine poses a low potential risk to them. Noise levels for the proposed wind turbine are anticipated to not exceed 55 decibels Adjusted (dBA); the residences to the north are greater than 500 feet from the turbine and at this distance the turbine operation would have no audible tones or impulses. The proposed wind turbine will be located on a monopole in the interior of the site and in an area that is already developed with industrial buildings and uses. Discretionary review required for this proposal is a variance to the maximum permitted height and a mitigated Negative Declaration and a Mitigation Monitoring Plan. Although the proposed project requires a variance to height, the 100 foot tall turbine with large setbacks from residents and public open spaces would not have any impact on immediate adjacent properties, persons and avian species.

Staff recommends that the Board of Zoning Adjustments approve this project, PLN2012-00006, by acting on the attached Resolutions to:

1. Adopt the Mitigated Negative Declaration and the Mitigation Monitoring Program; and
2. Approve the Variance to exceed the 60 feet maximum allowable height, to a maximum of 100 feet, subject to the recommended findings and recommended conditions of approval.

APPLICANT'S SUPPORTING STATEMENT

See attached.

BACKGROUND AND SURROUNDING AREA

Halus Power Systems, a San Leandro "green technology" company, and supplier of remanufactured wind turbines, moved to its current site at 2539 Grant Avenue in 2010. The company also designs and manufactures wind turbine components including digital and mechanical control systems. In addition, the company engages in significant research and development to increase the energy efficiencies of wind technologies and equipment. This R&D is done independently and in partnership with other industry leaders and requires the testing of these new technologies on functioning turbines. Halus currently employs 10 people and has plans for significant growth in coming years.

To the north are San Lorenzo Creek, the southerly edge of the Heron Bay residential neighborhood, and State Lands Commission marshland (see attached Vicinity Map). To the east is an 11 acre industrial complex containing two buildings with various distribution and warehouse companies; the property is located in the City of San Leandro. The other properties to the east and south are outside the City boundary; they are considered unincorporated territory (Alameda County). To the east are industrial uses with some warehouse buildings but predominantly more outdoor storage yards. To the south are developed industrial properties for warehousing, manufacturing, food distribution, and an outdoor wooden pallet company. The properties to the west are developed with a warehouse building for manufacturing (adjacent to the flag lot's driveway), an Alameda County Flood Control site with outdoor storage (junk yard/salvage yard), a Pacific Gas and Electric (PG&E) substation, and the Oro Loma Sanitary District facilities (termination of Grant Avenue).

The subject site and the few parcels within the City's boundary, accessible from Grant Avenue, are in the IG Industrial General District, except the PG&E substation which is zoned PS Public and Semipublic District. The San Lorenzo Creek and the marsh areas are zoned OS Open Space District. Heron Bay homes are in the RS(PD) Residential Single-family, Planned Development Overlay District.

PROPOSAL

Site Plan

The project site is a flag-shaped lot on the north side of Grant Avenue east of the Oro Loma Sanitary District facility. It is served by a 50 foot wide and 420 foot long driveway via Grant Avenue. The site comprises approximately 4.7 acres (204,732 square feet) and is developed with a 13,382 square foot warehouse building. The proposed wind turbine will be located on a monopole in the interior of the site (219 feet from the curved rear property line; 129 feet from the westerly side property line). See attached Exhibit A – Site Plan and Exhibit B – Aerial Photograph Existing Site Conditions. Its placement would be adjacent to the northwesterly corner of the existing paving on the site. The remaining site area is used for off-street parking and the outdoor storage of turbine structures which are stored in sections and horizontally on their sides.

Elevation

The proposed single turbine structure would include an 80 foot tall pole, the turbine mounted on top of the pole, and three blades with a diameter of 20 feet each, thus making it 100 feet tall to the top rotation point. The base of the structure would be approximately six feet in diameter and taper to three feet in diameter at the top and attachment of the turbine. At the point of attachment the turbine is able to pivot towards the prevailing winds.

Operation

The turbine will operate at times when wind conditions are suitable and the blades will rotate at a maximum of 44 revolutions per minute (rpm). When there is no wind or weak prevailing winds the rotor blades will remain motionless (i.e., still, no moving parts). The turbine would operate under 55 decibels (when measured at the exterior boundaries of the property). The proposed turbine will generate a peak of approximately 50 kilowatt (kW) of electricity. The annual production is expected to be about 75,000 kilowatt hours (kWh).

The purposes of the proposal are:

1. Research, development and testing, which are the primary purpose to develop an improved product versus the products from the 1980s.
2. Generate power to operate the Halus business.
3. Promote wind as an alternative means of energy.

An example of the proposed installation is at Rio Viento Recreational Vehicle Park, Rio Vista, which is 50 minutes away from San Leandro. It has operated for approximately five years. It provides energy for the RV Park.

Initial Study and Mitigated Negative Declaration

The City prepared an Initial Study and a proposed Mitigated Negative Declaration (MND) on May 22, 2012 and provided notice pursuant to State law and the City's notification policies.

On June 20, 2012, applicant Halus Power Systems, along with City Planning staff and a member of the City Council, attended a regularly scheduled meeting of the Heron Bay Homeowners Association at the Marina Community Center. At that meeting, members of Heron Bay Homeowner's Association requested an additional 120 days to review the document. At the conclusion of that meeting, Halus agreed to an extension of the time period and offered to meet with any and all members of the Association to discuss the project in greater detail. The City extended the review period 40-days (until July 31, 2012) to provide additional time for the public to file written comments. While a number of phone and email discussions occurred, there were no subsequent meetings with Halus and officials from the Association.

Based upon feedback received at the June 20th meeting and written comments on the MND, Halus and City staff agreed to provide additional information and revise and recirculate the MND. The re-circulated MND was prepared October 11 and re-circulated for a 30-day review period ending November 13, 2012 (see attached Mitigated Negative Declaration with Initial Study Checklist Form [MND/IS] and attachments). In addition, a notice of a December 6, 2012 public hearing before the San Leandro Board of Zoning Adjustments (BZA) was provided.

In connection with the re-circulated MND, individual residents and the Association, through their attorney A. Alan Berger, provided a comment letter received and stamped by the City on November 13, 2013 and entitled: "Amended Public Comments of Heron Bay Homeowners Association and Individual Owner/Members of Heron Bay Homeowners Association in Opposition of the City of San Leandro's Intent to Adopt a Mitigated Negative Declaration for Halus Power Systems Wind Turbine Located at 2539 Grant Avenue, Within the City of San Leandro" ("Association letter"). This can be found attached to the end of the attached MND/IS.

The December 6, 2012 hearing was continued to provide additional time to consider the comments provided during the comment period. The BZA will conduct a public hearing to consider the MND and the project application on February 7, 2013.

The City of San Leandro has complied with all requirements under federal, state and local laws, including the California Environmental Quality Act. The public was afforded time required by law to review the MND and submit comments. All comments submitted have been reviewed and evaluated by the City, and are addressed in the attached Response to Comments. This can be found after the comment letters related to the MND.

STAFF ANALYSIS

Variance

Structures covering not more than 10 percent of the ground area covered by the structure may exceed the maximum height permitted height in the district in which the site is located by no more than 10 feet (Zoning Code Section 4-1658). In the IG District the maximum permitted height is 50 feet (Zoning Code Section 2-734 C.); thus the maximum permitted height is 60 feet tall. The proposed structure exceeds the 60 foot maximum height limit that the Zoning Code permits in the IG Industrial District. The maximum height for the proposed turbine is 100 feet, thus the variance is to exceed the maximum height limit by 40 feet.

Although the turbine structure exceeds the maximum height limit, the proposed turbine is situated in the center of a large parcel that gives it large setbacks to adjacent properties - over 500 feet from the nearest Heron Bay residences and over 750 feet from Grant Avenue.

Photo-Simulations

Photo-simulation studies were conducted from various points across the San Lorenzo Creek looking south to the Halus site by extending a crane to 80 feet high and placing a 20 foot long blade on top to simulate the 100 foot point to the top of the turbine's rotation. The purpose of the photo-simulations is to provide a perspective and understanding of the height of the proposed turbine and also that the turbine lacks bulk and mass such as a regular building. The photo-simulations also show that the turbine would be less in height than the existing PG&E high tension line towers that are approximately 120 feet tall to the west of the site. The turbine would not block or obstruct any views of the San Francisco Bay. The attached photo-simulations can be found included in the MND/IS as Attachment 6, dated October 8 2012. There are 11 photographs; nine of them show the simulated turbine. Photographs 7 and 9 do not include the turbine since it would not be visible from these vantage points.

Land Use

The proposed use itself would be considered a permitted use under the IG District. General Industry, and Research and Development are permitted in the IG District. The benefit of electric power for its own business makes the turbine accessory to the industrial business. The turbine is not for the purpose of generating power for sale off-site.

The proposed turbine would achieve a goal of the San Leandro Climate Action Plan Section 3.3 to increase residential, commercial and industrial renewable energy use. On-site renewable energy systems provide an important means to reducing emissions.

The proposed 50kW wind turbine is the appropriate size for small and midsize industrial users. It would generate 75,000 kilowatt hours (kWhs) in a year and this would generate a majority of energy for Halus's operations (note: 75,000 kWhs is the average use of 9-10 single-family homes.). Commercial/Industrial electric rate is \$0.20/kWh. At this rate the turbine would generate electricity for Halus having a value of \$15,000 per year.

Avian Report

A Technical Memorandum was prepared by Environmental Science Associates (ESA) to evaluate potential impacts to avian species resulting from construction of the wind turbine. The study concluded that bird species at highest risk in the area are populations of California clapper rails and California black rails. Any risk to these populations would be greatly reduced due to the distance from the habitat area and the rails' ground-dwelling behavior and relatively little time spent in flight. Bird fatalities are relatively infrequent events at wind farms and therefore a single wind turbine poses little risk. Higher bird fatalities occur at altitudes greater than 400 feet. Based on comparison of available data, it is estimated that the small turbine would result in 0.152 bird deaths per year. At that rate, it would take 6.5 years of continuous operation to result in the death of one bird (see the attached MND/IS with the Technical Memorandum for additional information).

Noise

The nearest residences are located more than 500 feet away and have been constructed to minimize noise from aircraft operations at the Oakland International Airport to the north. The project noise specifications provided was intended to be conservative by providing noise level data related to a much larger turbine (Vestas 225kW model) than the one proposed (Vestas 50kW). The smaller turbine will generate even lower sound levels. The evidence in the record and reasonable inferences from it show that the proposed turbine will not exceed 55dBA at the Halus property boundary line nearest the Heron Bay Homes, or any part of the property boundary line, and therefore its noise effects are well within the City's noise standard policies. This is within the acceptable range for industrial as well as residential uses.

City staff performed a site visit of the turbine in Rio Vista since it was the same model and height that is proposed. Staff observed that the sound up close to about 80 feet was not greater than the mechanical hum of a refrigerator in the home. As the distance was increased to 120 to 150 feet the sound from the turbine was not noticeable anymore. The resident manager and a resident of the RV Park stated that the turbine does not receive any complaints about its sound or operation.

Shadow Analysis

An Evaluation of Potential Shadows from the proposed wind turbine was prepared by ESA to analyze potential shadows on the homes and residents to the north and northwest of the site. The study determined that the proposed project would cast no shadows on the residences from one hour after sunrise to one hour before sunset throughout the year (see the attached MND/IS with the Technical Memorandum for additional information). In the winter solstice (when shadows are longest), shadow from the tower and the hub would reach toward the southwestern corner of the residential development in the morning, but only as far as the channel of San Lorenzo Creek. Even considering the shadow from the highest point for the rotor blades, that shadow would not reach the residences during that time interval.

Alameda County Airport Land Use - United States Federal Aviation Administration

Halus contacted the Alameda County Airport Land Use (ACLUC), and received referral to the United States Federal Aviation Administration (FAA). cursory comments after initial contact with the two agencies is that there will not be any significant concerns from either the FAA or ACLUC being that the turbine will be less than 200 feet tall. The FAA on June 22, 2012 issued its determination that the proposed turbine is not a hazard to air navigation. The determination is attached to the Mitigated Negative Declaration.

Structural Support

Due to the Bay soils it is likely that the proposed turbine would require six, 35 feet deep piers. A hollow stem flight auger would be required to construct and install these piers. As it drills into the soil it prevents soil from sloughing into the bore; a tension rod is slipped into the bore and concrete poured into it. The structure is bolted to the piers. Prior to issuance of Building Permits a State Licensed engineer will be required to design the support for the turbine.

Additional Information – Relative Height's of Structures

The following is additional information about structures in San Leandro to put the height of the proposed turbine in perspective.

1. The PG&E towers west of the subject property are 120 feet tall.
2. The elevated BART tracks along San Leandro Boulevard are 35-40 feet tall.
3. The ridgeline to the TriNet Building at Davis Street and San Leandro Boulevard is 65 feet tall.
4. The top of the parapet on the tallest parts of the Wells Fargo Building at East 14th Street and Estudillo Avenue is over 65 feet tall.
5. The former Albertsons pylon sign, now Kaiser Permanente sign, along I-880 is 42 feet tall.
6. The Marina Square Shopping Center pylon sign is 65 feet tall.
7. The Marina Auto Mall pylon/readerboard sign is 90 feet tall

GENERAL PLAN CONFORMANCE

The proposed use conforms to the General Plan, which designates the property for General Industrial uses which are characterized by distribution facilities, research and development, and manufacturing operations which produce minimal off-site impacts. The following General Plan policies are applicable to the proposed project:

7.01 Industrial Assets - Build on the strengths of the City's existing industrial base, transportation infrastructure, and proximity to Oakland International Airport in the City's business development efforts.

7.02 Economic Diversity - Promote economic diversity and the growth of new and emerging industries. Target businesses that will provide higher-paying jobs for San Leandro residents.

7.03 Sustainable Manufacturing - Promote environmentally sustainable manufacturing practices by San Leandro businesses and focus business attraction efforts on clean, environmentally-friendly businesses.

7.06 Adaptive Reuse - Encourage private reinvestment in vacant or underutilized industrial and commercial real estate to adapt such property to changing economic needs, including the creation of flex/office space.

10.02 Off-Site Impacts - Consider the setting and context of each site when evaluating proposals for development in industrial areas. The potential for impacts on adjacent uses, including the potential for land use conflicts and increased parking demand and truck traffic, should be a key consideration.

In addition to conforming to the General Plan, the proposal also satisfies a goal the San Leandro Climate Action Plan.

Section 3.3 Goal: Increase residential, commercial and industrial renewable energy use “On-site renewable energy systems offer another important lever for reducing emissions...To encourage on-site renewable energy, one common strategy employed by other local governments is to offer expedited permitting procedures for renewable generation and green buildings.”

Thus, there are a number of significant public benefits that would result from the proposed project. They include local green/high tech jobs, research and development investment that creates local revenues, and compliance with state and local mandated policies which promote green/wind energy projects to reduce greenhouse gasses, reduce dependence on foreign energy sources and reduce the overall consumption of fossil fuels.

ENVIRONMENTAL ANALYSIS

Pursuant to the California Environmental Quality Act, a Mitigated Negative Declaration has been prepared for this project (PLN2012-00006). A copy of the revised Mitigated Negative Declaration and Initial Study are attached. The initial 30-day review period from May 23, 2012 to June 21, 2012, was extended by the City 40 days to July 31, 2012. In response to comments a revised Mitigated Negative Declaration and Initial Study were recirculated for a 30-day review period from October 12, 2012 to November 13, 2012.

The recirculated IS/MND includes additional information that includes: responses to comments related to the IS/MND; photo simulations; shadow diagrams; sound information; a list of mitigation measures where the applicant and the City have worked closely with the California Department of Fish and Wildlife (CDFW) to address public concerns about avian life; and the Federal Aviation Administration’s determination that the turbine would not be a hazard to air navigation. In addition, East Bay Regional Park District (EBRPD) submitted a letter stating that it had reviewed the recirculated MND and supplemental material and it had no comments on the project (see attached letter).

The analysis of the Avian Report and the Noise were covered earlier in this report and in the attached Initial Study Checklist to the Mitigated Negative Declaration. The other mitigation measure is that geotechnical and seismic design criteria must conform to engineering recommendations in accordance with the seismic requirements of the 2009 California Building Code (Title 24) and any amendments adopted in the San Leandro Municipal Code. In addition, because the project site is in a liquefaction Seismic Hazard Zone, the project applicant will be required to comply with the guidelines set forth by California Geological Survey Special Publication 117.

PUBLIC OUTREACH

A Notice of Availability and Intent to Adopt a Mitigated Negative Declaration received a 30-day noticing period due to the Initial Study and Mitigated Negative Declaration that was prepared. The normal methods of noticing for the public hearing regarding the Variance and the Mitigated Negative Declaration were conducted including a legal advertisement in the Daily Review Newspaper, the posting of placards near the subject property on nearby utility poles, the mailing notification to property owners and business owners within a 300-foot radius of the subject property within the City of San Leandro, all of the property owners in the Heron Bay subdivision, and the property owners within a 300-foot radius of the subject property outside the City and in unincorporated territory. In addition, CEQA documents for Halus have been posted and maintained in the City's website since early summer.

RECOMMENDATION

Staff recommends that the Board of Zoning Adjustments approve this project, PLN2012-00006, by acting on the attached Resolutions to:

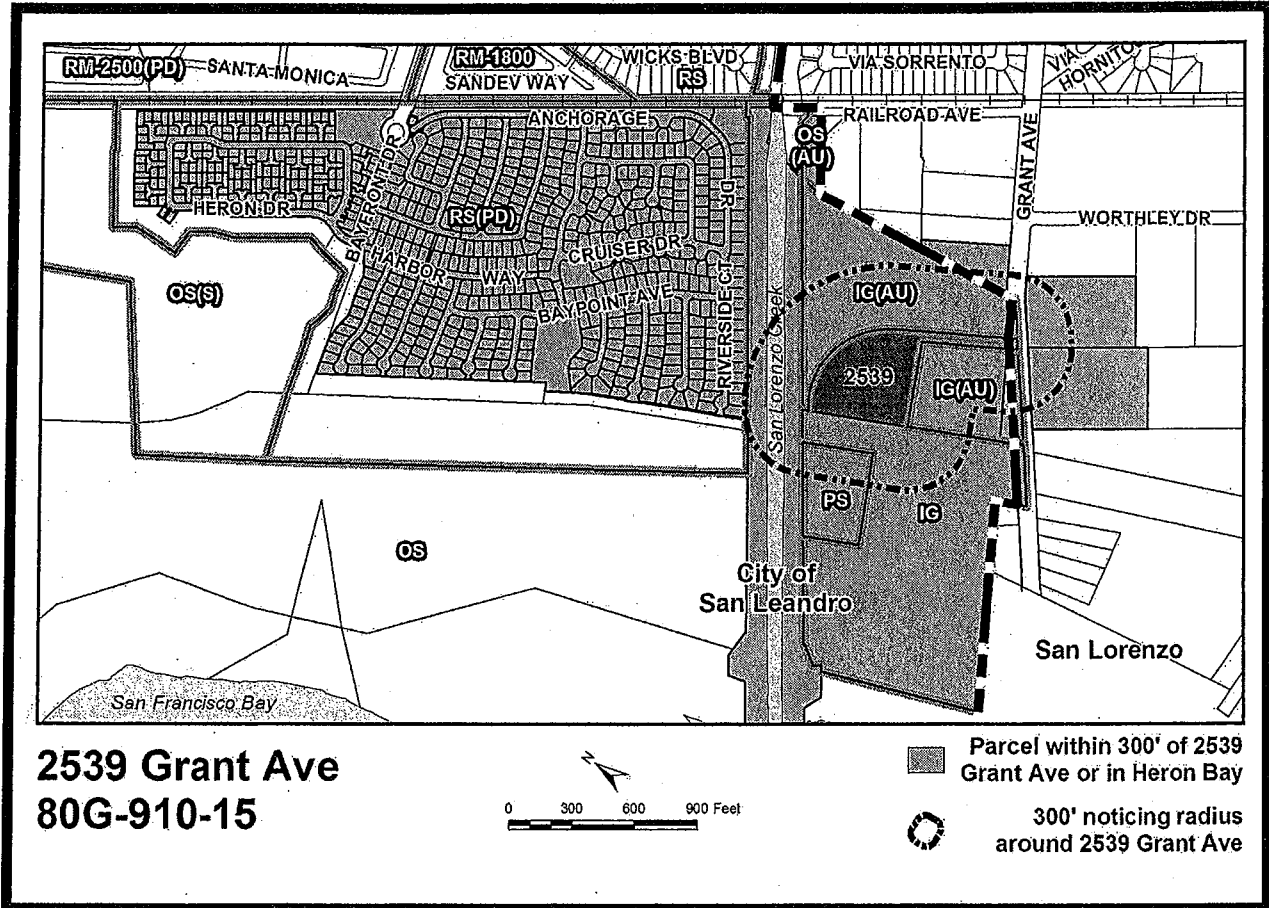
1. Adopt the Mitigated Negative Declaration and the Mitigation Monitoring Plan; and
2. Approve the Variance to exceed the 60 feet maximum allowable height, to a maximum of 100 feet, subject to the recommended findings and recommended conditions of approval.

ATTACHMENTS

Vicinity Map
Applicant's Supporting Statement
Recommended Findings of Fact
Recommended Conditions of Approval
Draft Mitigated Negative Declaration with Initial Study with technical attachments
Response to Comments
Annotated Comments to the Mitigated Negative Declaration
Draft Mitigation Monitoring Program
Additional Correspondence Received; EBRPD, January 31, 2013 and P. Tong, January 28, 2013
Exhibit A – Site Plan
Exhibit B – Aerial Photograph of Existing Site Conditions
Exhibit C – Elevations
Resolution Adopting Mitigated Negative Declaration and Mitigation Monitoring Program*
Resolution Approving Variance to Height Subject to Findings and Conditions of Approval*

*(Attachments that are cited in the Resolution are also Attachments to the Staff Report and will be included in the Final Resolution.)

City of San Leandro
BOARD OF ZONING ADJUSTMENTS
Staff Report
VICINITY MAP
 Showing Existing Land Use and Zoning



Meeting Date: February 7, 2013
 File Number: PLN2012-00006
 Agenda Item No.: 7 b.
 Applicant and
 Property Owner: L. Rigaud, Halus Power Systems
 Address: 2539 Grant Avenue
 Assessor's Parcel #: 80G-910-15
 Project Planner: Elmer Penaranda

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APPLICANT'S STATEMENT

HALUS POWER SYSTEMS WIND TURBINE

February 28, 2012

Halus Power Systems is requesting approval of a Variance to allow an 80-foot tall, single wind turbine to be located in the interior of their property at 2539 Grant Avenue, San Leandro, CA.

ZONING AUTHORITY

Pursuant to Section 2-706.A.32 "Telecommunications Antennae and/or Alternative Tower Structures up to sixty (60) feet in height" are permitted in the I-G Zoning District. Therefore, a variance is required. The proposed tower would be an "accessory use" to the primary manufacturing/ R&D use in the building and on the site.

BACKGROUND

Halus Power Systems, a San Leandro "green technology" company, and North America's leading supplier of remanufactured wind turbines, moved to its current 5 acre San Leandro facility at 2539 Grant Avenue in 2010. The company also designs and manufactures wind turbine components including digital and mechanical control systems. In addition, the company also engages in significant research and development activities to increase the energy efficiencies of wind technologies and equipment. This R&D is done independently and in partnership with other industry leaders and requires the testing of these new technologies on functioning turbines.

Halus Power Systems currently employs 10 people and has plans for significant growth in coming years. It is precisely the type of company envisioned and supported by the City's General Plan, the State of California, Alameda County and East Bay Green Corridor Initiative policies. The following is brief list of some of those policies:

STATE, LOCAL AND REGIONAL POLICIES REGARDING WIND ENERGY

- California Government Code Section 65893.
 - (a) The Legislature finds and declares all of the following:
 - (1) Wind energy is an abundant, renewable, and nonpolluting energy resource.
 - (2) Wind energy, when converted to electricity, reduces our dependence on nonrenewable energy resources, reduces air and water pollution that result from conventional sources burning fossil fuels, and reduces emissions of greenhouse gases.
 - (3) Distributed generation small wind energy systems also enhance the reliability and quality of electricity delivered by the electrical grid, reduce peak power demands, increase in-state electricity generation, diversify the state's energy supply portfolio, and make the electricity supply market more competitive by promoting consumer choice.

(4) Small wind energy systems designed for onsite home, farm, and small commercial use are recognized by the Legislature and the State Energy Resources Conservation and Development Commission as an excellent technology to help achieve the goals of increased in-state electricity generation, reduced demand on the state electrical grid, increased consumer energy independence, and nonpolluting electricity generation.

- California Government Code Section 65897:
It is the policy of the state to promote and encourage the use of distributed renewable energy systems and to limit obstacles to their use, and it is the intent of the Legislature that local agencies encourage the installation of distributed renewable energy systems by removing obstacles to, and minimizing costs of, permitting distributed renewable energy systems.
- California Public Resources Code Section 25300.
(a) The Legislature finds and declares that clean and reliable energy is essential to the health of the California economy and of vital importance to the health and welfare of the citizens of the state and to the environment.
- California Public Resources Code Section 26001:
The Legislature hereby finds and declares all of the following:
 - (a) It is essential that the state, in cooperation with the federal government, use all practical and commercially feasible means to promote the prompt and efficient development of energy sources which are renewable or which more efficiently utilize and conserve scarce energy resources.
 - (b) The promotion of energy sources which reduce the degradation of the environment and which protect the health, welfare, and safety of the people of this state is in the public interest and serves a public purpose.
 - (c) It is essential that the state, in cooperation with the federal government, use all practical and commercially feasible means to promote the development and commercialization of advanced transportation technologies to conserve energy, reduce air pollution, promote economic development and jobs, and protect the health, welfare, and safety of the people of the state.
- California Public Resource Code Section 25695
In enacting this chapter, the Legislature hereby finds and declares all of the following:
 - (a) The development and commercialization of energy technologies and energy conservation is a vital element in meeting the state's energy needs.

EAST BAY GREEN CORRIDOR POLICIES

- Support local green businesses in a way that expands markets and/or removes barriers;
- Leads to Green Corridor economic development and high quality job creation;
- Connects to workforce training for a variety of wage and skill levels, providing career ladders for low income wage earners whenever possible;
- Improves the environment and quality of life by reducing greenhouse gas emissions and toxicity, improving water conservation, or conserving natural resources.

SAN LEANDRO GENERAL PLAN

- Section 7.03 Sustainable Manufacturing
Promote environmentally sustainable manufacturing practices by San Leandro businesses and focus business attraction efforts on clean, environmentally friendly businesses.

SAN LEANDRO CLIMATE ACTION PLAN

- Section 3.3 Goal: Increase residential, commercial and industrial renewable energy use
“On-site renewable energy systems offer another important lever for reducing emissions... To encourage on-site renewable energy, one common strategy employed by other local governments is to offer expedited permitting procedures for renewable generation and green buildings.”

DETAILS OF THE PROPOSAL

To continue its leadership in the area of renewable energy and to grow in San Leandro, Halus Power Systems requires an on-site wind turbine. The turbine will allow the company to do on-site research and development to continue the development of more efficient technologies. The addition of the wind turbine will allow the company to grow in San Leandro and improve its competitive position in the wind energy field. The wind turbine will also reduce or eliminate the dependence upon fossil fuel-based sources for the energy demands of their factory and office building.

Turbine Structure Details

(Note: Exhibit A attached, includes typical design and structural details for the turbine. Precise engineering calculations will be designed by a registered structural engineer based upon a geotechnical analysis of existing soil characteristics. The design will comply with all building and seismic codes. Details will be submitted as part of the building permit application.)

Location:

The proposed turbine would be located as shown on Exhibit B, with a minimum setback of 100' from the nearest property line or structure.

Dimensions:

Height: 80 feet in height to top of structure as shown in Exhibit A attached. Blades would extend 20 feet from the structure.

Diameter: The below grade concrete structural foundation will be approximately 20 feet in diameter. The foundation design loads will be designed by a registered structural engineer. The portion of the foundation that will be above ground and visible will be approximately 8 feet in diameter (to support the 6 foot diameter tower) and approximately 1 foot above finished grade.

Operations:

The turbine will operate at times when wind conditions are suitable. The blades will rotate at a maximum of 44 revolutions per minute (rpm's) unlike smaller turbines with direct current (DC) power that can operate in excess of 300 rpm's. The slower blade rotation makes it operate quietly and with no impact to bird populations as the blades are clearly visible due to their slow speed. We have attached noise information for a similar (but slightly larger and louder model), which shows that the noise levels are below the standard industrial noise levels for the property at it's property lines.

Energy Generation:

The proposed turbine will generate a peak of approximately 50 kW of electricity, which will significantly reduce Halus Power System's dependence on electricity created from fossil fuels. The annual production is expected to be about 75,000 kWh's, which is very close to current electrical consumption of the current operations. This is a specific goal of the San Leandro Climate Action Plan.

Noise:

As noted above, the proposed turbine will operate quietly with fewer noise impacts than other allowable and ubiquitous noise-generating equipment in the I-G Zoning District. Noise levels for the proposed turbine will not exceed 55 dBA and will therefore be well below the ambient noise levels in the area and significantly lower than the noise levels illustrated on Table 6.1 and Figures 6.2 and 6.3 of the City's General Plan. In addition, the property is located near and significantly affected by the aviation noise of aircraft approaching the Oakland International Airport. [Please refer to Exhibit D for Noise Specifications]

Design /Aesthetics:

The proposed wind turbine will be located on a "mono-pole" in the interior of the site. The mono-pole design reduces the profile and visibility of the structure, especially when compared to the "lattice-structure" design of the nearby electrical high tension wires.

(Another important benefit of the proposed mono-pole design is that it creates no opportunities for birds to perch and thereby reduces the risk to bird populations.)

Exhibit C includes a number of photo simulations showing the location of the proposed turbine tower from various vantage points. The applicant used a crane arm elevated to 80 feet in height. The end of the crane arm simulates the height of the top of the turbine tower. A 20-foot extension pole was placed at the end of the crane arm to simulate the length of the turbine blades. In the proposed location and given the many other tall structures including PG&E high tension lines and a recently approved cell phone antenna pole, the proposed wind turbine will create no adverse visual impacts. Further, for many, the view of a wind turbine is considered an attractive and interesting addition to an industrial areas and a reminder of the City's commitment to alternative energy sources.

Compliance with Building Codes: The proposed wind turbine will comply with all building codes including electrical, mechanical, structural, seismic and civil engineering requirements.

Compliance with applicable Federal Aviation Administration requirements: The proposed wind turbine will comply with all requirements of the Alameda County Airport Land Use Commission. An application has been submitted to the County for approval of the wind turbine. According to Cindy Horvath, Alameda County Planner, the proposed turbine is unlikely to be denied by the County or the FAA. The City's approval of the project will include a condition of approval requiring compliance with all conditions of approval of Alameda County and the FAA.

Environmental Review: The analysis of potential environmental impacts and the answers to the Environmental Checklist in Exhibit C, demonstrate that the proposed project will not have a significant effect on the environment.

ZONING

The property is located in the I-G zoning district, San Leandro's most intensive industrial zoning district.

SURROUNDING LAND USES

Properties in the vicinity include an adjacent recycling operation, warehousing and distribution facilities, the Ora Loma Sanitary District wastewater operations, a PG&E

electrical sub-station and large high-tension electrical lines. In addition, an 80-foot tall cellular telephone tower is located to the southwest. The Heron Bay residential community is located to the north across San Lorenzo Creek Storm water Drainage Channel. A row of tall trees along the property at the creek edge provides a substantial visual screen obstructing the view of the property from the homes.

ZONING APPLICATION REQUEST – HEIGHT VARIANCE

Pursuant to Zoning Code Section 2-706-32: “Telecommunications Antennae and/or Alternative Tower Structures up to sixty (60) feet in height” are permitted in the I-G Zoning District. This application is seeking a Variance to allow a tower structure of 80 feet. This tower would be an “accessory use” to the primary manufacturing/ R&D use in the building and on the site.

ANALYSIS/DISCUSSION

The variance for the proposed wind turbine is appropriate, necessary. It is an important step in meeting the City’s Climate Action Plan. It is also important from a land use and economic development perspective. Halus Power Systems is an important example of “green” businesses that want to locate in San Leandro. The types of research and development that the wind turbine will promote, could result in significant growth in employment and tax revenue to the City. In order to approve the Variance, the Board of Zoning Adjustments must approve required findings. The findings for approval can be made in the affirmative as follows:

1. That because of special circumstances or conditions applicable to the subject property, including narrowness and shallowness or shape, exceptional topography, or the extraordinary or exceptional situations or conditions, strict application of the requirements of this Article would result in peculiar and exceptional difficulties to, or exceptional and/or undue hardships upon, the owner of the property;

The subject property is a “panhandle lot” with no visibility from Grant Avenue. Views from the north are obscured by the row of tall trees that have been planted along the southern property line. Access to the property is from a 576-foot long driveway. The location of the wind turbine would minimize any view from the street or nearby properties. A height of 80 feet, which is necessary for the turbine to function properly and efficiently, is easily accommodated on this particular site due to the property’s shape and location.

2. That the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources, and without significant detriment or injury to property or improvements in the vicinity of the development site or to the public health, safety or general welfare; and

No detriment to the public good will occur as a result of this Variance. The proposed wind turbine will be located at the interior of the 5-acre site and the site

itself is virtually invisible from nearby properties. Further, it will be located a minimum of 100 feet from any property line or structure. Therefore no detriment, impairment or injury to property or the public health, safety or general welfare will result.

3. That granting the application is consistent with the purposes of this Code and will not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zoning district.

The approval of this application is consistent with City, State and County policies related to the promotion of renewable energy sources and the City's General Plan and Zoning Code. It would not constitute a grant of special privilege since those policies would apply to all properties in the vicinity.

**RECOMMENDED
FINDINGS OF FACT**

**PLN2012-00006 - 2539 Grant Avenue
L. Rigaud, Halus Power Systems (applicant and property owner)**

The Board of Zoning Adjustments hereby approves the Variance for the proposed 80-foot tall, single wind turbine where the blades will extend an additional 20 feet from the structure for a maximum height of 100 feet at 2539 Grant Avenue, Halus Power System, subject to the following findings:

Variance

1. **That because of special circumstances or conditions applicable to the subject property -- including narrowness and shallowness or shape, exceptional topography, or the extraordinary or exceptional situations or conditions -- strict application of the requirements of this article would result in peculiar and exceptional difficulties to, or exceptional and/or undue hardships upon, the owner of the property;**

The unusual circumstances in this instance are the irregular flag shape of the lot, its sizeable land area, it is not immediately adjacent to occupied properties, and its clear and unobstructed location to the westerly San Francisco Bay winds, which make it a candidate for the proposed turbine. The flag lot moves the turbine away from street view. The large size of the lot provides adequate setbacks from adjacent properties and uses by situating it on the center of the large parcel. In addition to the large setbacks, the immediately adjacent properties are either flood control area or industrial properties which are not occupied or densely occupied by persons. The geographic location near the Bay, plus being clear and unobstructed, is ideal for the turbine to operate from the westerly on shore winds. The proposed height is optimal in operating a turbine; a lower height is not a viable option in operating the turbine. Therefore the unique and unusual circumstances make the site suitable for the new turbine to operate.

2. **That the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources; and without significant detriment or injury to property or improvements in the vicinity of the development site, or to the public health, safety or general welfare; and**

The 40 foot variance to exceed the 60 foot allowable height limit would not have any detrimental impact on adjacent property or persons. It would not obstruct the availability of light or air to the adjacent properties and will pose no nuisance and no hazard to the general public. The turbine is in a fenced area within a larger fenced area in the middle of a site on private property that is not accessible to the public. Moreover, large setbacks are provided on all sides of the turbine (over 500 feet from residences to the north, approximately 750 feet from Grant Avenue, approximately 130 feet from the westerly side property line and approximately 280 feet from the easterly side property line) to prevent any obstruction of light and air to adjacent properties. In addition, the setbacks make the turbine inaudible from any of the adjacent properties. The immediate adjacent properties on all sides do not have a high concentration of persons occupying them. To the east is a junk yard/salvage yard. To the north is the San Lorenzo Creek. To the east and south are warehouse buildings.

Permitting the variance and constructing the turbine would have no affect on any natural resources. An avian study was conducted and the proposed operation of the turbine and existing biological and environmental conditions would have no significant affect on birds or bats.

3. **That granting the application is consistent with the purposes of this code and will not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zoning district.**

The granting of this variance is consistent with the purpose of this code to provide and protect existing industrial sites and allow for continued operation of existing general industry, subject to performance standards and requirements to minimize potential environmental impacts. The variance would not constitute a granting of special privilege. This is a unique situation for a single 100 foot tall turbine which is located in the middle of a 4.7 acre site. It would have adequate setbacks of over 500 feet from residences to the north and 750 feet from the street to the south.

4. **The Board of Zoning Adjustments shall approve, conditionally approve, or disapprove applications for use permits, variances, or parking exceptions upon finding that the proposed use permit, variance, or parking exception is consistent with the General Plan, the general purposes of this Article, the specific purposes of the base or overlay zoning district in which a development site is located, and all applicable requirements of the Municipal Code.**

The proposed variance would permit a use that is consistent with the General Plan, which designates the property for General Industrial uses that are characterized by distribution facilities, research and development, and manufacturing operations which produce minimal off-site impacts. The following General Plan policies are applicable to the proposed project:

7.01 Industrial Assets - Build on the strengths of the City's existing industrial base, transportation infrastructure, and proximity to Oakland International Airport in the City's business development efforts.

7.02 Economic Diversity - Promote economic diversity and the growth of new and emerging industries. Target businesses that will provide higher-paying jobs for San Leandro residents.

7.03 Sustainable Manufacturing - Promote environmentally sustainable manufacturing practices by San Leandro businesses and focus business attraction efforts on clean, environmentally-friendly businesses.

7.06 Adaptive Reuse - Encourage private reinvestment in vacant or underutilized industrial and commercial real estate to adapt such property to changing economic needs, including the creation of flex/office space.

10.02 Off-Site Impacts - Consider the setting and context of each site when evaluating proposals for development in industrial areas. The potential for impacts on adjacent uses, including the potential for land use conflicts and increased parking demand and truck traffic, should be a key consideration.

In addition to being consistent with the General Plan, the proposal would also satisfy a goal in the San Leandro Climate Action Plan.

Section 3.3 Goal: Increase residential, commercial and industrial renewable energy use
“On-site renewable energy systems offer another important lever for reducing emissions...To encourage on-site renewable energy, one common strategy employed by other local governments is to offer expedited permitting procedures for renewable generation and green buildings.”

The proposed variance would be consistent with this Article 22 of the Zoning Code in that it is only being granted with respect to the height of the structure. Pursuant to the Article the variance does not extend to permit a use which is not permitted or specified in the Zoning Code. Moreover, the intention of the variance to gain additional height is to resolve a practical difficulty to effectively operate a turbine which would be a permitted use on the subject property. The additional height is necessary because effective prevailing winds to operate the turbine are at a height greater than the maximum permitted height in the industrial zoning district.

The proposed variance would be consistent with the specific purposes of the IG Industrial General District in providing and protecting an existing industrial site and allowing for its continued operation of existing general industry, and at the same time minimizes potential environmental impacts. The variance would allow a turbine to operate which is a permitted in the IG District as it was determined that its purpose is for research, development and testing for the business operating on the property. Pursuant to the California Environmental Quality Act, a Mitigated Negative Declaration (MND) has been prepared for this project. The City in its preparation of a MND has conclusively determined that the proposed project, with the incorporation of the mitigation measures agreed to by the applicant, clearly will not have a significant effect on the environment and that no substantial evidence in the light of the whole record has been presented to the City that the proposed project may have a significant effect on the environment.

The proposed variance would be consistent with the applicable requirements in the Municipal Code in that approving the variance would subject the project to all of the other City requirements such as Building Codes, Fire Codes, etc. that are not included in the Zoning Code for further ensuring health and safety, and public welfare in carrying out the construction and the operation of the turbine structure.

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CONDITIONS OF APPROVAL

PLN2012-00006 - 2539 Grant Avenue

L. Rigaud, Halus Power Systems (applicant and property owner)

I. COMPLIANCE WITH APPROVED PLANS

- A. The project shall comply with Exhibits A through C, dated February 7, 2013, except as hereinafter modified. (Exhibits are on file at the City of San Leandro, Community Development Department, 835 East 14th Street, San Leandro, California, 94577).

Exhibit A – Site Plan

Exhibit B – Aerial Photograph of Existing Site Conditions

Exhibit C – Elevations

- B. The applicant and/or property owner shall be responsible for assuring that any successor in interest who assumes responsibility for this zoning approval is informed of its terms and conditions.
- C. Construction shall commence within one (1) year following Board of Zoning Adjustments approval of the Variance and shall be substantially completed one year after commencement of construction. For the purpose of compliance with this condition, commencement of construction shall be defined as the pouring or construction of a substantial portion of the building foundation structure. Pursuant to Zoning Code Section 5-2218, this approval shall lapse on **February 7, 2014** unless a) a building permit has been issued, coupled with diligent progress evidencing good faith intent to commence the intended use, or b) a written request for a one-year extension of the use permit is approved by the Zoning Enforcement Official.

II. PERMITTED USE

- A. This approval is for a Variance to permit construction 80-foot tall, single wind turbine where the blades will extend an additional 20 feet from the structure for a maximum height of 100 feet, where the maximum allowable height is 60 feet in the industrial districts; 2539 Grant Avenue; Alameda County Assessor's Parcel Number 80G-910-15.
- B. No application for amendment of the application or Conditions of Approval may be submitted or accepted for processing by the city unless (i) there is full compliance with all terms of the application and Conditions of Approval; or (ii) the Community Development Director can waive compliance with the terms of the application if they are minor in content.
- C. Construction of the project shall remain in substantial compliance with the approved exhibits and plans. Any change to the project design, materials or colors shall be subject to the review and approval of the Community Development

Director who may administratively approve minor changes, or for more substantial changes, require review by the Board of Zoning Adjustments as a modification to the Variance.

- D. Unless otherwise specified on the approved plans (Exhibits A - C) or in these Conditions of Approval, the development shall comply with the applicable zoning standards for the IG Industrial General District, such as but not limited to standards governing setbacks, building coverage, outdoor storage, and screening, with the exception of the variance granted to exceed the height limit.

III. MITIGATION OF ENVIRONMENTAL IMPACTS

- A. All mitigation measures indicated in the Mitigated Negative Declaration shall be included and are hereby incorporated as Conditions of Approval. (They are listed below as letters B. through K.). Said mitigation measures are also listed in the Mitigation Monitoring Plan and the applicant shall comply with and implement all provisions of said Mitigation Monitoring Plan (MMP). Note: References to Department of Fish and Game (DFG) below has been changed to the California Department of Fish and Wildlife (CDFW).
- B. ~~If construction must be scheduled to occur during the migratory bird and raptor nesting season (February 15 through August 15 for most birds),~~ a qualified wildlife biologist, familiar with the species and habitats in the Project area, will be retained to conduct pre-construction surveys for raptors and nesting birds within 300 feet of construction activities. The surveys shall be conducted one week before initiation of construction. If no active nests are detected during surveys, activities may proceed. If active nests are detected then the applicant should consult with the Lead Agency and DFG on appropriate buffers. Mitigation Measure # 1a in the MMP. **(BZA amended this measure by motion at its February 7, 2013 meeting.)**
- C. To reduce impacts to raptors, the applicant shall minimize small mammal habitat from occurring beneath the wind swept area of the turbine. Mitigation Measure #1b in the MMP.
- D. To reduce impacts to avian species from electrocution, all electrical wires shall be placed underground or follow minimization methods established by Avian Power Line Interaction Committee. Mitigation Measure # 1c in the MMP.
- E. If a state or federally listed species is killed during Project operations without the appropriate Incidental Take Permit (ITP) under the California Endangered Species Act (CESA) or the federal Endangered Species Act, the applicant shall halt all turbine operations immediately. The applicant must consult with the United States Fish and Wildlife Service (USFWS) and/or California Department of Fish and Game (DFG). Mitigation Measure # 1d in the MMP.
- F. If a carcass is found that is federally threatened, endangered or protected by the Migratory Bird Treaty Act (MBTA), the information shall be reported by a qualified biologist to USFWS, Office of Law Enforcement, Renewable Energy

Officer at (650) 876-9078 within five days of its discovery. Mitigation Measure # 1e in the MMP.

- G. If a carcass of a species listed pursuant to CESA or Fish and Game Code Section 3511 is discovered, DFG shall be immediately notified at (707) 944-5500. Mitigation Measure # 1f in the MMP.
- H. If a species is injured as a result of Project operations, the applicant shall immediately take it to a DFG approved wildlife rehabilitation or veterinary facility, such as Sulphur Creek Nature Center, at (510) 881-6747; or Ohlone Humane Center, at (510) 797-9449. Permittee shall bear any costs associated with the care and treatment of such injured species. Mitigation Measure # 1g in the MMP.
- I. A post-construction monitoring plan shall be approved by DFG and implemented within one month of initial turbine operation. Mitigation Measure # 1h in the MMP.
- J. Turbine may not operate in heavy rain or dense fog. Mitigation Measure # 1i in the MMP. **(BZA added this measure by motion at its February 7, 2013 meeting for the purpose of protecting avian species.)**
- K. The City of San Leandro has incorporated the 2009 International Building Code into its municipal building code (Title 7, Chapter 7-5). The project applicant would be required to comply with all applicable State and City regulations to address potential geologic hazards associated with the proposed project, including ground shaking and liquefaction. Geotechnical and seismic design criteria must conform to engineering recommendations in accordance with the seismic requirements of the 2009 California Building Code (Title 24) and any amendments adopted in the San Leandro Municipal Code. Additionally, because the project site is in a liquefaction Seismic Hazard Zone, the project applicant will be required to comply with the guidelines set forth by California Geological Survey Special Publication 117. Mitigation Measure #2 in the MMP.
- L. Halus Power Systems shall secure approval of Alameda County Airport Land Use Commission and the Federal Aviation Administration prior to building permit approval of the wind turbine. Mitigation Measure #3 in the MMP.

IV. MAINTENANCE

- A. The project site shall be well-maintained and shall be kept free of litter, debris, and weeds at all times; during construction, the site shall be well maintained and shall be kept free of litter, debris, and weeds.
- B. Any graffiti shall be promptly removed from the property (i.e., turbine tower structure, building walls, signs, windows, paving, et cetera).

- C. In the event that the use of the tower to operate a turbine is abandoned, the applicant shall obtain the necessary building permit to remove the tower and restore the site to its pre-installation condition.

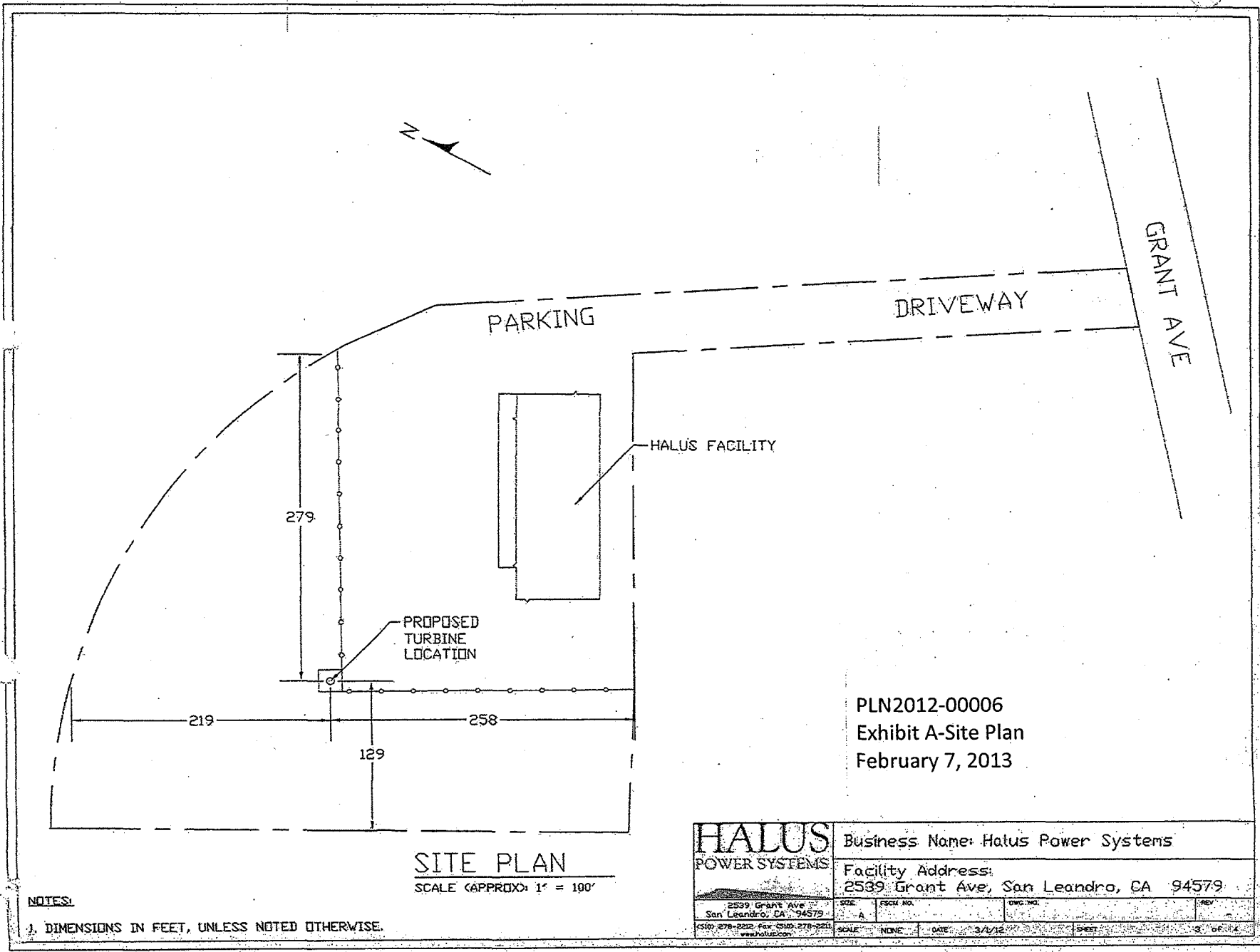
V. CONSTRUCTION PROVISIONS

- A. Construction activity on private property shall not commence prior to 7:00 a.m. and shall cease by 7:00 p.m. Monday through Friday, and construction activity shall not commence prior to 8:00 a.m. and shall cease by 7:00 p.m. on Sunday and Saturday. No such construction is permitted on Federal holidays. As provided in this City of San Leandro's Noise Ordinance (ORDINANCE NO. 2003 – 005), "construction" shall mean any site preparation, assembly, erection, substantial repair, alteration, demolition or similar action, for or on any private property, public or private right-of-way, streets, structures, utilities, facilities, or other similar property. Construction activities carried on in violation of this Article may be enforced as provided in Section 4-11-1130, and may also be enforced by issuance of a stop work order and/or revocation of any or all permits issued for such construction activity.
- B. Construction activity shall not create dust, noise, or safety hazards for adjacent businesses and properties. Dirt and mud shall not be tracked onto Grant Avenue from the project site during construction.
- C. Standard construction dust control procedures, such as wetting, daily road washing, and other maintenance functions to control emissions, shall be implemented at all times during outdoor construction. Dust generating activities such as grading, excavation, paving etc., shall be scheduled in the early morning or other hours when wind speeds are low. All construction activities entailing soil disturbance shall cease when winds exceed thirty (30) miles per hour as an hourly average.
- D. The applicant shall prepare a construction truck route plan that would restrict trucks to arterial streets that have sufficient pavement section to bear the heavy truck traffic, thereby minimizing noise and traffic impacts to the community. The construction truck route plan shall be reviewed and approved by the City Engineer prior to issuance of the building permit.
- E. Truck hauling activities shall be restricted to 8:00 a.m. to 5:00 p.m. There shall be no truck hauling activity on Saturdays, Sundays, and legal holidays.
- F. Procedures with the highest noise potential shall be scheduled for daylight hours, when ambient noise levels are highest.
- G. The applicant and/or contractor(s) shall be required to employ the quietest among alternative equipment or to muffle/control noise from available equipment.
- H. All construction contracts shall include the following requirements: 1) Unpaved construction sites shall be sprinkled with water at least twice per day; and 2)

Trucks hauling construction materials shall be covered with tarpaulins or other effective covers.

VI. GENERAL CONDITIONS

- A. Any sign copy on the structure shall be limited to the brand or model name in an accessory or an incidental application on said structure, sign details subject to the review and approval of the Community Development Director. The structure shall not be used for any other supplemental sign copy, such as the advertising of products, services, phone numbers, and website addresses.
- B. East Bay Municipal Utility District (EBMUD) Right-of-Way, R/W 5275, is located on the northeast side of the subject property for a groundwater well and related pipeline and access. Any proposed construction activity within the right-of-way shall be coordinated with EBMUD, Water Service Planning.
- C. The approvals granted by the City as a result of this application, as well as the Conditions of Approval, shall be recorded in the Office of the County Recorder of Alameda County.



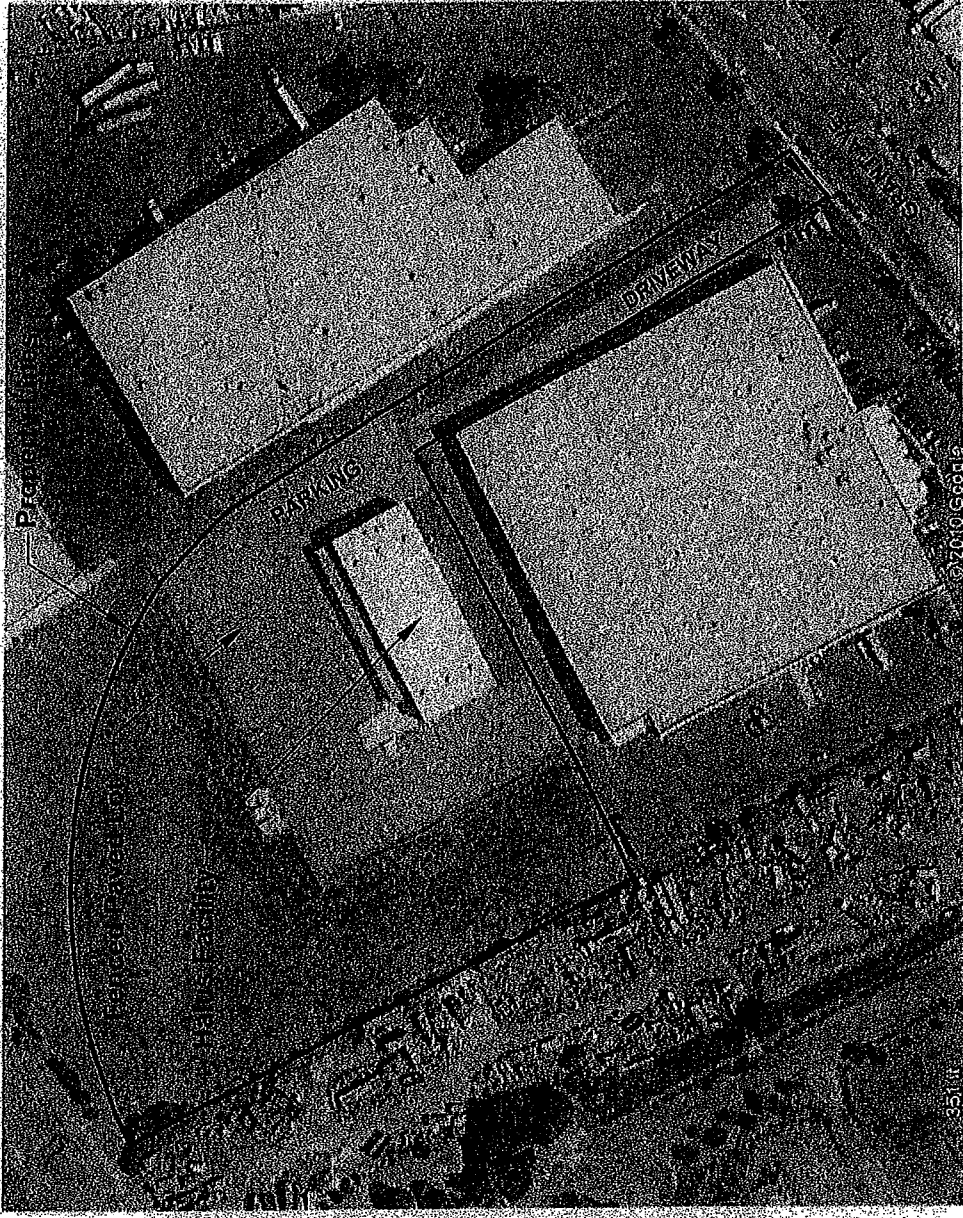
PLN2012-00006
 Exhibit A-Site Plan
 February 7, 2013

SITE PLAN
 SCALE (APPROX): 1" = 100'

NOTES:
 1. DIMENSIONS IN FEET, UNLESS NOTED OTHERWISE.

HALUS POWER SYSTEMS		Business Name: Hatus Power Systems	
2539 Grant Ave San Leandro, CA 94579		Facility Address: 2539 Grant Ave, San Leandro, CA 94579	
SIZE: A	PROJ. NO.	DWG. NO.	REV.
SCALE: NONE	DATE: 3/1/12	SHEET: 1	OF 1

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Main Property Entrance

HALDUS
POWER SYSTEMS

2539 Grant Ave
San Leandro, CA 94579
510-379-2312 Fax: 510-379-2311
www.haldus.com

Business Name: Haldus Power Systems

Facility Address:
2539 Grant Ave, San Leandro, CA 94579

SIZE	Sheet No.	DATE	BY
A		3/1/12	
SCALE	NONE	DATE	SHEET
			2 of 4

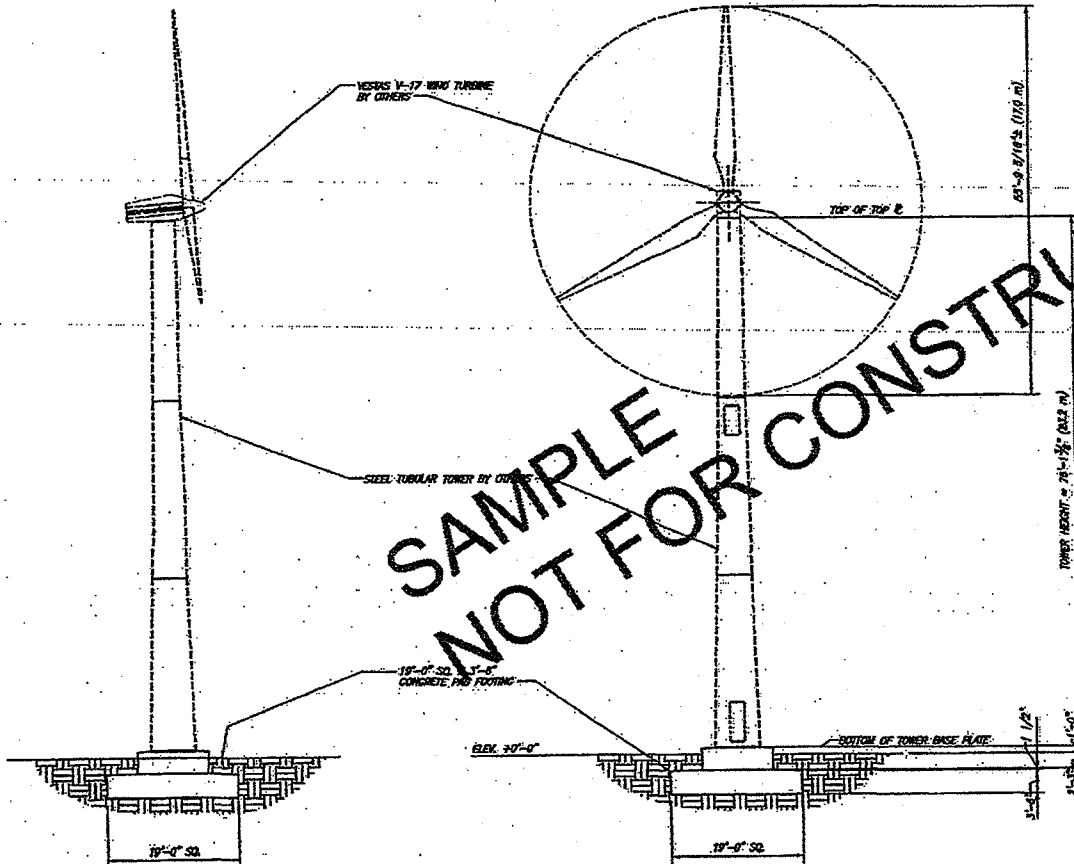
FACILITY MAP
SCALE APPROX 1" = 140'

PLN2012-00006
Exhibit B-Aerial Photograph with
Existing Site Conditions
February 7, 2013

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VESTAS V-17 WIND TURBINE FOUNDATION

23 METER TOWER • 3 SECTION



ELEVATIONS

1/16"=1'-0"

SHEET INDEX	
No.	TITLE
1	SLD: TITLE SHEET
GENERAL NOTES	
2	SLD: GENERAL NOTES
3	SL1: GENERAL NOTES
4	SL2: GENERAL NOTES
FOUNDATION DETAILS	
5	SLD: FOUNDATION PLAN, SECTIONS AND DETAILS
6	SL1: FOUNDATION DETAILS

EDGEWOOD WIND ENERGY PROJECT
EDGEWOOD, NEW MEXICO, USA
FOUNDATION

FALLOU POWER SYSTEMS
2220 GALE AVENUE TEL: (505) 780-2001
300 CAMPBELL, N.M. 88401 FAX: (505) 780-2011

Nestor A. Agbayani



Nestor A. Agbayani
SIGNATURE (OR DIGITAL SIGNATURE ON ELECTRONIC FILE)
DATE: 01-27-2011

SAMPLE
NOT FOR CONSTRUCTION

TITLE SHEET

MINNER, STINNETT, KOO & AGRAYANI
STRUCTURAL & CIVIL ENGINEERS
1704 10TH STREET, S.W., ALBUQUERQUE, NEW MEXICO
PHONE (505) 262-0728 FAX (505) 262-0414

VESTAS V-17
WIND TURBINE FOUNDATION
23 METER • 3 SECTION

JOB NO. 11-008	DATE 2011-01-27	SHEET
DESIGNER Nestor A. Agbayani	CHECKER Nestor A. Agbayani	SO.0
DRIVER Nestor A. Agbayani	APPROVER Nestor A. Agbayani	

PLN2012-00006
Exhibit C- Elevations
February 7, 2013

SCOPE OF DESIGN:
 THESE DESIGN DRAWINGS AND CALCULATIONS THAT ACCOMPANY THEM ARE FOR THE DESIGN OF THE REINFORCED CONCRETE FOUNDATION AND THE ANCHOR BOLTS.
 THE FOLLOWING ITEMS ARE BY OTHERS: THE TOWER SUPERSTRUCTURE AND ALL OTHER ITEMS ASSOCIATED WITH THE TOWER STRUCTURE SUCH AS THE TOWER INTERNAL DETAILS, ETC.

GENERAL NOTES

CODE DESIGN DATA (FOR FOUNDATION ONLY)
 STATEMENT OF DESIGN CODE COMPLIANCE:
 THE TERM "NOT USED" HEREIN SHALL MEAN THE FOLLOWING:
 "THE STATE BUILDING CODE BASED ON THE IBC"
 LOAD CALCULATIONS ARE IN ACCORDANCE WITH ASCE 7-05 FOR COMPARABILITY WITH THE 2000 AND 2005 INTERNATIONAL BUILDING CODES (IBC). THE DESIGN IS ALSO COMPLIABLE WITH LOCAL AND STATE BUILDING CODES BASED ON THE IBC WHERE TYPICALLY THE LOCAL AMENDMENTS TO THE IBC DO NOT SIGNIFICANTLY CHANGE THE RESULTING EXTREME WIND OR SEISMIC DESIGN FORCES.

WIND DESIGN DATA - PER IBC/ASCE 7-05

NO.	ITEM	DESIGN VALUE	SIZE VALUE	COMMENT
1	BASIC WIND SPEED	V (mph)	80	SAME
2	WIND IMPORTANCE FACTOR	I	1.15	SAME OCC. CAT. II
3	EXPOSURE	C		SAME
4	EXPOSURE COEFFICIENT (K _z)	K _z	1.183	SAME
5	FORM COEFFICIENT FOR SMALL ROUND TOWERS	C _f	0.670	SAME
6	DESIGN WIND PRESSURE FOR TOWER COMPONENTS AND CLADDING		N/A	N/A
OTHER WIND DESIGN DATA:				
	TOPOGRAPHIC FACTOR (K _z)	K _z	1.0	SAME
	VELOCITY PRESSURE (Q _s)	Q _s (psf)	27	SAME
	CYST-EFFECT FACTOR	C _e	1.007	SAME
	AIR DENSITY	ρ (lb/ft ³)	1.225	SAME

NOTES:
 1. [NOT USED]
 2. WIND DESIGN LOAD COMBINATIONS (FOR STRENGTH DESIGN):
 U = (1.2 D OR 1.2 Q) + (1.6 W OR 1.6 S OR 1.6 T)
 3. [NOT USED]
 4. ESTABLISHED BY USER FOR FOUNDATION ONLY - TOWER DESIGN IS BY OTHERS.

SEISMIC DESIGN DATA - PER IBC/ASCE 7-10

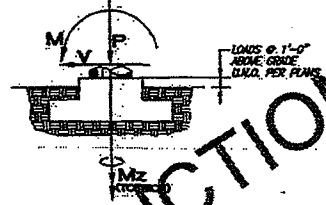
NO.	ITEM	DESIGN VALUE	SIZE VALUE	COMMENT
1	SEISMIC IMPORTANCE FACTOR	I	1.0	SAME OCC. CAT. II
ADAPTED-SPRING RESPONSE ACCELERATIONS:				
	SEISMIC PERIOD	T _s (s)	0.150	SAME
	DESIGN PERIOD	T _d (s)	0.150	SAME
	SEISMIC MASS	M	C	SAME
SPECIAL RESPONSE COEFFICIENTS (W/ 5% DAMPING)				
	SHORT PERIOD	S ₁ (s)	0.540	SAME
	1-SECOND PERIOD	S ₂ (s)	0.540	SAME
	DESIGN RESPONSE CATEGORY	SDC	C	SAME
6	DESIGN WIND-FORCE-RESISTING ACTION			HORIZONTAL TUBULAR STEEL CHIMNEYER MUST
7	DESIGN BASE SHEAR	V (kip)	7.1	SAME
8	SEISMIC RESPONSE COEFFICIENT	C _s	0.235	SAME
9	RESPONSE MODIFICATION FACTOR	R	1.0	SAME See Note 1.
10	ANALYSIS PROCEDURE			RESPONSE SPECTRUM ANALYSIS
OTHER:				
	TOWER FUNDAMENTAL FREQUENCY (ANALYSIS ESTIMATE)	f (Hz)	1.20	SAME 0.17 _g DYNAMIC
	FOUNDATION HORIZONTAL STIFFNESS (MINIMUM)	K _h (kip-in/rad)	1000	SAME

NOTES:
 1. SEISMIC DESIGN LOAD COMBINATIONS (FOR STRENGTH DESIGN):
 PER CODE: U = (1.2 D OR 1.2 Q) + 1.6E/1.4; 0.9 D + 1.6 E
 PER IBC: U = N/A

SERVICE UNFACTORED LOADS (1) AT BOTTOM OF TOWER BASE FLANGE

	DEAD	WIND (2)
P (k)	20.5	-
V (k)	-	18.9
M _x (k-ft)	-	1011
M _y (k-ft)	-	0

NOTES:
 (1) SUPPLIED BY OWNER/CONTRACTOR PROVIDED BY OTHERS. TOWER STRUCTURE ENGINEER OF RECORD SHALL VERIFY SITE-SPECIFIC VALIDITY OF THESE FOUNDATION LOADS.
 (2) COMPLIABLE FOR USE WITH ASCE 7-05 1.6 WIND LOAD FACTOR.



FOUNDATION DESIGN LOADS - NO SCALE

BOGARD WIND ENERGY PROJECT
 EDGEWOOD, NEW MEXICO, USA
FOUNDATION
HALLIBURTON SYSTEMS
 2529 GRAND AVENUE
 381 LUCERNE, CO 80524
 TEL: (310) 730-0001
 FAX: (310) 730-0034



Nestor A. Agrayani
 SIGNATURE (OR DIGITAL SIGNATURE OR ELECTRONIC FILE)
 01-27-2011
 DATE

GENERAL NOTES
 MINNER, STINNETT, KOO & AGRAYANI
 STRUCTURAL & CIVIL ENGINEERS
 1714 ONE STREET, BIRMINGHAM, CALIFORNIA 95070
 PHONE (916) 234-5224 FAX (916) 234-5248
VESTAS V-17
WIND TURBINE FOUNDATION
 23 METER * 3 SECTION
 JOB NO. 11-006
 DATE 2011-01-27
 DRAWN: *N. Agrayani* CHECKED: *N. Agrayani* DESIGNED: *N. Agrayani* REVIEWED: *N. Agrayani*
S10

CONCRETE

Minimum 28-Day Compressive Strength @ 28 Days: 5000 psi
 Cement: Type I or Type II Low-Alkali
 Maximum Coarse Aggregate: 60 Sieves/100
 Maximum Moisture: 6.0 Gallons/Stack of Cement
 Water Reducing Admixtures: Redox Builders (Maximum 322M or Green WRM with HFOC or water)
 Prohibited Admixtures: No Chlorides Chloride shall be used in the mix.
 Air-Entrainment: 5% Air 212.
 Maximum Shrinkage: With planned curing compound ASTM C1084, Type 2.
 Required Curing Compound for all Concrete: Spray 2 heavy coats on the top. Spray the sides of the concrete after forms are removed. High frequency electric vibration is required for all concrete.

WIRING
 Shall be non-ferrous, non-alkali graded "Bare" or approved equal. Follow manufacturer's instructions.

REINFORCING STEEL

Deformed Bars: ASTM No. A63, Grade 60
 Lap Splices: Lap Splices
 PW TYPICAL REINFORCING STEEL DETAILS
 Fabrication: Fabrication for field conditions.
 Inspection: Follow ASTM A631, Section 5.1.1. Clearances: 2" Clear.

STRUCTURAL STEEL (For Foundation Base)

Steel: ASTM No. A36
 All Plates & Other Shapes: A36
 Anchor Bolts: F1554 Gr 75 or 70 S/Anchor bar steel
 Horizontal Steel Brackets: F436 min. or per Millwork spec.

Fabrication and erection: Conform to latest AISC Specifications
 Welding: AISC or AWS process or approved
 Steel Fabrication: AISC, per approved shop drawings compatible with base metal.
 Welding: Shall be certified and work done in accordance with the Structural Steel Institute AISC, D1.1, Subpart Certification copies.
 Surface Treatment: (On Foundation Base/Plate)
 Finish steel plates: steel tower shell. See lower supplier for plate specifications.

COLD WEATHER APPLICATIONS:

Reinforcing Bars: The lower foundation can only operate within the Allowable Service Temperature range provided that Classy 14-Hotels (HWS) impact requirements are met. Unless noted otherwise, each impact test value shall constitute the average of three specimens with an average one value below minimum value, but in no case less than two-thirds of the minimum average value.
 Allow 0° F for CHN testing is required. Below 0° F the following requirements apply:
 Steel for ASTM A631, Grade 75 Anchor Bolts:
 Zone: Minimum Service Temperature: Minimum Average Energy, ft-lb
 1: Below 0° F to -30° F: 30 @ -20° F
 2: Below -30° F to -50° F: 30 @ -10° F

Welding Frequency: All materials shall be in accordance with ASTM A631, Frequency 1/2 and ASTM A334. The term "Hot Loc" or "Frequency 1/2" shall only be used on the test reports. The steel of all structural specimens shall be quenched.
 Steel for WMS Millwork (Compliance 30, hot Rolled Millwork):
 Zone: Minimum Service Temperature: Minimum Average Energy, ft-lb
 2: Below 0° F to -30° F: 20 @ 0° F
 3: Below -30° F to -50° F: 25 @ -20° F

Welding Frequency: Provide a set of impact tests for each plate thickness of complete penetration groove welds. The weld procedure specifications (WPS) shall include impact tests which in accordance with AWS D1.5-05 Table 4.5 and Section 12 and ASTM E709 and ASTM 370. Each impact test value shall consist of the average of three specimens out of a total of five specimens, after obtaining the highest and lowest values.

GENERAL NOTES

TESTING
 Reinforcing Bars: Provide test results of all reinforcing bars of larger bars. All tests are acceptable if noted can be furnished.
 Concrete: Provide concrete mix design for approval prior to first concrete pour. Provide certified independent certificates for each batchload of concrete for each concrete pour.
 Test 2 concrete test cylinders for each complete lower foundation in every concrete strength. Test the cylinders at ages of 7, 14, and 28 days.

WELDING INSPECTION (Foundation Plates)
 All welding inspections shall be in accordance with AWS D1.1 Section 6. Copies of weld inspection reports shall be included to the Owner and Engineer.
 Ultrasonic or X-ray inspection (unless acceptable criteria for cyclically loaded connections) is required on all complete penetrations welds where used to splicing plates, foundation plates. Copies of these weld inspection reports shall be mailed to the Owner and Engineer.
 Test 100% of Foundation Plate Splice Welds (if used where occur).

FOUNDATION NOTES
 Set base: Level ship with sand and gravel, medium stiff to hard
 Maximum Disturbance Pressure: 10 psi, or 500 psi
 Allowance of Disturbance: As shown on drawings.
 Plate Fabrication: Only on Firm Borehole, and on level soil or uncompacted fill.
 Groundwater: FH & SW-1000 Implementation: Placement and Completion per Sub-Report SW-1000, Version Report 08/10/2008 (dated 1/7/2010)

SOIL REPORT
 The owner shall provide a soil report prepared by a geotechnical engineer for the site on which the tower will be placed. The soil shall be capable of safely supporting the lower foundation and meeting the minimum design bearing pressure noted under "Foundation Notes". If the soil will not meet these requirements, the foundation shall be FOUNDED PLAN, SETTING AND DETAILS SHEET) and be modified or redesigned to accommodate the actual soil conditions.

SHOP DRAWINGS
 Shall be prepared for the anchor bolts, foundation plate, and foundation formwork. Drawings of plate and anchor bolts shall be submitted to the Owner. The Owner will review the shop drawings for general conformance to the design drawings and specifications. He will either reject, or approve them. Fabrication shall not begin until the shop drawings have been approved.

STATEMENT OF SPECIAL INSPECTIONS
 Special Inspections (Refer to Contract Documents)
 Test Documents: _____
 Construction Documents: _____
 1. _____
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See the steel sheet for specific EC requirements.

WORK BY OTHERS
 Tower design, site grading, soil investigations, and soil reports are by others. They are not provided by Mincer, Stinnett, Koo & Agbayani Structural and Civil Engineers.

GENERAL NOTE
 Safety Hazards and Special Notes apply to all cases unless specifically stated otherwise on the drawings.
 When No Detail is Shown construction shall be as shown for other similar work.
 No Deviations from the Design Drawing are permitted without the permission of the Engineer.

TYPICAL BAR CHAIR DETAIL

BAR	H MAX
#6	2'-0"
#7	1'-0"
#8	8'-0"
#9	5'-0"
#10	4'-0"
#11	3'-0"

SHOPS OF BEND
 3" FOR #6 & #8 BARS
 4" FOR #9, #10 & #11
 5" FOR #12 & #13

BEND OFFSET HOOK

REINFORCING PLACING TOLERANCES

1. DEPTH ± 1/2" FOR MEMBERS 8" OR LESS IN DEPTH
 2. DEPTH ± 1/2" FOR MEMBERS LARGER THAN 8" IN DEPTH
 3. TOLERANCE ± 1"

CONCRETE BAR LAP SPACE LENGTHS (CLASS 'B')
 5" @ 5000 psi ; 4" @ 6000 psi ; 3" @ CONC. CLASS

BAR NO.	#1	#2	#3	#4	#5	#6	#7	#8	#9	#10	#11
TOP BARS	1'-0"	1'-0"	1'-10"	2'-0"	2'-0"	3'-0"	4'-0"	5'-0"	5'-0"	5'-0"	5'-0"
OTHER BARS	1'-0"	1'-0"	1'-5"	1'-0"	2'-0"	2'-10"	3'-0"	4'-0"	4'-0"	4'-0"	4'-0"

WORKING: BARS MUST BE MORE THAN 12" OF CONCRETE CAST IN MEMBER BELOW BAR

TYPICAL REINFORCING STEEL DETAILS

EDGEWOOD WIND ENERGY PROJECT
 EDGEWOOD, NEW MEXICO, USA
 FOUNDATION

HALUIS POWER SYSTEMS
 2830 WHITE SANDS BLVD. S.W. TEL: (505) 765-0881
 2807 UNIVERSITY BLVD. S.W. FAX: (505) 765-0534

NESTOR A. AGBAYANI
 NEW MEXICO
 18767
 PROFESSIONAL ENGINEER

Mark A. Agbayani
 SIGNATURE (OR DIGITAL SIGNATURE OR ALTERNATE FILE)
 01-27-2011
 DATE

GENERAL NOTES

MINNER, STINNETT, KOO & AGBAYANI
 STRUCTURAL & CIVIL ENGINEERS
 1710 ONE STREET, ALBUQUERQUE, NEW MEXICO 87102
 PHONE (505) 263-0214 FAX (505) 263-0416

VESTAS V-17
WIND TURBINE FOUNDATION
 23 METER • 3 SECTION

JOB NO. 11-008 DATE: 2011-01-27 SHEET
 DRAWN: T. Agbayani CHECKED: T. Agbayani
 DESIGNED: T. Agbayani APPROVED: T. Agbayani **S11**

PLN2012-0006
 Exhibit C- Elevations
 February 7, 2013

STATEMENT OF SPECIAL INSPECTION (cont.)

The following items require Special Inspection per 2009 IBC, Chapter 17. Refer to the 2009 IBC in the books for the local building code. The following items may be used without modification or approval accordingly where they do not conflict with the requirements.

The lists are general and match the extent of the Code tables. All items are not necessarily applicable to this project. Where the local building code is based on or earlier edition of the IBC, the applicable sections shall apply.

TOWER FOUNDATION
TOWER FOUNDATION DESIGN IS BY OTHERS. CONCRETE FOUNDATION-RELATED ITEMS LISTED HERE ARE ONLY SUGGESTED. FOUNDATION DESIGN DRAWINGS BY OTHERS SHALL GOVERN.

SOILS PER IBC TABLE 1704.7

Verification and Inspection Task	Continuous	Periodic
1. Verify materials below footings are adequate to achieve the design bearing capacity.		X
2. Verify excavations are extended to proper depth and have reached proper material.		X
3. Perform classification and testing of controlled fill materials (where occurs per soils report).		X
4. Verify use of proper materials, densities and fill thickness during placement and compaction of controlled fill (where occurs per soils report).	X	
5. Prior to placement of controlled fill, observe, subgrade and verify that site has been prepared properly.		X

TOWER FOUNDATION
TOWER FOUNDATION DESIGN IS BY OTHERS. CONCRETE FOUNDATION-RELATED ITEMS LISTED HERE ARE ONLY SUGGESTED. FOUNDATION DESIGN DRAWINGS BY OTHERS SHALL GOVERN.

CONCRETE PER IBC TABLE 1704.4

Verification and Inspection Task	Continuous	Periodic
1. Inspection of reinforcing steel, including prestressing tendons and placement.		X
2. Inspection of reinforcing steel welding in accordance with IBC Table 1704.5, Item 2b.	-	-
3. Inspect forms to be installed in concrete prior to and during placement of concrete.	X	
4. Inspection of anchors installed in hardened concrete.		X
5. Verify use of required design mix.		X
6. At the time fresh concrete is supplied to fabricate specimens for strength tests, perform slump and air content tests, and determine the temperature of the concrete.	X	
7. Inspection of concrete and rebar placement for proper application techniques.	X	
8. Inspection for consistency of specified casting temperature and techniques.		X
9. Inspection of prestressed concrete: <ul style="list-style-type: none"> a. Application of prestressing forces. b. Grouting of bonded prestressing tendons in the ultimate-force-resisting system. 	X	X
10. Location of precast concrete members.		X
11. Verification of in-situ concrete strength prior to removal of shores and forms from beams and structural slabs.		X
12. Inspect formwork for slabs, beams and dimensions of the concrete member being formed.		X

GENERAL NOTES

STEEL PER IBC TABLE 1704.3

Verification and Inspection Task	Continuous	Periodic
1. Material verification of high-strength bolts, nuts and washers: <ul style="list-style-type: none"> a. Identification markings to conform to ASTM standards specified in the approved construction documents. b. Manufacturer's certificate of compliance req'd. 		X
2. Inspection of high-strength bolting: <ul style="list-style-type: none"> a. Stay-tight joints. b. Professional and slip-critical joints using turn-of-nut and ultrasonic, turn-of-bolt or direct tension indicator methods of installation. c. Professional and slip-critical joints using turn-of-nut without marksmarking or calibrated wrench methods of installation. 		X
3. Material verification of structural steel and cold-formed steel deck: <ul style="list-style-type: none"> a. For structural steel, identification markings to conform to AISC 308. b. For other steel, identification markings to conform to ASTM standards specified in the approved construction documents. c. Manufacturer's certified test reports. 	X	
4. Material verification of weld filler materials: <ul style="list-style-type: none"> a. Identification markings to conform to AISC specifications in the approved construction documents. b. Manufacturer's certificate of compliance req'd. 		X
5. Inspection of welding: <ul style="list-style-type: none"> a. Structural steel and cold-formed steel deck: <ul style="list-style-type: none"> 1) Complete weld penetration groove welds. 2) Match welds. 3) Groove welds and fillet welds > 1/2" 4) Groove welds. 5) Single-pass fillet welds. 6) Floor and roof deck welds. b. Reinforcing steel: <ul style="list-style-type: none"> 1) Weldability of reinforcing steel. 2) Weldability of reinforcing steel, lap and cold joints in intermediate and special moment frames, and boundary elements of special reinforced concrete shear walls and shear reinforcement. 3) Steel reinforcement. 4) Other reinforcing steel. 	X	X
6. Inspection of steel frame-joint details for compliance with approved construction documents: <ul style="list-style-type: none"> a. Details such as bracing and stiffening. b. Member locations. c. Application of joint details at each connection. 		X

STRUCTURAL OBSERVATIONS

Where the 2009 IBC is the applicable basis for the local building code, refer to Section 1702 for structural observation requirements or to the equivalent section in the local building code.

Where the 2009 IBC is the applicable basis for the local building code, refer to Section 1710 for structural observation requirements or to the equivalent section in the local building code.

EDGEWOOD WIND ENERGY PROJECT
EDGEWOOD, NEW MEXICO, USA
FOUNDATION

HALLUS POWER SYSTEMS
2300 GRANT AVENUE
DALLAS, TEXAS 75242
TEL: (972) 289-0285
FAX: (972) 289-0284

NEW MEXICO PROFESSIONAL ENGINEER
148767

Mont O. Agbayani
SIGNATURE (FOR DIGITAL SIGNATURE OR ELECTRONIC FILE)
01.27.2011
DATE

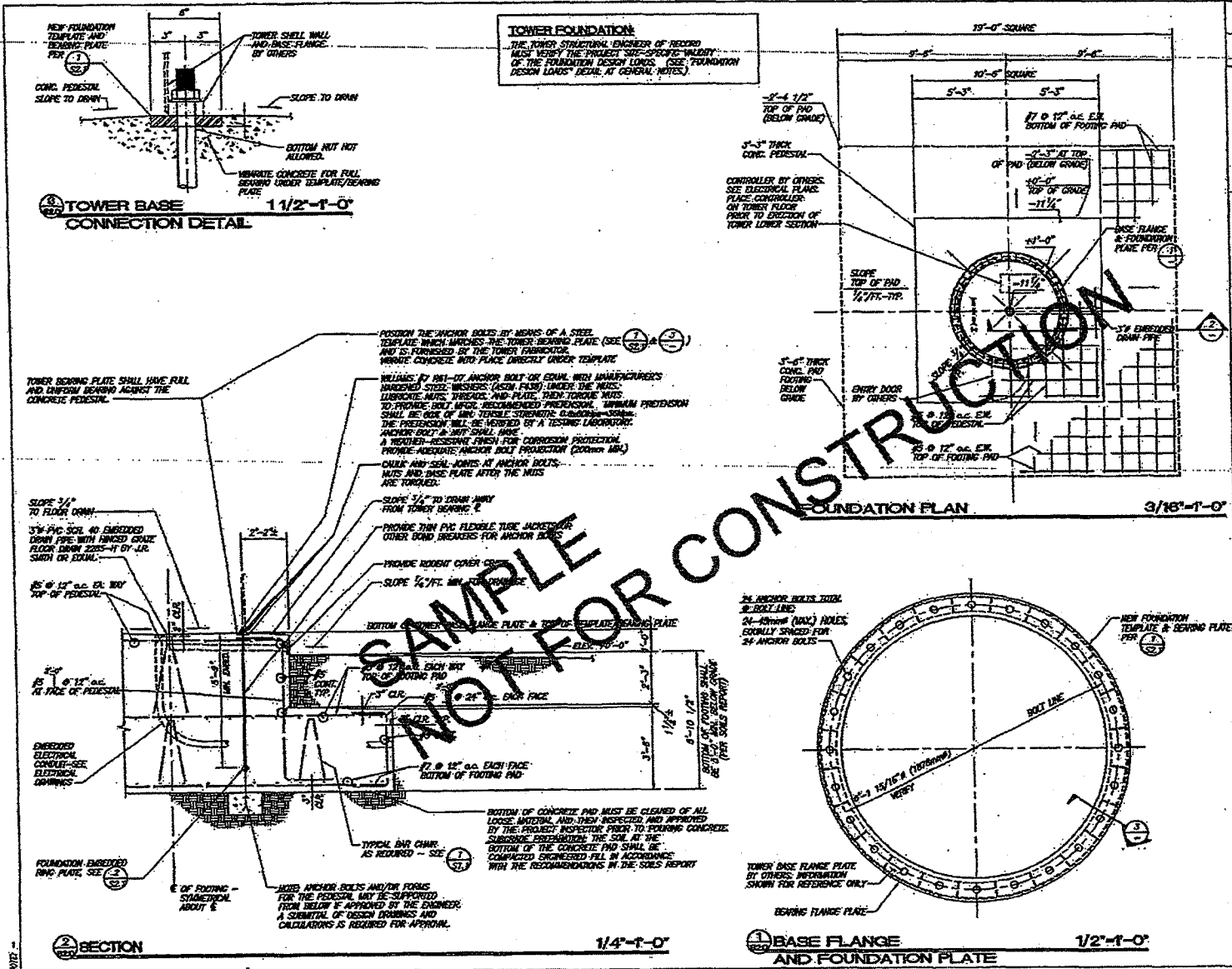
GENERAL NOTES

MINNER, STINNETT, KOO & AGBAYANI
STRUCTURAL & CIVIL ENGINEERS
1710 WEST CENTER, MESA, ARIZONA 85201
PHONE (602) 321-0224 FAX (602) 321-0219

VESTAS V-17
WIND TURBINE FOUNDATION
23 METER • 3 SECTION

JOB NO. 11-008 DATE 2011-01-27 SHEET
ISSUED By Agbayani, Mont O. CHECKED By Agbayani, Mont O. DESIGNED By Agbayani, Mont O.
SEAL

SAMPLE NOT FOR CONSTRUCTION



EDGEWOOD WIND ENERGY PROJECT
 EDGEWOOD, NEW MEXICO, USA
1 FOUNDATION
 HALLUS POWER SYSTEMS
 8030 GRANT AVENUE, SUITE 1000, DENVER, CO 80231
 TEL: (303) 740-0691
 FAX: (303) 740-0334



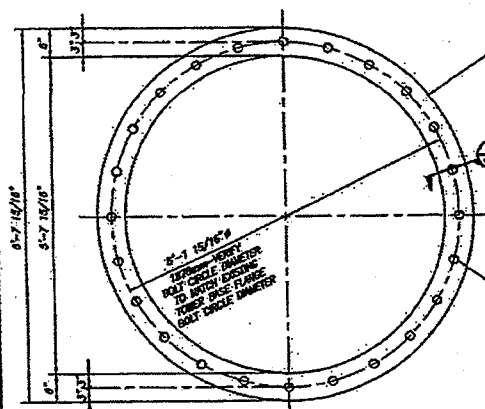
Nestor A. Agbayani
 SIGNATURE (SEE GENERAL SPECIFICATIONS FOR ELECTRICAL FILE)
 01-27-2011
 DATE

FOUNDATION PLAN, SECTIONS AND DETAILS
 MINNER, STINNETT, KOO & AGBAYANI
 STRUCTURAL & CIVIL ENGINEERS
 1718 ONE CENTER, ALBUQUERQUE, NEW MEXICO 87104
 PHONE: (505) 224-7024 FAX: (505) 224-7476

VESTAS V-17 WIND TURBINE FOUNDATION
 23 METER • 3 SECTION

JOB NO. 11-008	DATE 2011-01-27	PROJECT S20
DESIGNER: Nestor Agbayani	CHECKER: Nestor Agbayani	
ISSUED BY: Nestor Agbayani	APPROVED BY: Nestor Agbayani	

PLN2012-00006
 Exhibit C- Elevations
 February 7, 2013

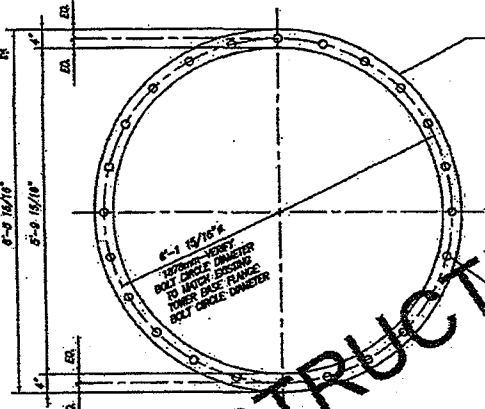


FOUNDATION BOLT TEMPLATE AND BEARING PLATE
 SHALL BE 1" THICK
 FORME A ONE PIECE UNIT
 WHICH WILL POSITION THE ANCHOR
 BOLTS WITHIN ±20mm OF THEIR
 SPECIFIED HORIZONTAL LOCATIONS &
 ±3.0mm FROM ITS SPECIFIED HEIGHT.

**ANCHOR TEMPLATE TO TOWER
 BASE FLANGE**

ALTERNATE:
 THE TEMPLATE MAY BE
 FIELD SPACED IF DETAILS
 ARE SUBMITTED TO &
 APPROVED BY THE ENGINEER.
 THE SPACED UNITS MUST MEET
 THE FOLLOWING CRITERIA.

24 BOLT HOLE-TYP.
 (24 TOTAL, EQUALLY SPACED)



FOUNDATION EMBEDDED RING PLATE
 SHALL BE 1 3/4" THICK.
 THE RING PLATE SHALL BE PROBABLY
 BE A ONE PIECE UNIT
 WHICH WILL POSITION THE ANCHOR
 BOLTS WITHIN ±20mm OF THEIR
 SPECIFIED HORIZONTAL LOCATIONS &
 ±3.0mm FROM ITS SPECIFIED HEIGHT.

ALTERNATE:
 THE TEMPLATE MAY BE
 FIELD SPACED IF DETAILS
 ARE SUBMITTED TO &
 APPROVED BY THE ENGINEER.
 THE SPACED UNITS MUST MEET
 THE FOLLOWING CRITERIA.

24 BOLT HOLE-TYP.
 (24 TOTAL, EQUALLY SPACED)


FOUNDATION BOLT TEMPLATE AND BEARING PLATE

N.T.S.

FOUNDATION EMBEDDED RING PLATE

N.T.S.

SAMPLE NOT FOR CONSTRUCTION

EDGEWOOD WIND ENERGY PROJECT EDGEWOOD, NEW MEXICO, USA FOUNDATION		
HALUIS POWER SYSTEMS <small>2525 CHASE AVENUE TEL (949) 780-4381 SAN LUIS OBISPO, CA 94967 FAX (949) 780-0214</small>		
		
<i>Nestora Agbayani</i> SIGNATURE (OR DIGITAL SIGNATURE) OF REGISTERED PROFESSIONAL ENGINEER DATE: 01.27.2011		
FOUNDATION DETAILS		
MINNER, SEINNETT, KOO & AGBAYANI STRUCTURAL & CIVIL ENGINEERS <small>1700 GUN STREET, ALBUQUERQUE, NEW MEXICO 87102 PHONE (505) 224-4204 FAX (505) 224-4202</small>		
VESTAS V-17 WIND TURBINE FOUNDATION 23 METER • 3 SECTION		
<small>REV</small> 11-008 <small>BY</small> Nestora Agbayani <small>CHKD</small> Nestora Agbayani	<small>REV</small> 2011-01-27 <small>BY</small> Nestora Agbayani <small>CHKD</small> Nestora Agbayani	S21

PLN2012-00006
 Exhibit C- Elevations
 February 7, 2013

EXHIBIT D

Mitigation Monitoring Program

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DRAFT MITIGATION MONITORING PROGRAM (MMP)

IMPACT	MITIGATION REQUIRED	MONITORING RESPONSIBILITY	TIMING
Biological Resources			
<p>1. Potential impacts on avian species.</p>	<p>#1a. If construction must be scheduled to occur during the migratory bird and raptor nesting season (February 15 through August 15 for most birds), a A qualified wildlife biologist, familiar with the species and habitats in the Project area, will be retained to conduct pre-construction surveys for raptors and nesting birds within 300 feet of construction activities. The surveys shall be conducted one week before initiation of construction. If no active nests are detected during surveys, activities may proceed. If active nests are detected then the applicant should consult with the Lead Agency and DFG on appropriate buffers. <u>(BZA amended this measure by motion at its February 7, 2013 meeting.)</u></p> <p>#1b. To reduce impacts to raptors, the applicant shall minimize small mammal habitat from occurring beneath the wind swept area of the turbine.</p> <p>#1c. To reduce impacts to avian species from electrocution, all electrical wires shall be placed underground or follow minimization methods established by Avian Power Line Interaction Committee.</p> <p>#1d. If a state or federally listed species is killed during Project operations without the appropriate Incidental Take Permit (ITP) under the California Endangered Species Act (CESA) or the federal Endangered Species Act, the applicant shall halt all turbine operations immediately. The applicant must consult with the United States Fish and Wildlife Service (USFWS) and/or California Department of Fish and Game (DFG)*.</p> <p>#1e. If a carcass is found that is federally threatened, endangered or protected by the Migratory Bird Treaty Act (MBTA), the information shall be reported by a qualified biologist to USFWS, Office of Law Enforcement, Renewable Energy Officer at (650) 876-9078 within five days of its discovery.</p> <p>#1f. If a carcass of a species listed pursuant to CESA or Fish and Game Code Section 3511 is discovered , DFG* shall be immediately notified at (707) 944-5500.</p> <p>#1g. If a species is injured as a result of Project operations, the applicant shall immediately take it to a DFG* approved wildlife rehabilitation or veterinary facility, such as Sulphur Creek Nature Center, at (510) 881-6747; or Ohlone Humane Center, at (510) 797-9449. Permittee shall bear any costs associated with the care and treatment of such injured species.</p> <p>#1h. A post-construction monitoring plan shall be approved by</p>	<p>City of San Leandro and Department of Fish and Game (DFG)* has been changed to the California Department of Fish and Wildlife (CDFW)</p>	<p>These measures are to be implemented prior to one month of initial turbine operations and enforced in an ongoing basis.</p>

DRAFT MITIGATION MONITORING PROGRAM (MMP)

IMPACT		MITIGATION REQUIRED	MONITORING RESPONSIBILITY	TIMING
		<p>DFG* and implemented within one month of initial turbine operation.</p> <p>#1i. Turbine may not operate in heavy rain or dense fog. <u>(BZA added this measure by motion at its February 7, 2013 meeting for the purpose of protecting avian species.)</u></p>		
Geology and Soils				
2.	Project is in a liquefaction hazard zone.	<p>#2: The City of San Leandro has incorporated the 2009 International Building Code into its municipal building code (Title 7, Chapter 7-5). The project applicant would be required to comply with all applicable State and City regulations to address potential geologic hazards associated with the proposed project, including ground shaking and liquefaction. Geotechnical and seismic design criteria must conform to engineering recommendations in accordance with the seismic requirements of the 2009 California Building Code (Title 24) and any amendments adopted in the San Leandro Municipal Code. Additionally, because the project site is in a liquefaction Seismic Hazard Zone, the project applicant will be required to comply with the guidelines set forth by California Geological Survey Special Publication 117.</p>	City Engineer and Building Official	Prior to issuance of grading permits.
Hazards and Hazardous Materials				
3.	The proposed wind turbine is subject to the regulations of the Alameda County Airport Land Use Commission and the Federal Aviation Administration requirements. (The proposed wind turbine is at a height similar to the PG&E high-tension wires to the west of the site.)	<p>#3: Halus Power Systems shall secure approval of Alameda County Airport Land Use Commission and the Federal Aviation Administration prior to building permit approval of the wind turbine.</p> <p>NOTE: The FAA issued a "Determination of No Hazard to Air Navigation" on June 21, 2012. A copy of this determination is on file at the City of San Leandro Planning Services Division Office.</p>	City of San Leandro, Alameda County Airport Land Use Commission and the Federal Aviation Administration	Already completed (June 12, 2012).

EXHIBIT B

FINDINGS OF FACT

PLN2012-00006 - 2539 GRANT AVENUE

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**RECOMMENDED
FINDINGS OF FACT**

**PLN2012-00006 - 2539 Grant Avenue
L. Rigaud, Halus Power Systems (applicant and property owner)**

The Board of Zoning Adjustments hereby approves the Variance for the proposed 80-foot tall, single wind turbine where the blades will extend an additional 20 feet from the structure for a maximum height of 100 feet at 2539 Grant Avenue, Halus Power System, subject to the following findings:

Variance

- 1. That because of special circumstances or conditions applicable to the subject property -- including narrowness and shallowness or shape, exceptional topography, or the extraordinary or exceptional situations or conditions -- strict application of the requirements of this article would result in peculiar and exceptional difficulties to, or exceptional and/or undue hardships upon, the owner of the property;**

The unusual circumstances in this instance are the irregular flag shape of the lot, its sizeable land area, it is not immediately adjacent to occupied properties, and its clear and unobstructed location to the westerly San Francisco Bay winds, which make it a candidate for the proposed turbine. The flag lot moves the turbine away from street view. The large size of the lot provides adequate setbacks from adjacent properties and uses by situating it on the center of the large parcel. In addition to the large setbacks, the immediately adjacent properties are either flood control area or industrial properties which are not occupied or densely occupied by persons. The geographic location near the Bay, plus being clear and unobstructed, is ideal for the turbine to operate from the westerly on shore winds. The proposed height is optimal in operating a turbine; a lower height is not a viable option in operating the turbine. Therefore the unique and unusual circumstances make the site suitable for the new turbine to operate.

- 2. That the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources; and without significant detriment or injury to property or improvements in the vicinity of the development site, or to the public health, safety or general welfare; and**

The 40 foot variance to exceed the 60 foot allowable height limit would not have any detrimental impact on adjacent property or persons. It would not obstruct the availability of light or air to the adjacent properties and will pose no nuisance and no hazard to the general public. The turbine is in a fenced area within a larger fenced area in the middle of a site on private property that is not accessible to the public. Moreover, large setbacks are provided on all sides of the turbine (over 500 feet from residences to the north, approximately 750 feet from Grant Avenue, approximately 130 feet from the westerly side property line and approximately 280 feet from the easterly side property line) to prevent any obstruction of light and air to adjacent properties. In addition, the setbacks make the turbine inaudible from any of the adjacent properties. The immediate adjacent properties on all sides do not have a high concentration of persons occupying them. To the east is a junk yard/salvage yard. To the north is the San Lorenzo Creek. To the east and south are warehouse buildings.

Permitting the variance and constructing the turbine would have no effect on any natural resources. An avian study was conducted and the proposed operation of the turbine and existing biological and environmental conditions would have no significant affect on birds or bats.

3. **That granting the application is consistent with the purposes of this code and will not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zoning district.**

The granting of this variance is consistent with the purpose of this code to provide and protect existing industrial sites and allow for continued operation of existing general industry, subject to performance standards and requirements to minimize potential environmental impacts. The variance would not constitute a granting of special privilege. This is a unique situation for a single 100 foot tall turbine which is located in the middle of a 4.7 acre site. It would have adequate setbacks of over 500 feet from residences to the north and 750 feet from the street to the south.

4. **The Board of Zoning Adjustments shall approve, conditionally approve, or disapprove applications for use permits, variances, or parking exceptions upon finding that the proposed use permit, variance, or parking exception is consistent with the General Plan, the general purposes of this Article, the specific purposes of the base or overlay zoning district in which a development site is located, and all applicable requirements of the Municipal Code.**

The proposed variance would permit a use that is consistent with the General Plan, which designates the property for General Industrial uses that are characterized by distribution facilities, research and development, and manufacturing operations which produce minimal off-site impacts. The following General Plan policies are applicable to the proposed project:

7.01 Industrial Assets - Build on the strengths of the City's existing industrial base, transportation infrastructure, and proximity to Oakland International Airport in the City's business development efforts.

7.02 Economic Diversity - Promote economic diversity and the growth of new and emerging industries. Target businesses that will provide higher-paying jobs for San Leandro residents.

7.03 Sustainable Manufacturing - Promote environmentally sustainable manufacturing practices by San Leandro businesses and focus business attraction efforts on clean, environmentally-friendly businesses.

7.06 Adaptive Reuse - Encourage private reinvestment in vacant or underutilized industrial and commercial real estate to adapt such property to changing economic needs, including the creation of flex/office space.

10.02 Off-Site Impacts - Consider the setting and context of each site when evaluating proposals for development in industrial areas. The potential for impacts on adjacent uses, including the potential for land use conflicts and increased parking demand and truck traffic, should be a key consideration.

In addition to being consistent with the General Plan, the proposal would also satisfy a goal in the San Leandro Climate Action Plan.

Section 3.3 Goal: Increase residential, commercial and industrial renewable energy use
“On-site renewable energy systems offer another important lever for reducing emissions...To encourage on-site renewable energy, one common strategy employed by other local governments is to offer expedited permitting procedures for renewable generation and green buildings.”

The proposed variance would be consistent with this Article 22 of the Zoning Code in that it is only being granted with respect to the height of the structure. Pursuant to the Article the variance does not extend to permit a use which is not permitted or specified in the Zoning Code. Moreover, the intention of the variance to gain additional height is to resolve a practical difficulty to effectively operate a turbine which would be a permitted use on the subject property. The additional height is necessary because effective prevailing winds to operate the turbine are at a height greater than the maximum permitted height in the industrial zoning district.

The proposed variance would be consistent with the specific purposes of the IG Industrial General District in providing and protecting an existing industrial site and allowing for its continued operation of existing general industry, and at the same time minimizes potential environmental impacts. The variance would allow a turbine to operate which is a permitted use in the IG District as it was determined that its purpose is for research, development and testing for the business operating on the property. Pursuant to the California Environmental Quality Act, a Mitigated Negative Declaration (MND) has been prepared for this project. The City in its preparation of a MND has conclusively determined that the proposed project, with the incorporation of the mitigation measures agreed to by the applicant, clearly will not have a significant effect on the environment and that no substantial evidence in the light of the whole record has been presented to the City that the proposed project may have a significant effect on the environment.

The proposed variance would be consistent with the applicable requirements in the Municipal Code in that approving the variance would subject the project to all of the other City requirements such as Building Codes, Fire Codes, etc. that are not included in the Zoning Code for further ensuring health and safety, and public welfare in carrying out the construction and the operation of the turbine structure.



EXHIBIT C

CONDITIONS OF APPROVAL

PLN2012-00006 - 2539 GRANT AVENUE

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**RECOMMENDED
CONDITIONS OF APPROVAL**

**PLN2012-00006 - 2539 Grant Avenue
L. Rigaud, Halus Power Systems (applicant and property owner)**

I. COMPLIANCE WITH APPROVED PLANS

- A. The project shall comply with Exhibits A through C, dated February 7, 2013, except as hereinafter modified. (Exhibits are on file at the City of San Leandro, Community Development Department, 835 East 14th Street, San Leandro, California, 94577).

Exhibit A – Site Plan

Exhibit B – Aerial Photograph of Existing Site Conditions

Exhibit C – Elevations

- B. The applicant and/or property owner shall be responsible for assuring that any successor in interest who assumes responsibility for this zoning approval is informed of its terms and conditions.
- C. Construction shall commence within one (1) year following Board of Zoning Adjustments approval of the Variance and shall be substantially completed one year after commencement of construction. For the purpose of compliance with this condition, commencement of construction shall be defined as the pouring or construction of a substantial portion of the building foundation structure. Pursuant to Zoning Code Section 5-2218, this approval shall lapse on **February 7, 2014** unless a) a building permit has been issued, coupled with diligent progress evidencing good faith intent to commence the intended use, or b) a written request for a one-year extension of the use permit is approved by the Zoning Enforcement Official.

II. PERMITTED USE

- A. This approval is for a Variance to permit construction 80-foot tall, single wind turbine where the blades will extend an additional 20 feet from the structure for a maximum height of 100 feet, where the maximum allowable height is 60 feet in the industrial districts; 2539 Grant Avenue; Alameda County Assessor's Parcel Number 80G-910-15.
- B. No application for amendment of the application or Conditions of Approval may be submitted or accepted for processing by the city unless (i) there is full compliance with all terms of the application and Conditions of Approval; or (ii) the Community Development Director can waive compliance with the terms of the application if they are minor in content.
- C. Construction of the project shall remain in substantial compliance with the approved exhibits and plans. Any change to the project design, materials or colors shall be subject to the review and approval of the Community Development

Director who may administratively approve minor changes, or for more substantial changes, require review by the Board of Zoning Adjustments as a modification to the Variance.

- D. Unless otherwise specified on the approved plans (Exhibits A - C) or in these Conditions of Approval, the development shall comply with the applicable zoning standards for the IG Industrial General District, such as but not limited to standards governing setbacks, building coverage, outdoor storage, and screening, with the exception of the variance granted to exceed the height limit.

III. MITIGATION OF ENVIRONMENTAL IMPACTS

- A. All mitigation measures indicated in the Mitigated Negative Declaration shall be included and are hereby incorporated as Conditions of Approval. (They are listed below as letters B. through K.). Said mitigation measures are also listed in the Mitigation Monitoring Plan and the applicant shall comply with and implement all provisions of said Mitigation Monitoring Plan (MMP). Note: References to Department of Fish and Game (DFG) below has been changed to the California Department of Fish and Wildlife (CDFW).
- B. If construction must be scheduled to occur during the migratory bird and raptor nesting season (February 15 through August 15 for most birds), a qualified wildlife biologist, familiar with the species and habitats in the Project area, will be retained to conduct pre-construction surveys for raptors and nesting birds within 300 feet of construction activities. The surveys shall be conducted one week before initiation of construction. If no active nests are detected during surveys, activities may proceed. If active nests are detected then the applicant should consult with the Lead Agency and DFG on appropriate buffers. Mitigation Measure # 1a in the MMP.
- C. To reduce impacts to raptors, the applicant shall minimize small mammal habitat from occurring beneath the wind swept area of the turbine. Mitigation Measure #1b in the MMP.
- D. To reduce impacts to avian species from electrocution, all electrical wires shall be placed underground or follow minimization methods established by Avian Power Line Interaction Committee. Mitigation Measure # 1c in the MMP.
- E. If a state or federally listed species is killed during Project operations without the appropriate Incidental Take Permit (ITP) under the California Endangered Species Act (CESA) or the federal Endangered Species Act, the applicant shall halt all turbine operations immediately. The applicant must consult with the United States Fish and Wildlife Service (USFWS) and/or California Department of Fish and Game (DFG). Mitigation Measure # 1d in the MMP.
- F. If a carcass is found that is federally threatened, endangered or protected by the Migratory Bird Treaty Act (MBTA), the information shall be reported by a qualified biologist to USFWS, Office of Law Enforcement, Renewable Energy

Officer at (650) 876-9078 within five days of its discovery. Mitigation Measure # 1e in the MMP.

- G. If a carcass of a species listed pursuant to CESA or Fish and Game Code Section 3511 is discovered, DFG shall be immediately notified at (707) 944-5500. Mitigation Measure # 1f in the MMP.
- H. If a species is injured as a result of Project operations, the applicant shall immediately take it to a DFG approved wildlife rehabilitation or veterinary facility, such as Sulphur Creek Nature Center, at (510) 881-6747; or Ohlone Humane Center, at (510) 797-9449. Permittee shall bear any costs associated with the care and treatment of such injured species. Mitigation Measure # 1g in the MMP.
- I. A post-construction monitoring plan shall be approved by DFG and implemented within one month of initial turbine operation. Mitigation Measure # 1h in the MMP.
- J. The City of San Leandro has incorporated the 2009 International Building Code into its municipal building code (Title 7, Chapter 7-5). The project applicant would be required to comply with all applicable State and City regulations to address potential geologic hazards associated with the proposed project, including ground shaking and liquefaction. Geotechnical and seismic design criteria must conform to engineering recommendations in accordance with the seismic requirements of the 2009 California Building Code (Title 24) and any amendments adopted in the San Leandro Municipal Code. Additionally, because the project site is in a liquefaction Seismic Hazard Zone, the project applicant will be required to comply with the guidelines set forth by California Geological Survey Special Publication 117. Mitigation Measure #2 in the MMP.
- K. Halus Power Systems shall secure approval of Alameda County Airport Land Use Commission and the Federal Aviation Administration prior to building permit approval of the wind turbine. Mitigation Measure #3 in the MMP.

IV. MAINTENANCE

- A. The project site shall be well-maintained and shall be kept free of litter, debris, and weeds at all times; during construction, the site shall be well maintained and shall be kept free of litter, debris, and weeds.
- B. Any graffiti shall be promptly removed from the property (i.e., turbine tower structure, building walls, signs, windows, paving, et cetera).
- C. In the event that the use of the tower to operate a turbine is abandoned, the applicant shall obtain the necessary building permit to remove the tower and restore the site to its pre-installation condition.

V. CONSTRUCTION PROVISIONS

- A. Construction activity on private property shall not commence prior to 7:00 a.m. and shall cease by 7:00 p.m. Monday through Friday, and construction activity shall not commence prior to 8:00 a.m. and shall cease by 7:00 p.m. on Sunday and Saturday. No such construction is permitted on Federal holidays. As provided in this City of San Leandro's Noise Ordinance (ORDINANCE NO. 2003 – 005), "construction" shall mean any site preparation, assembly, erection, substantial repair, alteration, demolition or similar action, for or on any private property, public or private right-of-way, streets, structures, utilities, facilities, or other similar property. Construction activities carried on in violation of this Article may be enforced as provided in Section 4-11-1130, and may also be enforced by issuance of a stop work order and/or revocation of any or all permits issued for such construction activity.
- B. Construction activity shall not create dust, noise, or safety hazards for adjacent businesses and properties. Dirt and mud shall not be tracked onto Grant Avenue from the project site during construction.
- C. Standard construction dust control procedures, such as wetting, daily road washing, and other maintenance functions to control emissions, shall be implemented at all times during outdoor construction. Dust generating activities such as grading, excavation, paving etc., shall be scheduled in the early morning or other hours when wind speeds are low. All construction activities entailing soil disturbance shall cease when winds exceed thirty (30) miles per hour as an hourly average.
- D. The applicant shall prepare a construction truck route plan that would restrict trucks to arterial streets that have sufficient pavement section to bear the heavy truck traffic, thereby minimizing noise and traffic impacts to the community. The construction truck route plan shall be reviewed and approved by the City Engineer prior to issuance of the building permit.
- E. Truck hauling activities shall be restricted to 8:00 a.m. to 5:00 p.m. There shall be no truck hauling activity on Saturdays, Sundays, and legal holidays.
- F. Procedures with the highest noise potential shall be scheduled for daylight hours, when ambient noise levels are highest.
- G. The applicant and/or contractor(s) shall be required to employ the quietest among alternative equipment or to muffle/control noise from available equipment.
- H. All construction contracts shall include the following requirements: 1) Unpaved construction sites shall be sprinkled with water at least twice per day; and 2) Trucks hauling construction materials shall be covered with tarpaulins or other effective covers.

VI. GENERAL CONDITIONS

- A. Any sign copy on the structure shall be limited to the brand or model name in an accessory or an incidental application on said structure, sign details subject to the review and approval of the Community Development Director. The structure shall not be used for any other supplemental sign copy, such as the advertising of products, services, phone numbers, and website addresses.
- B. East Bay Municipal Utility District (EBMUD) Right-of-Way, R/W 5275, is located on the northeast side of the subject property for a groundwater well and related pipeline and access. Any proposed construction activity within the right-of-way shall be coordinated with EBMUD, Water Service Planning.
- C. The approvals granted by the City as a result of this application, as well as the Conditions of Approval, shall be recorded in the Office of the County Recorder of Alameda County.

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CONDITIONS OF APPROVAL

PLN2012-00006 - 2539 Grant Avenue

L. Rigaud, Halus Power Systems (applicant and property owner)

I. COMPLIANCE WITH APPROVED PLANS

- A. The project shall comply with Exhibits A through C, dated February 7, 2013, except as hereinafter modified. (Exhibits are on file at the City of San Leandro, Community Development Department, 835 East 14th Street, San Leandro, California, 94577).

Exhibit A – Site Plan

Exhibit B – Aerial Photograph of Existing Site Conditions

Exhibit C – Elevations

- B. The applicant and/or property owner shall be responsible for assuring that any successor in interest who assumes responsibility for this zoning approval is informed of its terms and conditions.
- C. Construction shall commence within one (1) year following Board of Zoning Adjustments approval of the Variance and shall be substantially completed one year after commencement of construction. For the purpose of compliance with this condition, commencement of construction shall be defined as the pouring or construction of a substantial portion of the building foundation structure. Pursuant to Zoning Code Section 5-2218, this approval shall lapse on **February 7, 2014** unless a) a building permit has been issued, coupled with diligent progress evidencing good faith intent to commence the intended use, or b) a written request for a one-year extension of the use permit is approved by the Zoning Enforcement Official.

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- A. This approval is for a Variance to permit construction 80-foot tall, single wind turbine where the blades will extend an additional 20 feet from the structure for a maximum height of 100 feet, where the maximum allowable height is 60 feet in the industrial districts; 2539 Grant Avenue; Alameda County Assessor's Parcel Number 80G-910-15.
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Director who may administratively approve minor changes, or for more substantial changes, require review by the Board of Zoning Adjustments as a modification to the Variance.

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- C. To reduce impacts to raptors, the applicant shall minimize small mammal habitat from occurring beneath the wind swept area of the turbine. Mitigation Measure #1b in the MMP.
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Officer at (650) 876-9078 within five days of its discovery. Mitigation Measure # 1e in the MMP.

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- I. A post-construction monitoring plan shall be approved by DFG and implemented within one month of initial turbine operation. Mitigation Measure # 1h in the MMP.
- J. Turbine may not operate in heavy rain or dense fog. Mitigation Measure # 1i in the MMP. **(BZA added this measure by motion at its February 7, 2013 meeting for the purpose of protecting avian species.)**
- K. The City of San Leandro has incorporated the 2009 International Building Code into its municipal building code (Title 7, Chapter 7-5). The project applicant would be required to comply with all applicable State and City regulations to address potential geologic hazards associated with the proposed project, including ground shaking and liquefaction. Geotechnical and seismic design criteria must conform to engineering recommendations in accordance with the seismic requirements of the 2009 California Building Code (Title 24) and any amendments adopted in the San Leandro Municipal Code. Additionally, because the project site is in a liquefaction Seismic Hazard Zone, the project applicant will be required to comply with the guidelines set forth by California Geological Survey Special Publication 117. Mitigation Measure #2 in the MMP.
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- B. Any graffiti shall be promptly removed from the property (i.e., turbine tower structure, building walls, signs, windows, paving, et cetera).

- C. In the event that the use of the tower to operate a turbine is abandoned, the applicant shall obtain the necessary building permit to remove the tower and restore the site to its pre-installation condition.

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- B. Construction activity shall not create dust, noise, or safety hazards for adjacent businesses and properties. Dirt and mud shall not be tracked onto Grant Avenue from the project site during construction.
- C. Standard construction dust control procedures, such as wetting, daily road washing, and other maintenance functions to control emissions, shall be implemented at all times during outdoor construction. Dust generating activities such as grading, excavation, paving etc., shall be scheduled in the early morning or other hours when wind speeds are low. All construction activities entailing soil disturbance shall cease when winds exceed thirty (30) miles per hour as an hourly average.
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- G. The applicant and/or contractor(s) shall be required to employ the quietest among alternative equipment or to muffle/control noise from available equipment.
- H. All construction contracts shall include the following requirements: 1) Unpaved construction sites shall be sprinkled with water at least twice per day; and 2)

Trucks hauling construction materials shall be covered with tarpaulins or other effective covers.

VI. GENERAL CONDITIONS

- A. Any sign copy on the structure shall be limited to the brand or model name in an accessory or an incidental application on said structure, sign details subject to the review and approval of the Community Development Director. The structure shall not be used for any other supplemental sign copy, such as the advertising of products, services, phone numbers, and website addresses.
- B. East Bay Municipal Utility District (EBMUD) Right-of-Way, R/W 5275, is located on the northeast side of the subject property for a groundwater well and related pipeline and access. Any proposed construction activity within the right-of-way shall be coordinated with EBMUD, Water Service Planning.
- C. The approvals granted by the City as a result of this application, as well as the Conditions of Approval, shall be recorded in the Office of the County Recorder of Alameda County.

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**EXCERPTS FROM THE
SAN LEANDRO BOARD OF ZONING ADJUSTMENTS
REGULAR MEETING**

City Council Chambers, First Floor
835 East 14th Street
San Leandro, California 94577

MINUTES FOR FEBRUARY 7, 2013

7:00 p.m. Regular Meeting

Item 1: Roll Call

Present: Members Philip Daly (District 1), and Lee Thomas (District 3); Vice Chair René Mendieta (District 6); Chair Catherine Vierra Houston (District 4).

**Absent/
Excused:** Members Jane Abelee (District 5), Thomas Makin (District 2) and Janet Palma (At Large).

Staff: Sally Barros, Secretary to the Board of Zoning Adjustments; Jennifer Faught and Richard Pio Roda, Assistant City Attorneys; Tom Liao, Acting Community Development Director; Elmer Penaranda, Senior Planner; Larry Ornellas, Facilities Coordinator; Barbara Templeton, Recording Secretary.

Item 4: Correspondence

Planner Penaranda reported receiving communication from Howard Beckman concerning Public Hearing Item 7B, and **Secretary Barros** indicated receiving written correspondence regarding Item 7A since the preparation of the staff report on that item. **Chair Houston** gave Board Members time to review that material.

Item 7B: Public Hearings

PLN2012-00006; Variance to construct an 80-foot tall, single wind turbine where the blades will extend an additional 20 feet from the structure for a maximum height of 100 feet. Structures up to sixty (60) feet in height are permitted in the IG Industrial General District and a variance to height is required for exceeding 60 feet. The proposed turbine would be an accessory use to the primary manufacturing/research and development (R&D) use of the site; 2539 Grant Avenue; Alameda County Assessor's Parcel Numbers 80G-910-15; Louis Rigaud, Halus Power Systems (applicant and property owner). (Penaranda)

Planner Penaranda, using a PowerPoint presentation and referring to the staff report dated February 7, 2013, explained that the applicant's proposed monopole structure would be 100 feet tall in total, including the turbine blades. The IG District allows 60 feet, so the applicant is seeking a variance.

Planner Penaranda described Halus as a San Leandro-based green technology company that moved here from Hayward in 2010. The company designs and manufactures wind turbine components, including digital mechanical control systems, and engages in research and development (R&D) to increase the energy efficiencies of wind technologies and equipment.

Included in the applicant's request for a variance is the environmental review, a Mitigated Negative

Declaration (MND), and the mitigation monitoring plan.

The setbacks for the monopole would include approximately 200 feet from the northern property line and about 750 feet from Grant Avenue, in excess of 100 feet from the western property line and nearly 300 feet from the eastern industrial neighbor.

In preparing the MND, Planner Penaranda said the City conclusively determined that the proposed project, with mitigation measures incorporated will not have a significant effect on the environment, and that no substantial evidence has been presented indicating that the proposed project would have a significant environmental effect.

Among key points in the MND, which had been recirculated, he cited:

- An avian report indicating that bird fatalities are relatively low even on wind farms, and would be even less likely with a single small wind turbine (0.15 bird deaths annually). At that rate, it would take 6.5 years of continuous operation to result in a bird death.
- The California Department of Fish and Game (DFG; note: now known as Department of Fish and Wildlife [DFW]) recommendations for mitigation measures to protect avian life.
- Noise would not exceed 55 dB at the exterior property lines, well within the City's noise limits in residential areas (as well as industrial standards).
- Shadow analysis by Environmental Science Associates (ESA), a leading environmental consulting firm, indicated that the shadow of a structure 100 feet tall would not reach the homes to the north at the winter solstice (December 21), when the path of the sun is the lowest and the shadows the longest. Rather, it would fall on the north bank of the channel and the channel itself.
- The Federal Aviation Administration determined that the proposed wind turbine would present no hazard to air traffic or navigation.

Planner Penaranda also showed several exhibits, including a series of photo simulations of how the turbine would look from various perspectives. The simulations are of a crane with a propeller that took it to the 100-foot height. Simulations depicted views of the proposed turbine from such areas as:

- The Bay Trail parking lot
- The salvage yard with the 120-foot PG&E transmission towers in the foreground
- Further north along the Bay Trail adjacent to the east side of the PG&E substation looking over the salvage yard onto the Halus site
- Along the shoreline

From the Oro Loma dechlorination facility, Planner Penaranda pointed out, the monopole and its blades are no longer visible. Nor, he pointed out, is it visible looking south from the first house in Heron Bay, which is located at the southwest corner of the Bay Trail, until the trail turns.

Turning to the recirculated MND, Planner Penaranda pointed out a typographical error in the date of attorney A. Alan Berger's letter on behalf of the Heron Bay Homeowners Association (HOA) in the staff report. The letter was received and stamped by the City on November 13, 2012 – not 2013 as indicated in the staff report. The MND comments from the Homeowners Association also included a supporting report from Paul Taylor, Principal Environmental Scientist at Paul Taylor Consulting, a professional practice of Environmental Scientists, Regulatory Analysts and Registered Environmental Assessors.

Although the California Environmental Quality Act (CEQA) does not require the City to comment, Planner Penaranda said responses to all comments were prepared, and copies have been made available to the public as well as on the City's website. The City found the revised MND complete, adequate and reflective of the City's independent judgment and analysis as to the environmental effects of the Halus turbine project.

In regard to the requested variance, he said, the Recommended Findings of Fact indicates a special circumstance applicable to this property is its expansive clear area with unobstructed access by prevailing westerly onshore winds. Furthermore, the proposed turbine would not affect availability of light or air on adjacent properties, nor pose a nuisance or hazard to the general public with its large setbacks. Accordingly, the requested 40-foot variance was found to have no detrimental impact on adjacent property or persons. Permitting this variance and constructing this turbine would have no effect on any natural resources, and the proposed operation of the turbine would have no significant effect on birds, bats or existing biological environmental conditions.

Member Daly asked for clarification about the recommended variance shown at the end of the PowerPoint presentation. Planner Penaranda said the slide was incorrect; the height limit is 60 feet, and the variance request is to add 40 feet to accommodate the turbine, for a total of 100 feet.

Member Thomas asked how long ago the avian research was conducted, what kinds of wind turbines were involved, and where they were located. Planner Penaranda said that he believed the research was based on smaller turbines in Fairfield-Suisun Sewer District.

Member Daly asked whether the applicant would be able to build, for example, 20 wind turbines instead of only one if the project is approved. Planner Penaranda said it would be possible because it would be permitted, but a variance would have to be approved for any that would exceed the 60-foot height limit.

In response to **Member Daly** asking the applicant's reasons for wanting to build this turbine, Planner Penaranda said it's for R&D, to provide energy for his site, and to promote his clean-energy business.

Member Daly asked what would prevent a blade, for instance, from flying off during a big storm. Planner Penaranda said if there's enough wind to make them spin, the blades rotate at a maximum of 44 rpm and pivot to pick up the prevailing winds, but he deferred to Mr. Rigaud to answer the safety question.

Vice Chair Mendieta said his review of the report shows the City did significant and thorough work in preparing the MND, looking at the wildlife issues, contacting DFG and obtaining the ESA study and shadow analysis and photo simulations from various vantage points. He said he's also weighing the fact that the turbine would be obvious to homeowners on the south side of the Heron Bay neighborhood, and that Heron Bay residents question whether the MND is sufficient as opposed to having a complete Environmental Impact Review (EIR).

Chair Houston had several questions. In response, Planner Penaranda said:

- The turbine would be 370 feet north of San Lorenzo Creek
- After Mr. Rigaud met with the Heron Bay HOA on June 20, 2012, the MND review period (which had been due to expire on June 21, 2012) was extended 40 days (to July 31, 2012), but there were no subsequent meetings involving Halus and the HOA
- In Photo View 5, the structures that appear higher than the turbine are PG&E towers and tension lines

Chair Houston also asked about Photo View 9. The simulated turbine was not visible from the angle photographed – from the trail near the front yard of the southwesterly Heron Bay house – but

she asked how far one would need to walk before it would be visible. Planner Penaranda estimated about 34 feet, and the front of the house faces the street that runs parallel to the channel. (When Mr. Rigaud came to the microphone later in the meeting, he explained that the photo in question was taken from a distance of one house back from the one visible in the photo.)

Referring to the May 5, 2010 ESA Technical Memorandum section about avian reports, **Chair Houston** said with 0.152 bird deaths per year it would take 6.5 years of continuous operation to result in the death of one bird. The Memorandum also said it was infrequent, that one turbine poses little risk, and there would be no significant biological impact, but Chair Houston said the impact could be construed as significant for threatened or endangered species. Birds mentioned specifically within this report, including California clapper rails and California black rails, are both on the Endangered Species List, she said.

Planner Penaranda cited two of the eight mitigation measures recommended by DFG to minimize the potential for avian mortalities. Mitigation Measures: #1d and #1e.

Chair Houston said she visited the Rio Vista wind turbine farm, which apparently had neither an environmental review nor pre- or post-construction monitoring. The wind turbine installed at the Anheuser-Busch brewery in Fairfield was supposed to have post-construction monitoring, she said, but the report said there was no fatality monitoring. So, she asked, what was monitored?

At one point, **Chair Houston** said, she read that the Halus wind turbine was expected to run 11 months out of the year, but in another place she saw comments about potential shutdowns during periods of dense fog or heavy rain. She asked how to ensure operations would be halted under those conditions. Planner Penaranda said that would be in the BZA's purview to add as a condition of approval.

Chair Houston was disappointed to see the San Francisco Bay Area Wetlands Ecosystem Goals Project study of 2000 was the latest report about avian mortality cited. She said she's concerned about disturbances to the environment for endangered species. Because these are migratory birds, that would be their point of takeoff and they aren't "big fliers."

Member Daly asked who does the monitoring when a bird is killed or the carcass of an endangered species is found. Planner Penaranda said the applicant would be required to self-report. But then, **Chair Houston** added, the material indicates that a qualified biologist would be required to come in. **Secretary Barros** pointed out that monitoring isn't completely voluntary, but that one of the mitigation measures addresses this issue. **Mr. Pio Roda** added that complaints and/or outside evidence also could trigger investigations.

Member Thomas asked whether the wind turbines that Halus remanufactures produce energy equivalent to what newer models do. Planner Penaranda deferred to Mr. Rigaud for the answer.

Member Daly asked whether any agency besides the City, such as DFG or the airport, would be involved if Halus wanted to erect more wind turbines that didn't require variances to exceed the height limit. Planner Penaranda said the City would consult with the Airport Land Use Commission and the FAA. Although he said he does not know the specific spacing requirements between wind turbines on a farm, Planner Penaranda said there are operating standards for proficiency that address density and placement.

In response to a further question from **Member Daly**, Planner Penaranda said that the proposed wind turbine would be six feet in diameter at the base, tapering to three feet in diameter at the 80-foot point.

Vice Chair Mendieta asked whether installation of multiple wind turbines would constitute a farm, and whether zoning regulations would allow it. Secretary Barros said that as she interprets the Zoning Code, multiple installations would constitute a utility, so it would be necessary to check permitted uses in IG Districts.

Chair Houston invited the applicant to make his presentation.

Louis Rigaud began by addressing BZA member questions. He stated the first ESA report referenced more than 25 bird studies, most of which dealt with farms and thus, larger wind turbines than Halus is proposing. One of the reasons for placing the wind turbine in the middle of the Halus property is to have ample buffer space – even though it’s not required – for safety reasons. In the event of a catastrophic event such as an earthquake, the tower could fall and not hit anyone else’s property. He added that the turbine proposed has two separate braking systems, as is characteristic of Vestas turbines. They’re extremely safe, Mr. Rigaud said, and more than 2,000 of them were installed in California alone in the mid-1980s as part of the Carter Administration tax credit program for wind energy. Located in Palm Springs, Tehachapi Pass and San Geronio, they’re extremely reliable and about the safest wind turbines ever built, he said. That’s part of why Halus chose to specialize in re-manufacturing Vestas turbines. Vestas was the early Danish pioneer in the wind industry, and the company remains the world’s largest wind turbine manufacturer. Vestas produces new turbines at the rate of about one every four hours, but its current output consists of much larger turbines than before. Mr. Rigaud said there’s still a market for the small- to medium-size commercial turbines, which is the niche his company serves.

DFG requires Halus to have an approved monitoring plan in place before turbine operations may commence. Employees must be trained to be able to identify birds, posters must be displayed, and ESA would be on retainer. The 2000 Goals Study was the best available, Mr. Rigaud said, but DFG is very current, and it monitors wind-farm development all over the country. DFG also visited the Halus site, he said, which is why it made no comment on the recirculated MND.

The amount of energy a wind turbine produces is a function of the amount of air in the blades, Mr. Rigaud said, and Halus isn’t expecting to produce considerably more power with the wind turbines it specializes in. The advantages of the smaller wind turbines are that they can react to mini-grids, work with diesel generators in remote areas, and pick up more wind because the blades pivot. Efficiency gains are only up to 20%. Efficiency does not double or triple when refurbishing the turbines. The most significant development over the last 10 to 15 years has been in producing wind turbines with blades that move directionally with the wind.

Showing a PowerPoint presentation, Mr. Rigaud provided some of Halus Power Systems background. He showed photos of projects for which the company has supplied wind turbines over the past 10 years. Its equipment has gone to 25 states and overseas destinations. Halus moved to San Leandro in July 2010 from a smaller location in Hayward and was happy to find nearly five acres in San Leandro. The new location enabled Halus to purchase a machine shop in Belmont and move the manufacturing equipment to San Leandro to increase production. Halus recently installed an automated Computer Numerical Control (CNC) metal-cutting system with a table 45 feet long and 15 feet wide. It can cut through steel up to 3 inches thick, Mr. Rigaud said.

The turbine transmissions weigh from 3,000 to more than 10,000 pounds. The transmission, coupled with blades and an electric motor (no combustion engine), is why these wind turbines run so quietly (55 dB). Mr. Rigaud said that Halus is now able to manufacture more and more of the thousands of transmission parts needed in remanufacturing. Halus also designs and manufactures in-house microprocessor-based control systems that can be checked remotely via the internet.

Mr. Rigaud said the turbines his company supplies are among the most sophisticated of their size anywhere. Halus recently shipped one of its wind turbines to Reese Technology Center (RTC) in

Lubbock, Texas, which wanted a commercial turbine to fit with new components for testing for a project funded by the U.S. Department of Energy (DOE). RTC wasn't interested in a big 3 MW (megawatt) turbine, but rather a smaller one with all the bells and whistles of a larger model. Sandia National Laboratories and Vestas are joint partners in that project.

Mr. Rigaud showed a slide depicting some of the various sizes of wind turbines, including a 5 MW installation being tested in Germany that's so tall it dwarfs the 555-foot-tall Washington Monument. Wind-farm developers are installing wind turbines that generate enough energy to power approximately 2,000 homes. From an engineering perspective, Mr. Rigaud said it's rather remarkable that in less than 20 years, turbines went from 50 KW – which at one time was the world's largest – to their current size.

For R&D purposes, Mr. Rigaud explained, testing done on single-phase motors, such as those that power household blenders, is not applicable to three-phase motors, but even a 50 KW turbine produces enough power to test three-phase commercial electric motors.

In response to **Member Daly**, Mr. Rigaud said spacing of multiple turbines on a site depends on the site itself. If a site has reliable wind speed from one direction, he said, turbines could be placed close together. Developers spend a lot of time and money working that out, he added, because it's more economical to place as many as possible on a parcel. He said, too, that Halus plans to put up one turbine, and that's what the application requests. That's all we need and all we want, he said. The primary purpose is to test new products. Much of the world doesn't have the reliable power grid U.S. users know, he said, and with multiple daily blackouts to deal with, international customers, in particular, want turbines they can rely upon. Bench-testing switchgear and power electronics goes only so far, he said, so Halus needs the wind turbine to advance its R&D to test new controls.

Member Daly asked how employees would reach the wind turbine engine for repairs and maintenance. Mr. Rigaud said the tower is made of rolled steel plate, with access from a door at the bottom. They would climb a ladder to grease, service and check the turbine. His company currently employs 10 people, and he said he can't wait to bring in more employees. Developing new product is the path to growing, he said. He stated that Halus has been rebuilding turbines for about 10 years, knows the market very well, and sees foreign countries entering that market space. He wants Halus to be the company at the forefront with the small turbines. Vestas, General Electric and other major players no longer make small turbines, but many properties want them, including schools, farms and businesses. Other World Computing, for instance, (macsales.com) had one installed in a surplus field behind its headquarters complex in Illinois to power it. OWC didn't want a \$6 million, 2 MW machine. A wind farm needs 100 or 200 of the large wind turbines to compete with coal or small natural gas plants, but "distributed generation" such as that in place at OWC is quite different from wind-farm development. The distributed generation market is definitely growing, Mr. Rigaud said, and that's the market Halus serves.

Most of the studies that have been performed related to farms have dozens or hundreds of wind turbines in operation. Altamont Pass has about 6,000 turbines, he added.

As a trail user himself, **Vice Chair Mendieta** said he went to see the Halus site from that perspective. Noting that in addition to many of the letters from Heron Bay homeowners, other trail users addressed the safety issue. He said a video he saw in researching this issue online showed what happened in a high wind when a wind turbine overheated. Vice Chair Mendieta supposed it was a much larger wind turbine involved than what Halus produces, but the braking mechanism for the propeller failed and exploded, sending the blades flying off.

Mr. Rigaud said the YouTube video depicted a large-scale, 1.5 MW turbine. He said incidents with serious turbine problems are something like one in 10,000. That's why he's proposing to put the Halus tower as close as possible to the center of the property, for everyone's safety.

Vice Chair Mendieta said as he understands it, the BZA could have language incorporated that would require Halus to shut down the turbine in high winds. Mr. Rigaud said that winds up to 60 mph generally don't pose a problem, but both mechanical and electronic mechanisms ensure shutoff in higher winds. He said even if there were no structures or creatures in sight, you'd want to shut it down under those circumstances to protect the turbine itself. High winds pose not only a safety risk, but cause excessive wear and tear and potential damage to the turbine drive train, blades, etc. As for shutdown on foggy days, he said that's not an issue because if it's foggy it isn't windy, so the turbine is already off. The minimum wind speed to operate a wind turbine depends to some extent on the model, but he said a 10 mph wind speed would be the sweet spot. At the Halus site, he said wind speed usually ranges between 10 and 20 mph in the spring and summer, when winds in the area are typically strongest.

In response to a further question from **Vice Chair Mendieta**, Mr. Rigaud said that although wind turbines generally don't do well in low winds, a lot of work is being done to maximize the wind turbine's energy output through controls during low wind speeds.

Addressing **Vice Chair Mendieta's** question about why more avian studies have not been undertaken with the smaller wind turbines, Mr. Rigaud said that studies do differentiate between tower types, such as lattice-type structures that have dozens of perching spots versus tubular towers. He also noted studies cited by ESA, including:

- An October 2009 study prepared by the East Bay Regional Park District for the California Energy Commission, *Range Management Practices to Reduce Wind Turbine Impacts on Burrowing Owls and Other Raptors in the Altamont Pass Wind Resource Area*
- An October 2007 study by Curry and Kerlinger, *Feasibility Study of Potential Avian Risk from Wind Energy Development, Western Ohio Lakeshore Region*

Vice Chair Mendieta asked whether onsite employees would require ear protection when the turbine is running. Mr. Rigaud said he's spent a lot of time in and on turbines, climbing them, working on them, and no hearing protection is necessary. He said 55 dB is very low, and when people come close to a turbine for the first time, he said they wonder whether it's even running.

Planner Penaranda saw an identical model turbine when he visited Rio Vista. Planner Penaranda said that at 120 feet away, he couldn't hear it at all.

Vice Chair Mendieta referred to Mr. Beckman's letter, which indicated that noise calculated in dBA (A-weighted) eliminates low-frequency air pressure waves produced by wind turbines, helicopters and other rotating machines. Mr. Beckman stated that the low-frequency waves have distinct adverse effects on humans and wildlife, and that Halus uses dBA rather than dBC, which *does* detect the lower-frequencies. He asked Mr. Rigaud to comment on that.

Mr. Rigaud quoted from one of Mr. Beckman's attachments: "In general, the Environmental Protection Agency (in Denmark) does not expect problems relating to low-frequency noise from wind turbines that keep current limits for the 'normal noise.'" Mr. Rigaud said this seems to contradict assumptions Mr. Beckman stated in his letter. Mr. Rigaud also said that San Leandro has its own Noise Ordinance, and Halus would not be allowed to exceed it – whether from the wind turbine, a forklift with a bad flywheel, or anything else.

Planner Penaranda noted that the Halus site is along the airport's landing path, so the ambient noise level in this location is relatively higher because it's also combined with industrial uses. He said the turbine isn't ever likely to exceed the present ambient noise level when aircrafts are landing.

Chair Houston asked what triggers automatic shutdown, and whether the triggers relate to external factors such as wind speed as well as mechanical failures. Mr. Rigaud said that even earlier-generation turbines had sensors for cable twist, vibration, generator temperature, bearings

overheating, etc. The turbine's microprocessor runs at a high frequency, checking components many times each second, and if it detects a problem, it sends a signal that shuts the turbine off. In addition to the microprocessor, the tips of the blades have mechanical failsafe devices. In the absence of a computer, these devices would deploy on their own.

If something happens and the microprocessor isn't functioning properly but the internet is up, Mr. Rigaud said automatic notifications would instantly alert him and other employees via cell phone messages. If the internet is down and the power out, the hydraulic brakes on the turbine transmission would deploy automatically. Unlike with a car, where you have to push a pedal to apply the brakes, he explained, a hydraulic system needs electricity in order to prevent the brakes from engaging. In addition, he said nowhere in the world do Vestas turbines have a history of not working properly.

In response to **Chair Houston**, Mr. Rigaud said that unlike other businesses, Halus is not seeking this turbine to offset its electric bill. That factor is secondary. The company wants to develop turbine products. It currently produces about two turbines each month because each remanufacture takes between 1,000 and 2,000 manhours. Although small relative to other turbines, they aren't small. In fact, Mr. Rigaud said it takes a 40-foot flatbed to haul one of Halus's remanufactured wind turbines. (It takes up to six trucks to deliver the larger ones.) With only about two turbines coming out of Halus each month, he added, the company creates very little truck traffic.

Chair Houston, who went to Rio Vista to be able to assess the noise impact of wind turbines, said she found the noise minimal at what she estimated to be 150 feet away. She said she couldn't hear it and did not find the noise to be a huge factor personally.

Chair Houston asked how far away the nearest PG&E tower is from the Halus property. Planner Penaranda said it was 270 to 300 feet, and not a concern to PG&E. **Chair Houston** also asked whether, in foregoing an EIR, the BZA could request pre- and post-construction monitoring. Mr. Rigaud said post-construction monitoring is already a requirement, as is pre-construction monitoring unless construction occurs outside a nesting window. Mr. Pio Roda said the City could negotiate a condition with the applicant to address the concern about any construction that might occur earlier or later.

Vice Chair Mendieta asked whether any excess energy Halus produced at its site would go into the PG&E power grid. At times, some of it would, Mr. Rigaud said. With net metering, he explained, PG&E meters track the power coming onto a property as well as leaving it. For example, homes with solar panels accrue credits on the meter when the sun is shining, which are then deducted as they use energy in the evening.

In response to a further question from **Vice Chair Mendieta**, Mr. Rigaud said wind-farm developers are happy to have their turbines running 30% to 35% of the time; the best are in the high 30s. He said in San Leandro he hopes for 20%. In terms of propeller velocity, he said some turbines are faster than others, but the Vestas equipment speed runs at 44 rpm maximum.

Vice Chair Mendieta asked whether anything on a wind turbine functions like a circuit breaker. Mr. Rigaud said many such turbine controls are in place, and before it can even connect to the grid, it must pass a PG&E-required inspection. Other safeguards include finger-sized copper plates that serve as circuit breakers, and multiple layers of fuse protection on distribution lines between the site and along Grant Avenue.

After a break in the proceedings, **Chair Houston** confirmed with Mr. Rigaud that if the application is approved, he is prepared to comply with the conditions set forth. She invited public comments.

Howard Beckman, 1261 Via Dolorosa, San Lorenzo, said there's strong local agreement that finding alternative energy sources is urgent but it requires an orderly, lawful planning process. He said the BZA must deny the subject application because it cannot be supported by the required

findings under the terms of the San Leandro Zoning Ordinance. Upon denial, he recommends that the City adopt a moratorium on wind turbine installations in order to explore the conditions under which turbines will be permitted.

Mr. Beckman said his letter touches on noise, property values and the definition of a structure in the Zoning Ordinance. The record presented for tonight's hearing says there's no quantitative evidence concerning low-frequency sound of the wind turbine and its potential impact within the sensitive shoreline environment. Indeed, he continued, no evidence in the record suggests that this issue was even considered. Mr. Beckman said he has extensive experience with the issue of low-frequency sound, and provided documents from the Danish Ministry of Environment saying it has determined low-frequency noise is a problem. The Danish EPA's opinion is relevant and important, he said, because it set the rules for certifying the noise on the Halus turbine. Mr. Beckman also said he deals frequently with the question of damages or nuisance from noise.

Likewise, Mr. Beckman said, the issue of property values was dismissed by the City as irrelevant to the MND and environmental analysis. A real estate appraiser said the jury is out in that regard. In terms of the requested variance, Mr. Beckman said the conditions that staff believes support the variance are laughable.

Chris Morey thanked all the other Heron Bay residents who came to the meeting and asked them to stand quietly to show their numbers. He said Heron Bay is a beautiful neighborhood with all the wetlands around it that make it a jewel in San Leandro. He said he hoped the group made a good impression because first impressions are important. He said having to go 50 miles to find a wind turbine also makes a first impression. Without an EIR, he said the first impression of the Halus proposal is skimpy, and an EIR is necessary to understand what a wind turbine would do in the proposed environment and whether it's appropriate for that area. It needs to be studied, researched and fully vetted. It ought to be done right, and the right questions must be asked. He said that his wife was supportive of wind turbines until she saw one off an I-80 exit on the way back from a ski trip.

Alan Berger, 95 South Market Street #545, San Jose, is the Heron Bay HOA attorney. He referred to comments he submitted on behalf of Heron Bay on two occasions, July 31, 2012 and November 14, 2012, as well as an attached report prepared by Paul Taylor. Mr. Berger said that Mr. Taylor is one of California's foremost environmental engineers and has commented on issues related to the requested variance. Despite considering Planner Penaranda a credit to the City, Mr. Berger said after trying cases in more than 20 states and every California jurisdiction, he's rarely seen a staff report quite like the one on the Halus proposal. He said he represents residents in 629 homes who are vitally concerned about the comments of staff and about the issue. While indicating there's no doubt staff did considerable work putting together the Halus materials, Mr. Berger asserted that every photograph, every submission, every chart and every report submitted by staff rehashes Halus material. It was not based on independent testing or empirical evidence, he said.

At this time, Mr. Berger continued, it is not Heron Bay's position whether this wind turbine should be allowed. The issue now concerns whether the variance should be granted without the benefit of a full EIR. At this point, the BZA has insufficient evidence to rely on staff's opinion to go with an MND, he said. CEQA Section 21064.5 talks about when an MND can be used, he said, and it's clear an MND can be used only when no substantial evidence in light of the whole record shows any chance of a significant effect on the environment.

Informed that his time was up, Mr. Berger said this is a serious legal position and he needs about 10 minutes to summarize it. Members of the audience offered to give him their time.

Motion to Extend Mr. Berger's Presentation Time

Daly/Mendieta: 4 Ayes, 0 Noes

Mr. Berger said when any fair argument can be made that a project may have environmental impacts, both CEQA rules and cases that have interpreted CEQA clearly state that an EIR must be ordered. He said the very questions raised by BZA members are ones members of the HOA brought up. He criticized the studies cited as being years old and conducted in environments very different from San Leandro's. If staff had ordered an EIR in the first place, almost eight months ago, the process would be finished by now, he said. Instead, the City invested the time, money and effort in showing why no EIR is necessary. Mr. Berger added, for the record, that he received additional staff comments just four days ago.

Despite what the photo simulations depict, Mr. Berger said everyone in Heron Bay and on the Bay Trail will see a 10-story billboard for Halus. He said turbines belong in non-residential, rural areas where they don't affect anyone. He said, too, that the MND ignores the issue of private property and aesthetic values, both of which the courts support and both of which demand an EIR and scientific evidence. He pointed out that the staff recommendations fail to address the important issue of what happens with the wind turbine if Halus leaves the site, and asked why staff puts the interest of one business ahead of the interests of 629 homeowners.

Mike Katz, 46 Estabrook Street, described Mr. Berger's scare tactics as "very entertaining." He said we're talking about a windmill on a piece of property that is zoned for industrial use – which is neither in the marsh nor on sensitive environment land. As a regular user of the Bay Trail, he said the most prominent features there are the 12-story-tall electric towers between the Heron Bay development and the Bay, followed by the regular aircraft landings. He said the aircraft are about 16 times louder than the wind turbine. Mr. Katz said there have been plenty of studies, including one in December 2009 by the Lawrence Livermore National Laboratory that looked at the effect of wind turbines on nearby home prices and found no correlation. He also cited a January 2012 study for the Massachusetts Department of Environmental Protection and Massachusetts Department of Public Health that documented no epidemiologically significant impacts of noise from wind turbines on nearby populations.

Encouraging the BZA to grant the variance requested, Mr. Katz asked them to think about the scientific documentation and not what people's fears are generating. This is not a wind-farm project, he said, but a project by a company in the business of refurbishing wind turbines and another similar company would want the same. Mr. Katz said he supports the requirement for monitoring effects on avian life, but he cited domestic cats, electrical power lines and communication towers as more dangerous to birds than a wind turbine. He cited a University of Southern California study released in April 2012 that documented seven million annual bird kills by the communication towers we rely on for cellular phone and TV service. Mr. Katz said that having an EIR would not be a bad thing, but in this case he considers it inappropriate.

David Johnson, 120 Estudillo Avenue, is President and CEO of the San Leandro Chamber of Commerce. Speaking in that capacity and as a representative of the Chamber Board of Directors, he stated that Halus gives San Leandro the opportunity to set a standard and grow a sophisticated company. He said he understands the fears, but is concerned that those fears have been stoked around issues that aren't real and have nothing to do with the adjacent residential area. He said all sorts of issues, as Mr. Katz mentioned, about electrical towers and aircraft noise, also come into play. He pointed out that the average person-to-person conversation is in the same decibel range as what the wind turbine would generate, and that would be only when it's running. He said we must

not forget that the fundamental purpose here is to do research that will make it possible to improve efficiencies around producing energy from wind, and San Leandro is never likely to have anything resembling a wind farm. He said the significant documentation provided in the MND clearly and conclusively supports granting the variance requested. The 100-foot turbine with large setbacks from residences and public open spaces would not have any impact on the immediate adjacent properties, persons or avian species.

Mr. Johnson read into the record a letter from the Chamber Board of Directors. In part, the letter states:

- *Halus Power Systems exemplifies the very kind of business that will establish a benchmark for San Leandro's growing green economy.*
- *[The BZA's] affirmative action will satisfy a key goal of our Climate Action Plan, and serve as a clear and far-reaching invitation to other innovative companies like Halus who are seeking to locate and grow businesses and green jobs in a sustainably focused community like ours.*
- *Consider our growing visibility as Halus carries out national as well as international research and development work in this critical field of wind energy.*
- *Our community, through Halus good work, will be at the cutting edge of taking on our changing climate challenges.*

Stephanie Smith, 2223 Kingfisher Court, said that as a San Leandro native, she wants this to be the best City possible now and in the future. She said she favors all forms of well-located and well-legislated green energy sources. She said the proposed Halus wind turbine is not well-located, nor does it have sufficient policy behind it to keep everyone safe. She asked what would happen if a fire broke out in the middle of the night and the wind carried embers over to the Heron Bay community. Heron Bay has only one exit and one entrance. She asked whether one business is worth risking the lives of thousands of residents. She also said studies have produced conflicting information regarding the health effects of wind turbines.

Ms. Smith said she would like San Leandro to establish comprehensive guidelines as to where a wind turbine could be built, including monitoring for noise, safety and effects on birds, independently from outside the company to guarantee that accurate information would be forthcoming. Ms. Smith said she's concerned about the proposed location because it directly abuts a residential community where thousands of San Leandro residents live, it's close to a nature preserve where several endangered species live, and it's an eyesore that would drive people away from the Bay Trail. California has banned offshore wind farms because wind turbines are ugly, she said, and building one that can be seen on the shoreline breaks the spirit of that law. She asked the BZA to stop the Halus project that would sacrifice the needs and wants of many San Leandro citizens, trail users and endangered birds for one small but already very successful business, and to take under consider her request for a thoughtful and comprehensive policy regarding wind turbines.

Howard Kerr, 15388 Norton Street, is a 62-year resident who served on the San Leandro City Council (starting in 1992) and was appointed Vice Mayor (1995). A founder, past president and longtime member of the Washington Manor Homeowners Association, he was also President of the Associated Homeowners of San Leandro. He said he can't remember any other project in San Leandro that's taken as much scrutiny as the Halus proposal. He said he's grateful for the staff's analysis of every issue of the whole project and the answers to every question raised. He recommended approval of the MND so the project can go forward, because it's needed in San Leandro.

Mr. Kerr said the City has lost a lot of industry over the years, including automobile and tractor manufacturing and canneries, and needs to attract new industries. He said he can't see the wind turbine as any detriment to the Heron Bay neighborhood and believes it should move forward. He praised Halus for restoring wind turbines that are no longer manufactured and making them available in outlying areas all over the country, and said it's the type of industry that San Leandro should encourage.

John Dalisay, 2301 Pacific View Court, a member of the Heron Bay HOA Board and a realtor with more than 10 years of experience, said everyone remembers how 9/11 changed the country, but not many probably remember 9/9 – the day in 2010 that a gas pipeline explosion rocked San Bruno's world. What happened in San Bruno, he said, stigmatized that community in the eyes of potential homebuyers, who now think about the risk factors involved in all the underground gas pipes. Mr. Dalisay said he doesn't equate Halus with a destructive monster prepared to invade Heron Bay, but as a realtor, he said it's important for the City to thoroughly investigate what it's getting into. Mr. Dalisay said he knows from his experience in selling a home in Five Canyons, right next to a tower, that it's hard to explain the effects. An EIR would at least be something to share with potential buyers who could use it to consider in making decisions. Without the EIR, he said, we're clueless about what the immediate effect would be.

Misha Wyatt, 2353 Lagoon Court, a Heron Bay resident, said she sent an email last year to request the EIR, and reiterated that request. She gave Halus kudos for its work in alternative energy technology and manufacturing in San Leandro. She said she has questions that remain unanswered including: What is the lifecycle of remanufactured wind turbines? Where is Halus in the monitoring plan with USFWS, which must be in place before the project can move forward? Can the City stipulate that the monitoring plan is in place prior to approval of its variance request? What should we do in terms of wind turbines in the future?

Ms. Wyatt said she also considers an EIR an independent safety provision for the community, the City and the Chamber of Commerce, and as a way of looking at constraints. She said an EIR would be an objective way to make a decision. She said she's heard contradictory information, for example, about studies being as old as 2000, but also about a Lawrence Livermore National Laboratory study in 2009 and another report in 2012. She said she looks to experts to provide the most comprehensive information. Thus she urged the completion of an EIR so that everyone involved – the community, businesses, residents, administrators, BZA Members – can take a holistic approach.

Ramoncito Asistin, 15698 Anchorage Drive, said most of his concerns have been mentioned, but he pointed out that the photo simulations are a subtle admission that the wind turbine would be an eyesore. He said his Heron Bay home is directly across from the site, and it would ruin his day every time he would see the wind turbine there. He said that even out-of-towners who come to San Leandro to walk the Bay Trail would have to look at it. He said properties in San Leandro have been affected already by the recession, and in Heron Bay homes have been hit by a 25% decrease in valuations of their primary investment. Halus is profit-driven, Mr. Asistin said, but the property owners' interests here are their life investments. They can't afford property values to decline even more.

Mr. Asistin said storms that hit the coast generate lightning, and because lightning strikes indiscriminately, with a 100-foot tower next to the power plant it won't be a coincidence if it hits one of the homes in Heron Bay. He said the City would not want to be a party to that. He said the BZA's decision would be about fairness to a community it represents, and that community wants a full EIR.

Dan Zhang, 2268 Mariner Way, said the response to homeowner comments characterized homeowners as unqualified to render opinions. He said he has lived in the neighborhood for more than 10 years, and knows the look and feel of the environment, that the turbine would be right in front of their faces and create a detrimental impact to the scenery. He also said Halus has yet to produce any substantial evidence to support its assertion of hardship for the variance requested. The recommended findings state that “the unusual circumstances in this instance include the irregular flag-shaped lot, its sizeable land area, it is not immediately adjacent to occupied properties, and its clear and unobstructed location to the westerly San Francisco Bay winds...” According to Mr. Zhang, this hardly describes a hardship, but he continued, the Heron Bay homeowners would definitely experience hardship if the wind turbine is built, because home values would decline. Even though the MND does not require it, he said the BZA should take into consideration the economic effects on homeowners as a separate issue.

Chris Smith, 2223 Kingfisher Court, said the community was shocked to find out, after the wind turbine was proposed. He said no one he’s talked to about this project takes exception to green energy or what Halus wants to accomplish except for the part of installing a wind turbine. He said he was also shocked by the minimum amount of information disseminated about this project, and that it had gone to only a handful of people who live right next to the site. The process was almost secret, he said, requiring people to pull and twist and turn to get information.

When Heron Bay homeowners finally met with Halus to express their honest fears and desire for information, Mr. Smith said they were outraged by the idea of having this project approved when the community of nearly 1,000 people didn’t want it. He said arguments about airplane noise being worse than a wind turbine and the power lines looking worse are disingenuous when you don’t live there. No one wants to look out the window and see a 100-foot-tall wind turbine that advertises Halus’s business. If realtors must tell a potential homebuyer they don’t know whether more wind turbines would be built, Mr. Smith asked how that would help the homeowners or be fair to the people who live there. “Is it worth it to do that to us?” he asked.

Mary Lavonas, 39030 Levi Street, Newark, said she has a vested interest in Heron Bay, because she uses the trails there for the post-stroke exercise she needs. She finds those trails relaxing, loves the view all the way to San Francisco on clear days, and said the wildlife adds to the beauty. After her walks, she said, she shops at the Greenhouse Marketplace or Marina Faire outlets, and eats at La Piñata or Kasper’s. The construction of even a single wind turbine would ruin this God-created beauty, she stated, and no one can convince her that it wouldn’t affect the wildlife and the view.

Ms. Lavonas said she and her daughter visited one of Halus’s wind turbines in Rio Vista. While her daughter went onto the property, she stayed in the car but after a long time she panicked and honked the horn. Her daughter didn’t hear it because the wind turbine is very loud. Ms. Lavonas said she’s hard of hearing and couldn’t stand the noise. With the opening of Kaiser’s San Leandro hospital in 2014, she said she would use the trails at Heron Bay more frequently, as would the stroke-group friends she’s encouraged to also enjoy the treasure of that trail. But if the turbine is built, she said she and her friends would stop coming because it would be ugly, noisy and kill birds.

Shudong Zheng, 2332 Riverside Court, said that according to Mr. Rigaud, Halus’s 50 KW-capacity wind turbine would run 20% of the time – approximately five hours a day – for 750 kWh a month, assuming 30 days of consecutive operation. Mr. Zheng said he pays PG&E 12.8 cents per kWh, so Mr. Rigaud’s 750 kWh would amount to \$938 per month. When this project was first made public, Mr. Zheng said, the rationale was for generating green energy, and 750 kWh per month doesn’t make economic sense. If it costs \$150,000 to build and install the wind turbine, it would take 11.3 years to break even. While applauding any green energy production, he said that would contradict

the project goals as they were first announced. Halus said the goal now is for testing, which Mr. Zheng said is scarier, because being tested is neither stable nor reliable.

Mr. Zheng said Heron Bay residents have many concerns about negative impacts because the project is so nearby, so why not just do the EIR? He also pointed out that airport noise and PG&E towers were present when he moved to Heron Bay about 15 years ago, but he doesn't want more bad things added on top of those. He asked the BZA to help protect our homes, communities, environment and ecosystems. He does not want to have to move again.

Darlene Evans, 359-361 Bristol Boulevard, said she studied building codes while taking architectural drafting courses, spent more than four years working on industrial buildings for fire-insurance ratings, and saw wind turbines in Indianapolis in 2004. She said a wind turbine in San Leandro is inappropriate. She referenced the ESA Biological Resources Technical Memorandum dated May 12, 2012. In discussing studies involving the impacts of single small wind turbines, it says, "Environmental guidance for small wind projects is lacking at both federal and state levels" and with "a rotor-swept area of less than 2,000 square feet, no additional surveys or mitigation should be required."

Julia Chung, 2385 Pacifica Court, said she moved to Heron Bay because her family loves wildlife. She said she also favors green energy. She said that human beings use so much space, it leaves smaller and smaller areas available to animals. She's grateful that San Leandro has this protected area for birds, geese, foxes and so on by Heron Bay, but their habitat is already very limited. She said she's never seen a bird perched on a wind turbine, whether or not the propellers are rotating, because the birds are afraid of them. She and her husband want to leave their estate to benefit wildlife in the area, but she is worried that in 10 or 20 years there will be no wildlife. She said that although the wind turbine is proposed for an industrial area, it borders a densely populated residential neighborhood. She also said that although the wind turbine would not be visible from her property, she believes they will feel it.

Howard Thu, 2338 Spinnaker Court, said the photographic simulations don't represent how the wind turbine actually would look because they were done so as to make nearby objects appear larger and minimize the appearance of the wind turbine in the distance. Mr. Thu said he respects business people, but they go home to their mansions at the end of the day and don't have to worry about the sight of a wind turbine, while the people who live here, pay taxes and vote have to deal with it every day.

Jenny Chen, 2386 Pacifica Court, said as she drives through the community to I-880, down Wicks Boulevard, she sees many empty business buildings and warehouses. She agrees we need to generate businesses to support the City. She said that according to Mr. Rigaud, Halus remanufactures one to two turbines a month, the most expensive of which is \$600,000. She calculated that even working at full capacity and selling only their highest-value products, Halus would generate only \$14 million in gross sales annually. She asked what tax Halus would pay to San Leandro on those sales, versus the property taxes of almost 700 Heron Bay homeowners. She said she expects the City would collect much less from Halus than from the property owners. Even though home prices have dropped considerably, she said the last home sold for more than \$500,000. She said that yes, San Leandro needs more businesses, but it needs businesses that hire more than 10 people.

Fred Simon, 15670 Atlantus Avenue, said Heron Bay is where he purchased his first home 15 years ago, and that's where he and his wife are raising their two children. He said it's a beautiful place to live and San Leandro overall is a wonderful place to live. Without an EIR on this project, he said the City would seriously deteriorate the quality of life in San Leandro. He urged the BZA to reject the variance request because the true impacts of the project – to health, to the environment, to the animals – have not been evaluated. He said, for example, that killing one bird in six years is

completely unrealistic. An EIR needs to be done in order to properly evaluate the impact. He said he has walked the Bay Trail at least three times a week for 15 years and sees hundreds of birds.

In terms of safety, Mr. Simon cited Vice Chair Mendieta's story about the wind turbine that exploded. He said the reports have not evaluated how far a blade would fly. People also suffer health impacts from wind turbines, he said, including nausea and migraines. He said that's not been studied, either, and "we deserve that respect and dignity" to be able to understand what the impacts would be. The impact on property values also needs to be evaluated, he stated, noting that some people have already told him they're moving out. This project would also have a negative impact on aesthetics. There are no wind turbines in affluent areas such as Danville and Blackhawk, he asked, why should San Leandro be the *guinea pigs* for a project of this magnitude without an EIR.

Motion to Close the Public Hearing

Daly/Mendieta: 4 Ayes, 0 Noes

Member Daly asked if anything in Mr. Beckman's letter or the public testimony changes the City Attorney's opinion about whether the BZA can proceed on the variance request. Mr. Pio Roda said no, and that he's also comfortable about proceeding without an EIR.

Member Daly asked Mr. Rigaud what fuels a wind turbine and whether in his experience they ever catch fire. Mr. Rigaud said there's no fuel source, and if the wind isn't strong enough to push the blades, they don't move. He also said turbines very rarely catch fire. Some of the bigger turbines have more components, including power electronics, and lightning could conceivably start a fire. In lightning-prone areas, he said lightning will hit whatever it finds, and lightning storms in Kansas have caused damage to wind turbines there. Most of the time, he said, the lightning blows out electrical components. He said he doesn't believe San Leandro is considered a lightning-prone area.

Vice Chair Mendieta asked whether the wind turbine would remain intact after being struck by lightning while the internal components are fried. Mr. Rigaud said that over a 10-year period, he's seen three turbines that have been hit by lightning. Twice it resulted in electrical damage and once there was fiberglass damage. Other incidents he's aware of but hasn't seen involved electrical damage. He said Halus bolts on lightning arrestors to keep lightning that hits the ground from coming up into the machine. He also pointed out that lightning that strikes utility wires can travel through the wires and break components in the turbine or any other building. In other words, he said it doesn't take a direct lightning hit to damage a wind turbine.

Member Thomas asked whether the information prepared by the City cross-referenced any related cases. Mr. Pio Roda said yes. In terms of the EIR-versus-MND issue, he added, the City and staff have made the case quite clearly about there being no substantial evidence or fair argument that there would be environmental impacts. They've received numerous comments, including some that came in after the extended deadline passed. The City responded diligently to every one of them, Mr. Pio Roda said, and many of the comments were not based on facts and some were absolutely false or contained erroneous information. The project, as it is modified in the MND, has no significant impacts, and with the mitigations, he said, we believe that the MND is proper in this case.

Mr. Liao clarified that the MND for CEQA is the City's document, prepared and vetted by staff, not unfiltered material from Halus. The reason for the delay was to address the comments seriously and thoughtfully. When expert input is appropriate, he explained that staff sometimes chooses a firm from its list, or with the City's approval, the applicant can choose another firm to address concerns. Mr. Liao said that ESA has considerable experience with regard to San Leandro shoreline issues. The City mandates the right to a peer review to make sure they're comfortable with the material

because staff must ultimately prepare and sign off on these environmental documents.

Vice Chair Mendieta said mitigation measures pertaining to wildlife, noise and aesthetics showed the kind of due diligence he expects of staff. He said he's sensitive to concerns of residents about negative health effects, but he cannot see that such effects have been demonstrated. As a realtor himself, he said he understands what Heron Bay residents have said in terms of the potential impact on property values. The sizzle of high-tension wires 30 feet from a property can have a detrimental effect on a property's appeal to a potential buyer, he said, although he noted that a buyer may decide that the size of the property, proximity to work and other factors are more important. The electromagnetic fields (EMFs) emitted by high-tension wires certainly affect real estate values, he said, but he isn't persuaded that a wind turbine would emit serious EMFs.

Despite the direct impact of the recession on home prices, **Vice Chair Mendieta** continued, San Leandro has seen a resurgence, which should continue with the Kaiser facility coming closer to completion, shoreline development projects that are taking form, the downtown transit-oriented development (TOD) that's moving forward and the Lit San Leandro fiber optic installations. He said significant dynamics are transforming San Leandro in a way that will make it more desirable.

As for renewable energy sources, **Vice Chair Mendieta** said our long-term existence is at risk due to the historic dependence on fossil fuels. Whether one believes in global warming, he said, the science tells us that we're in deep trouble. The polar icecaps could melt by the year 2050, and the sea level is rising. He appreciates environmental sensitivity to animals and wildlife, too, he said, but he's not persuaded that one wind turbine would present a problem.

Ms. Faught pointed out that an impact on property values isn't a CEQA issue. It might relate to the BZA's Finding #2 in terms of either approving or denying the variance, but not to adoption or denial of the MND.

Member Thomas commended both sides for their contributions to tonight's meeting including residents going out and fighting for what they believe in is part of what makes this a great City. Likewise, to think big, dream big and make San Leandro the place of business innovation is something we all ought to think about, he said.

Member Daly asked for a summary of what the BZA is being asked to do tonight. Ms. Faught outlined two parts:

1. The resolution to adopt the MND, which includes findings that, along with the mitigation measures, the project would have no significant impact on the environment; and
2. The variance requested

The changes that the BZA requested, she explained, would be part of the conditions of approval. The conditions of approval are attached to the variance, but they are also included in the mitigation measures in the MND.

Secretary Barros explained that in addition to staff's recommended conditions of approval, Mr. Pio Roda said a stipulation for a pre- and post-construction monitoring plan negotiated with the applicant would be included. It would involve modifying Condition of Approval III.B. and Mitigation Measure #1a (Mitigation Monitoring Plan), so that a qualified biologist will be retained for to conduct pre-construction surveys for raptors and nesting birds one week prior to any construction activity on the turbine. Construction activity will be permitted to proceed if no active nests are detected during the surveys.

Member Daly said his original concerns involved issues of height, safety and whether additional wind turbines would follow installation of the first. He said the area where Halus is located is not appropriate for a wind farm; one wind turbine is acceptable but more than one is not. Member Daly

said he appreciates the neighborhood's concerns, and considers this a close call that ultimately will have to be resolved at City Council level. Based on the applicant's stated reasons for the wind turbine – not so much to produce energy as to supplement his business, and that he would not return to ask for more – and as a volunteer member of the BZA, Member Daly said he accepts staff recommendations. He said staff work was thorough and there's nothing inappropriate about it. So, he said, as difficult as it is, he agrees with staff's recommendation.

Member Daly moved to accept the Resolution of the BZA adopting a Mitigated Negative Declaration and Mitigation Monitoring Program for the Halus Wind Turbine application PLN2012-00006, with the added Condition of Approval that the turbine may not operate in heavy rain or dense fog. **Vice Chair Mendieta** seconded the motion.

Chair Houston, for the record, stated that she did not have an opportunity to make her comments.

Member Daly said he's satisfied that the height is not outrageous and that the wind turbine would be safe. Considering the area and historic industrial uses around the Bay, one wind turbine is acceptable, he said, but any more would be an eyesore and a serious problem.

Chair Houston thanked everyone for coming out tonight for this very long meeting. In addition to many public speakers, she said BZA Members had many questions and wanted to ensure they were answered thoroughly. She said BZA Members do their best to make sure they make decisions on the basis of code and CEQA requirements. She thanked BZA Members for stepping back and viewing the issues from that perspective and for listening to everyone's comments. She agreed with Member Daly that this issue is likely to go to the City Council.

***Restated Motion to Accept the Resolution of the BZA
Adopting a Mitigated Negative Declaration and Mitigation Monitoring Program
for the Halus Wind Turbine Application PLN2012-00006,
with the Added Conditions of Approval that the Turbine May Not Operate in Heavy
Rain or Dense Fog and a Qualified Wildlife Biologist, will be Retained to Conduct
Pre-construction Surveys for Raptors and Nesting Birds One Week Before
Initiation of Construction.***

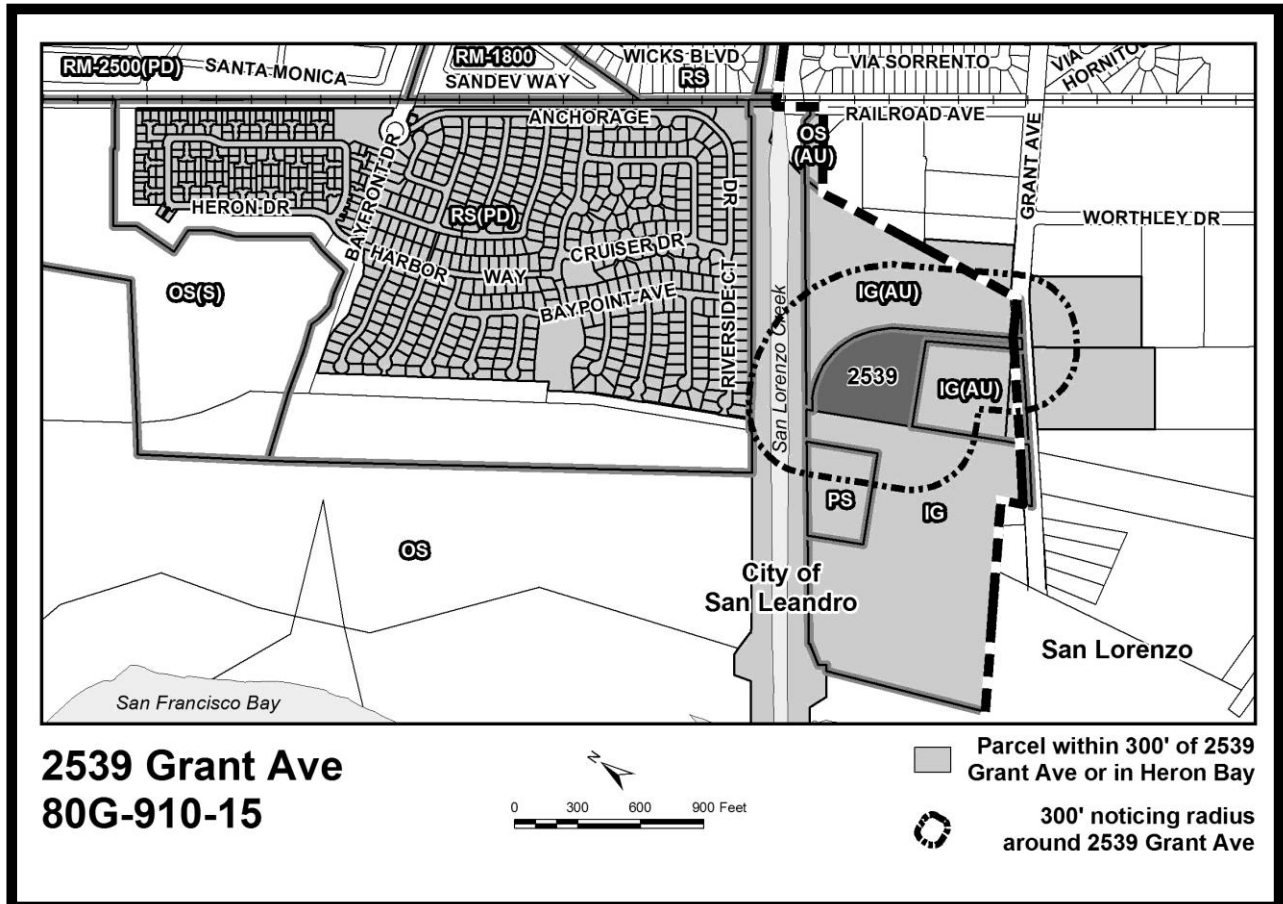
Daly/Mendieta: 4 Ayes, 0 Noes

Secretary Barros said that applications recommended for approval by the Board of Zoning Adjustments are final (contrary to what it states on the agenda, which is a typographical error). Decisions of the BZA under public hearing may be appealed to the City Council by filing a form with the City Clerk within 15 days of the date of the action. The form shall specifically state the reason for the appeal, and an appeal fee is required through the City Clerk's office.

***Motion to Approve a Variance
to Exceed the 60-Foot Maximum Height Limit to 100 Feet,
Subject to Recommended Findings and Conditions of Approval
for the Halus Wind Turbine Application PLN2012-00006***

Mendieta/Thomas: 4 Ayes, 0 Noes

City of San Leandro
BOARD OF ZONING ADJUSTMENTS
Staff Report
VICINITY MAP
 Showing Existing Land Use and Zoning



Meeting Date: February 7, 2013
 File Number: PLN2012-00006
 Agenda Item No.: 7 b.
 Applicant and
 Property Owner: L. Rigaud, Halus Power Systems
 Address: 2539 Grant Avenue
 Assessor's Parcel #: 80G-910-15
 Project Planner: Elmer Penaranda

APPLICANT'S STATEMENT

HALUS POWER SYSTEMS WIND TURBINE

February 28, 2012

Halus Power Systems is requesting approval of a Variance to allow an 80-foot tall, single wind turbine to be located in the interior of their property at 2539 Grant Avenue, San Leandro, CA.

ZONING AUTHORITY

Pursuant to Section 2-706.A.32 "Telecommunications Antennae and/or Alternative Tower Structures up to sixty (60) feet in height" are permitted in the I-G Zoning District. Therefore, a variance is required. The proposed tower would be an "accessory use" to the primary manufacturing/ R&D use in the building and on the site.

BACKGROUND

Halus Power Systems, a San Leandro "green technology" company, and North America's leading supplier of remanufactured wind turbines, moved to its current 5 acre San Leandro facility at 2539 Grant Avenue in 2010. The company also designs and manufactures wind turbine components including digital and mechanical control systems. In addition, the company also engages in significant research and development activities to increase the energy efficiencies of wind technologies and equipment. This R&D is done independently and in partnership with other industry leaders and requires the testing of these new technologies on functioning turbines.

Halus Power Systems currently employs 10 people and has plans for significant growth in coming years. It is precisely the type of company envisioned and supported by the City's General Plan, the State of California, Alameda County and East Bay Green Corridor Initiative policies. The following is brief list of some of those policies:

STATE, LOCAL AND REGIONAL POLICIES REGARDING WIND ENERGY

- California Government Code Section 65893.
 - (a) The Legislature finds and declares all of the following:
 - (1) Wind energy is an abundant, renewable, and nonpolluting energy resource.
 - (2) Wind energy, when converted to electricity, reduces our dependence on nonrenewable energy resources, reduces air and water pollution that result from conventional sources burning fossil fuels, and reduces emissions of greenhouse gases.
 - (3) Distributed generation small wind energy systems also enhance the reliability and quality of electricity delivered by the electrical grid, reduce peak power demands, increase in-state electricity generation, diversify the state's energy supply portfolio, and make the electricity supply market more competitive by promoting consumer choice.

(4) Small wind energy systems designed for onsite home, farm, and small commercial use are recognized by the Legislature and the State Energy Resources Conservation and Development Commission as an excellent technology to help achieve the goals of increased in-state electricity generation, reduced demand on the state electrical grid, increased consumer energy independence, and nonpolluting electricity generation.

- California Government Code Section 65897:
It is the policy of the state to promote and encourage the use of distributed renewable energy systems and to limit obstacles to their use, and it is the intent of the Legislature that local agencies encourage the installation of distributed renewable energy systems by removing obstacles to, and minimizing costs of, permitting distributed renewable energy systems.
- California Public Resources Code Section 25300.
(a) The Legislature finds and declares that clean and reliable energy is essential to the health of the California economy and of vital importance to the health and welfare of the citizens of the state and to the environment.
- California Public Resources Code Section 26001:
The Legislature hereby finds and declares all of the following:
 - (a) It is essential that the state, in cooperation with the federal government, use all practical and commercially feasible means to promote the prompt and efficient development of energy sources which are renewable or which more efficiently utilize and conserve scarce energy resources.
 - (b) The promotion of energy sources which reduce the degradation of the environment and which protect the health, welfare, and safety of the people of this state is in the public interest and serves a public purpose.
 - (c) It is essential that the state, in cooperation with the federal government, use all practical and commercially feasible means to promote the development and commercialization of advanced transportation technologies to conserve energy, reduce air pollution, promote economic development and jobs, and protect the health, welfare, and safety of the people of the state.
- California Public Resource Code Section 25695
In enacting this chapter, the Legislature hereby finds and declares all of the following:
 - (a) The development and commercialization of energy technologies and energy conservation is a vital element in meeting the state's energy needs.

EAST BAY GREEN CORRIDOR POLICIES

- Support local green businesses in a way that expands markets and/or removes barriers;
- Leads to Green Corridor economic development and high quality job creation;
- Connects to workforce training for a variety of wage and skill levels, providing career ladders for low income wage earners whenever possible;
- Improves the environment and quality of life by reducing greenhouse gas emissions and toxicity, improving water conservation, or conserving natural resources.

SAN LEANDRO GENERAL PLAN

- Section 7.03 Sustainable Manufacturing
Promote environmentally sustainable manufacturing practices by San Leandro businesses and focus business attraction efforts on clean, environmentally friendly businesses.

SAN LEANDRO CLIMATE ACTION PLAN

- Section 3.3 Goal: Increase residential, commercial and industrial renewable energy use
“On-site renewable energy systems offer another important lever for reducing emissions...To encourage on-site renewable energy, one common strategy employed by other local governments is to offer expedited permitting procedures for renewable generation and green buildings.”

DETAILS OF THE PROPOSAL

To continue its leadership in the area of renewable energy and to grow in San Leandro, Halus Power Systems requires an on-site wind turbine. The turbine will allow the company to do on-site research and development to continue the development of more efficient technologies. The addition of the wind turbine will allow the company to grow in San Leandro and improve its competitive position in the wind energy field. The wind turbine will also reduce or eliminate the dependence upon fossil fuel-based sources for the energy demands of their factory and office building.

Turbine Structure Details

(Note: Exhibit A attached, includes typical design and structural details for the turbine. Precise engineering calculations will be designed by a registered structural engineer based upon a geotechnical analysis of existing soil characteristics. The design will comply with all building and seismic codes. Details will be submitted as part of the building permit application.)

Location:

The proposed turbine would be located as shown on Exhibit B, with a minimum setback of 100' from the nearest property line or structure.

Dimensions:

Height: 80 feet in height to top of structure as shown in Exhibit A attached. Blades would extend 20 feet from the structure.

Diameter: The below grade concrete structural foundation will be approximately 20 feet in diameter. The foundation design loads will be designed by a registered structural engineer. The portion of the foundation that will be above ground and visible will be approximately 8 feet in diameter (to support the 6 foot diameter tower) and approximately 1 foot above finished grade.

Operations: The turbine will operate at times when wind conditions are suitable. The blades will rotate at a maximum of 44 revolutions per minute (rpm's) unlike smaller turbines with direct current (DC) power that can operate in excess of 300 rpm's. The slower blade rotation makes it operate quietly and with no impact to bird populations as the blades are clearly visible due to their slow speed. We have attached noise information for a similar (but slightly larger and louder model), which shows that the noise levels are below the standard industrial noise levels for the property at it's property lines.

Energy Generation: The proposed turbine will generate a peak of approximately 50 kW of electricity, which will significantly reduce Halus Power System's dependence on electricity created from fossil fuels. The annual production is expected to be about 75,000 kWh's, which is very close to current electrical consumption of the current operations. This is a specific goal of the San Leandro Climate Action Plan.

Noise: As noted above, the proposed turbine will operate quietly with fewer noise impacts than other allowable and ubiquitous noise-generating equipment in the I-G Zoning District. Noise levels for the proposed turbine will not exceed 55 dBA and will therefore be well below the ambient noise levels in the area and significantly lower than the noise levels illustrated on Table 6.1 and Figures 6.2 and 6.3 of the City's General Plan. In addition, the property is located near and significantly affected by the aviation noise of aircraft approaching the Oakland International Airport. [Please refer to Exhibit D for Noise Specifications]

Design /Aesthetics: The proposed wind turbine will be located on a "mono-pole" in the interior of the site. The mono-pole design reduces the profile and visibility of the structure, especially when compared to the "lattice-structure" design of the nearby electrical high tension wires.

(Another important benefit of the proposed mono-pole design is that it creates no opportunities for birds to perch and thereby reduces the risk to bird populations.)

Exhibit C includes a number of photo simulations showing the location of the proposed turbine tower from various vantage points. The applicant used a crane arm elevated to 80 feet in height. The end of the crane arm simulates the height of the top of the turbine tower. A 20-foot extension pole was placed at the end of the crane arm to simulate the length of the turbine blades. In the proposed location and given the many other tall structures including PG&E high tension lines and a recently approved cell phone antenna pole, the proposed wind turbine will create no adverse visual impacts. Further, for many, the view of a wind turbine is considered an attractive and interesting addition to an industrial areas and a reminder of the City's commitment to alternative energy sources.

Compliance with Building Codes: The proposed wind turbine will comply with all building codes including electrical, mechanical, structural, seismic and civil engineering requirements.

Compliance with applicable Federal Aviation Administration requirements: The proposed wind turbine will comply with all requirements of the Alameda County Airport Land Use Commission. An application has been submitted to the County for approval of the wind turbine. According to Cindy Horvath, Alameda County Planner, the proposed turbine is unlikely to be denied by the County or the FAA. The City's approval of the project will include a condition of approval requiring compliance with all conditions of approval of Alameda County and the FAA.

Environmental Review: The analysis of potential environmental impacts and the answers to the Environmental Checklist in Exhibit C, demonstrate that the proposed project will not have a significant effect on the environment.

ZONING

The property is located in the I-G zoning district, San Leandro's most intensive industrial zoning district.

SURROUNDING LAND USES

Properties in the vicinity include an adjacent recycling operation, warehousing and distribution facilities, the Ora Loma Sanitary District wastewater operations, a PG&E

electrical sub-station and large high-tension electrical lines. In addition, an 80-foot tall cellular telephone tower is located to the southwest. The Heron Bay residential community is located to the north across San Lorenzo Creek Storm water Drainage Channel. A row of tall trees along the property at the creek edge provides a substantial visual screen obstructing the view of the property from the homes.

ZONING APPLICATION REQUEST – HEIGHT VARIANCE

Pursuant to Zoning Code Section 2-706-32: “Telecommunications Antennae and/or Alternative Tower Structures up to sixty (60) feet in height” are permitted in the I-G Zoning District. This application is seeking a Variance to allow a tower structure of 80 feet. This tower would be an “accessory use” to the primary manufacturing/ R&D use in the building and on the site.

ANALYSIS/DISCUSSION

The variance for the proposed wind turbine is appropriate, necessary. It is an important step in meeting the City’s Climate Action Plan. It is also important from a land use and economic development perspective. Halus Power Systems is an important example of “green” businesses that want to locate in San Leandro. The types of research and development that the wind turbine will promote, could result in significant growth in employment and tax revenue to the City. In order to approve the Variance, the Board of Zoning Adjustments must approve required findings. The findings for approval can be made in the affirmative as follows:

1. That because of special circumstances or conditions applicable to the subject property, including narrowness and shallowness or shape, exceptional topography, or the extraordinary or exceptional situations or conditions, strict application of the requirements of this Article would result in peculiar and exceptional difficulties to, or exceptional and/or undue hardships upon, the owner of the property;

The subject property is a “panhandle lot” with no visibility from Grant Avenue. Views from the north are obscured by the row of tall trees that have been planted along the southern property line. Access to the property is from a 576-foot long driveway. The location of the wind turbine would minimize any view from the street or nearby properties. A height of 80 feet, which is necessary for the turbine to function properly and efficiently, is easily accommodated on this particular site due to the property’s shape and location.

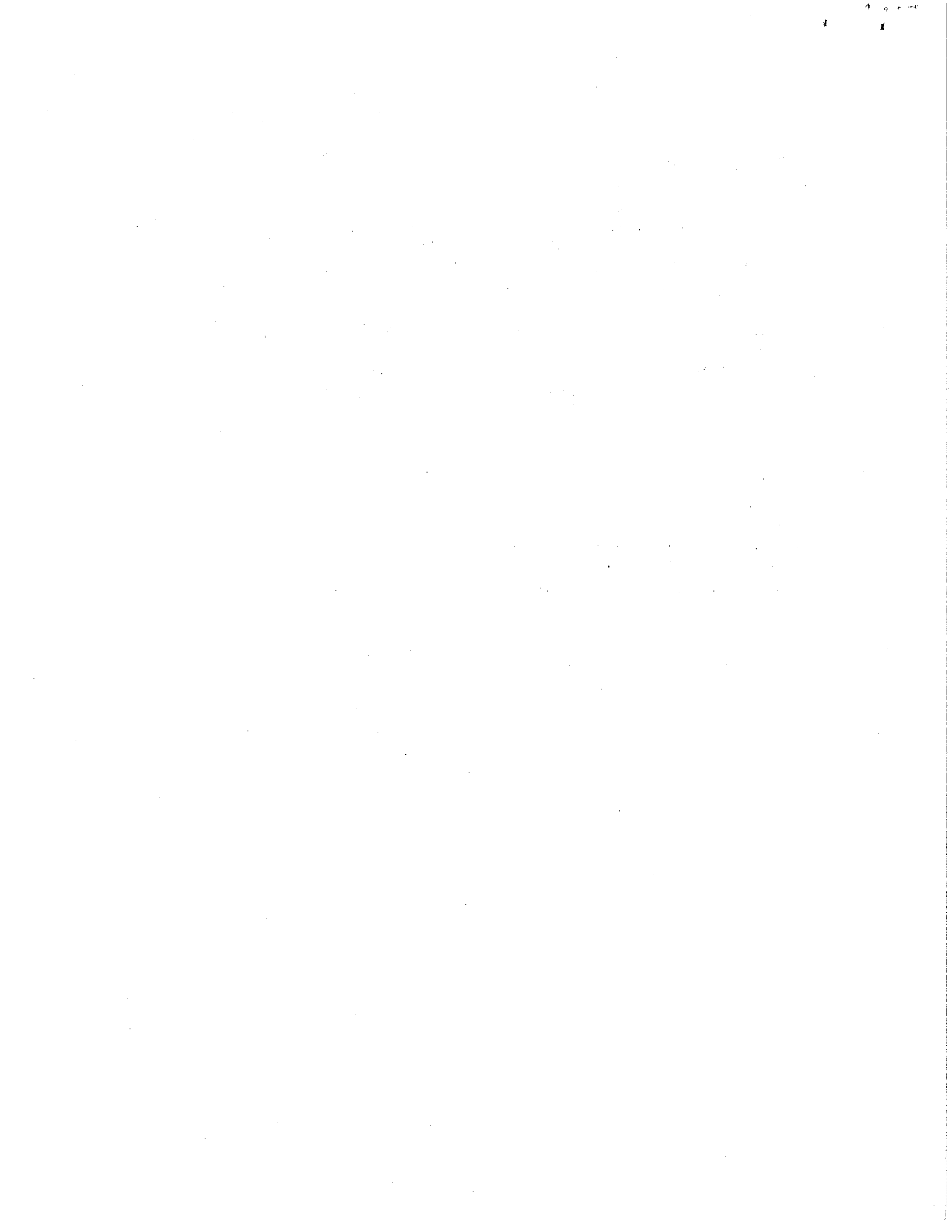
2. That the relief may be granted without substantial detriment to the public good, without substantial impairment of affected natural resources, and without significant detriment or injury to property or improvements in the vicinity of the development site or to the public health, safety or general welfare; and

No detriment to the public good will occur as a result of this Variance. The proposed wind turbine will be located at the interior of the 5-acre site and the site

itself is virtually invisible from nearby properties. Further, it will be located a minimum of 100 feet from any property line or structure. Therefore no detriment, impairment or injury to property or the public health, safety or general welfare will result.

3. That granting the application is consistent with the purposes of this Code and will not constitute a grant of special privilege inconsistent with limitations on other properties in the vicinity and in the same zoning district.

The approval of this application is consistent with City, State and County policies related to the promotion of renewable energy sources and the City's General Plan and Zoning Code. It would not constitute a grant of special privilege since those policies would apply to all properties in the vicinity.



January 31, 2013

Elmer Pendaranda
City of San Leandro
835 E. 14th St
San Leandro, CA 94577

RE: Halus Power Systems Wind Turbine (PLN 2012-00006) – Mitigated Negative Declaration

Mr. Pendaranda –

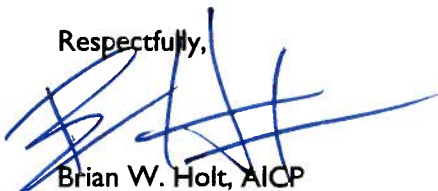
The East Bay Regional Park District has reviewed the recirculated Mitigated Negative Declaration and supplemental materials for the Halus Power Systems Wind Turbine proposed at 2539 Grant Avenue in San Leandro. The project proposes the development of a single 80-foot wind turbine (100 feet with blade length) that will generate up to 75,000 kWh of energy per year. The District operates the San Francisco Bay Trail adjacent to the project site and the Hayward Regional Shoreline located to the south.

The District has no further comments on the project at this time.

We remain interested in the development of clean energy and working to ensure that the East Bay's transition towards non-carbon energy sources does not result in unintended impacts to our regions biodiversity and quality of life. We look forward to working with the City of San Leandro on future proposals.

Thank you for the opportunity to review the project and provide comments. Please feel free to contact me should you have any questions at (650) 465-0561 or bholt@ebparks.org.

Respectfully,



Brian W. Holt, AICP
Senior Planner

Cc: Larry Tong, Interagency Planning Manager
Mark Taylor, Hayward Regional Shoreline Supervisor

Board of Directors

John Sutter
President
Ward 2

Ayn Wieskamp
Vice-President
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Treasurer
Ward 1

Ted Radke
Secretary
Ward 7

Beverly Lane
Ward 6

Carol Severin
Ward 3

Doug Siden
Ward 4

Robert E. Doyle
General Manager

Penaranda, Elmer

From: Phillip Tong [hkpt@hotmail.com]
Sent: Monday, January 28, 2013 4:56 PM
To: Penaranda, Elmer
Subject: Halus power system

Hi,

I just want to voice my object to have a wind turbine anywhere within San Leandro, or anywhere around the bay, period.

With airplanes descending to SFO and Oakland Airport, as a San Leandro resident, there's no way I want our beloved city to identified or associated to a wind turbine as location. Can you image you tell your friends or relatives from out of town about San Leandro, and the first response is something like this, "oh, that coastal , down with an ugly wind turbine, I thought only herds live around wind turbines".

-Phillip Tong
San Leandro resident since 2001.

February 6, 2013

Board of Zoning Adjustments
City of San Leandro

c/o Elmer Penerande
City Planning Dept.

COMM. DEVEL. DEPT.

FEB - 7 2013

SAN LEANDRO
RECEIVED

Comments on Application for Variance — Wind Turbine at 2539 Grant Avenue

Recommendations

You should (1) deny the application for variance because it cannot be supported by required findings and (2) recommend to the city council that it adopt a moratorium on installation of wind turbines in order to explore the conditions under which such turbines will be permitted in the city.

Background

We urgently need need to develop energy sources other than oil and coal but at the same time,, particularly because of the urgency, we also need to proceed in an orderly manner that does not place undue, unwanted, and unnecessary burdens on the environment and on ourselves.

The proposal for the wind turbine at Halus Power Systems first caught my attention because of its location near the San Lorenzo Creek and the shoreline. I have long been active in advocating for progressive policies regarding creeks, flood control, and shoreline development. A decade ago I founded the Friends of San Lorenzo Creek. I am also interested in promoting alternatives to oil- and coal-dependent power systems. Thus, in addition to my concerns for due process, discussed below, I am concerned that inappropriate siting of alternative energy sources will have the effect of undermining popular support for these alternatives.

The Noise Issue

The applicant has provided the City with information about the design criteria noise emissions of the wind turbine it wishes to install. There are two material and important issues with respect to this information. I am familiar with these issues because one of my specialties as a public interest lawyer is federal regulations for airport planning, particularly regulations concerning aircraft noise and abatement.

/ Continued ...

First, use of the A-weighted decibel to calculate noise, as done for the applicant's wind turbine, eliminates the low-frequency air pressure waves produced by wind turbines and helicopters and other rotating machines. The low-frequency spectrum has distinctive adverse effects on humans and wildlife, effects that are entirely different from the higher-frequency sounds within the range of human hearing. Low-frequency sound waves are largely vibratory, at least for humans, and are a documented source of feelings of anxiety and dread that have physiological effects. Low-frequency noise is detected using the C-weighted decibel.

In the record presented to you for the Feb. 7 hearing there is no quantitative evidence concerning low-frequency sound of the wind turbine and its potential impact on humans and wildlife in the sensitive shoreline environment. Indeed, there is no evidence in the record that this issue was even considered. (For a good summary of the research of health effects of wind turbine noise, see "Noise Radiation from Wind Turbines Installed Near Homes: Effects on Health, with an Annotated Review of the Research and Related Issues," Barbara Frey and Peter Hadden, Feb. 2007, posted at www.windturbinoisehealthhumanrights.com.)

Second, the information about the design criteria noise emissions of the wind turbine, provided by the applicant, is based on guidelines that are not current. The design standards of the manufacturer (a company in Denmark) comply with 1993 guidelines of the Danish Ministry of the Environment (see "Noise Resume of Vestas V29-225 kW Wind Turbine" submitted by applicant).

The Danish Ministry of the Environment recently revised its Statutory Order on Wind Turbines to include limits for low-frequency noise. The ministry has explained this change: "It was earlier the opinion of the [Danish] Environmental Protection Agency that low-frequency noise from wind turbines does not constitute a problem, since the noise levels do not exceed the limits for the 'normal noise' from wind turbines. But there has been concern about low-frequency noise in areas where wind turbines are being planned. Industry, municipalities, and citizens have thus requested specific rules for this type of noise." (See **attachments 1 and 2** from the ministry: "Noise from Wind Turbines" and "Q&A: Low-frequency Noise from Wind Turbines".)

While the Danish Statutory Order does not apply to turbines certified before 2012, I bring this up to illustrate that low-frequency noise is now a matter of regulatory concern. In addition to the question of impacts from wind turbines, the U.S. Federal Interagency Committee on Aviation Noise in recent years has established low-frequency noise as a research and regulatory priority, a major step forward since aviation interests have fought hard for decades to preserve use of the A-weighted decibel in measuring aircraft noise and thus continue to ignore the predominant source of annoyance in aviation noise.

/ Continued ...

Definition of a Structure in the Zoning Ordinance

There are strong reasons, based on the language of the city's zoning ordinance, to expect that the standards for "structures" in the city's zoning ordinance are meant to apply to buildings and other stationary structures, not "structures in motion". To assume that the term "structure" in the zoning ordinance includes "structures in motion" (i.e., structures whose principal function is to be in motion) can lead to absurdities in the interpretation of the zoning ordinance.

The zoning ordinance defines "structure" (sec. 1-304) as "anything constructed or erected that requires a location on the ground," including swimming pools but not walls. The zoning ordinance separately addresses "mechanical structures" (such as HVAC structures and generators that sit on top of buildings) and telecommunications towers.

If the city wishes to include "structures in motion" in standards that apply to "structures", it should do so expressly in the zoning ordinance.

In the "Applicant's Statement" included in your meeting packet, Halus Power Systems claims that the "zoning authority" for the wind turbine is in sec. 2706(A), which is a list of permitted uses in an IG zone. This list includes "(32) Telecommunications Antennae and/or Alternative Tower Structures up to sixty (60) feet in height. [See Section 4-1686: Wireless Telecommunication Facilities {as per Ordinance No. 98-009}]". The language appears to mean telecommunications towers only; what is meant by "alternative tower structures" is anyone's guess, but it is not reasonable to interpret this as something other than a tower supporting telecommunications antennae.

The Variance

Variations are one means (the other is the conditional use permit) for providing reasonable and fair flexibility in implementing zoning standards. The notion of the variance, and the rules and guidelines for granting a variance, are well established in California case law. A variance cannot be a way around zoning standards. It is intended to provide relief in the form of minor variations where the strict application of a standard would create an undue burden on a particular parcel. Variations thus arise from the condition of the land and nothing more.

The City of San Leandro has adopted these well-established rules for granting variations in its zoning ordinance (secs. 5-2202(A) and 5-2212(B)).

/ Continued ...

The applicant is asking the city to give it a major exception to the height standard, allowing it to erect a structure of 100 feet (80 foot tower plus 20 foot rotating propeller), which would exceed the zoning standard by 67 percent. The magnitude of the variation alone is contrary to the well-established purpose of variances.

Further, this exception is not predicated on any features of the applicant's parcel that would deprive him of parity when the height standards are applied to similar parcels. Absent this, your board cannot make the first finding required by city's zoning ordinance (sec. 5-2212(A)):

1. That because of special circumstances or conditions applicable to the subject property, including narrowness and shallowness or shape, exceptional topography, or the extraordinary or exceptional situations or conditions, strict application of the requirements of this article would result in peculiar and exceptional difficulties to, or exceptional and/or unique hardships upon, the owner of the property.

You are required to make all findings stated in the ordinance, so that failure to support any one finding is fatal to approval of the variance. ("Failure to make all the required findings under subsections A, B, or C shall require denial of the application for a use permit." Sec. 5-2212(D).)

I stress again that the "special circumstances or conditions" on which a variance is predicated are features of the parcel. All other factors are immaterial and irrelevant under the law. Granting a variance is a "quasi-judicial" action — it cannot legally supplant a legislative action, i.e., adopting zoning standards. Apart from the question of due process of law, using variances to override zoning standards is bad planning practice leading to disorderly and inequitable city planning and eventually eroding public faith in the official planning process.

The city planning staff in its recommended findings of fact for the variance cites the following "special circumstances" of the applicant's parcel:

- (1) "Irregular flag shape of the lot, its sizeable land area".
- (2) The lot "is not immediately adjacent to occupied properties".
- (3) The lot's "clear and unobstructed location to the westerly San Francisco Bay winds, which make it a candidate for the proposed turbine."
- (4) "The flag lot moves the turbine away from street view".
- (5) "The large size of the lot provides adequate setbacks from adjacent properties and uses by situating it on the center of the large parcel."

/ Continued ...

None of these are circumstances or conditions of the applicant's parcel that put him at a disadvantage compared to owners of all other parcels subject to the height limit. Instead, staff cites five reasons why the applicant's parcel is an ideal location for installation of a wind turbine generator. But such reasons are completely irrelevant to the rationale for a variance mandated by the city zoning ordinance and by well-established California law.

If parcels nearest the bay are ideal for wind turbine generators, the city should develop an overlay district or other planning measure that will promote and permit wind turbines. But approving variances to an existing zoning standard is not a lawful means to that end.

Impact on Property Values

I found nothing in the meeting packet for Feb. 7 that addresses the question of the potential adverse impact of the proposed wind turbine on nearby residential property values. While the cause/effect of such impacts are very difficult to demonstrate, evaluation of such impacts is a recognized specialty in real estate appraisal. (See for ex. *Real Estate Damages: Applied Economics and Detrimental Conditions*, 2nd ed., Randall Bell, Appraisal Institute. I first learned of this book because of its treatment of the question of noise impacts from the Sea-Tac International Airport.)

If the proposed wind turbine is built, and owners of property near the proposed wind turbine were to discover later in time that the market value of their property had been affected, a complex (and expensive) round of litigation could result involving the city as well as Halus Power Systems.

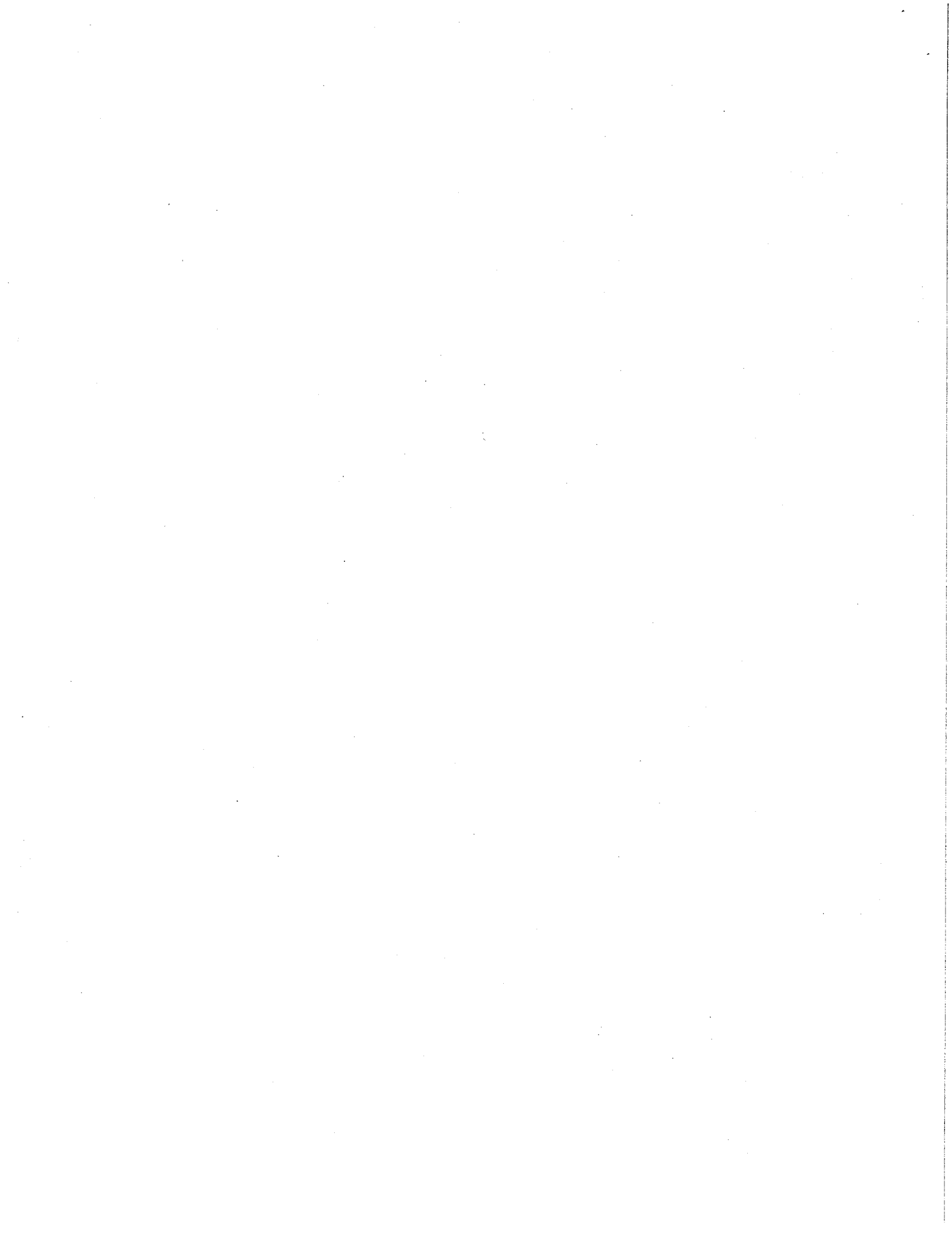
I enclose for your consideration a letter from a real estate appraiser saying that while the question of adverse impact is open, there is likely such an impact from wind turbines (**attachment 3**).

Respectfully,



Howard Beckman, Esq.
1261 via Dolorosa
San Lorenzo 94580
hpb@frys.com

- Encl: (1) "Q&A on Low-frequency Noise," Danish Ministry of Environment
(2) "Noise from Wind Turbines," Danish Ministry of Environment
(3) Letter from David Maturen on impact of wind turbines on property value



Danish Ministry of the Environment

Environmental Protection Agency

Q&A: Low frequency noise from wind turbines

The Environmental Protection Agency has revised the Statutory Order on Wind Turbines to include limit values for low frequency noise. The new limit values apply to turbines that are registered after January 1st 2012 where the new statutory order entered into force.

[Link to an English translation of the revised Statutory Order on noise from wind turbines.](#)

Please note that the Statutory Order is valid for wind turbines in Denmark, and that the methods for calculation of wind turbine noise are adapted to Danish conditions. This goes for the values stated for correction for ground effect, which are based on the general applicable method Nord 2000, as well as for the values stated for sound insulation of dwellings, which are based on measurements of sound insulation at low frequencies in 14 representative Danish dwellings.

[Read more about the regulation of noise from wind turbines \(in Danish\)](#)

[Read more about wind turbines on the Wind Turbine Secretariat website \(Danish Nature Agency\) \(in Danish\)](#)

Questions & answers:

What is low frequency noise?

Noise is unwanted sound. Noise can involve both high-pitched sounds (from high frequency sound waves) and deep sounds (from low frequency sound waves). Low frequency noise can for example be the hum or buzz from a compressor, rumble from a boiler or a combustion plant or the rumbling of an idling engine.

Wind turbine noise emanates from the rotation of the blades and from the nacelle machinery. The noise from the blades is a characteristic swishing sound, which varies in rate with their rotation. Normally this does not contain much low frequency noise. Noise from the machinery can consist of both a high-pitched wailing (high frequency) and buzzing sounds (low frequency).

Low frequency noise is technically defined as noise within the frequency range of 10 – 160 Hz (between 10 and 160 cycles per second).

Is low frequency noise a problem in relation to wind turbines?

It was earlier the opinion of the Environmental Protection Agency that low frequency noise from wind turbines does not constitute a problem, since the noise levels do not exceed the limits for the 'normal noise' from wind turbines.

But there has been concern about low frequency noise in areas where wind turbines are being planned. Industry, municipalities and citizens have thus requested specific rules for this type of noise.

A detailed analysis, by the Environmental Protection Agency, of several specific projects based on new industry information has indicated that the new rules can be a challenge for certain new types of serial produced wind turbines in specific situations.

No evidence suggests that low frequency noise is more dangerous than other forms of noise.

Are giant wind turbines a particular source of low frequency noise?

All turbines can emit low frequency noise, irrespective of their size either in terms of electrical power (megawatts) or height.

Current knowledge of the subject is that large wind turbines emit more noise than small ones, and should therefore not be located as close to properties. However, there is no clear correlation between the size of the wind turbine and the level of low frequency noise it emits. This depends more on construction type than on size.

In general there is no clear connection between the size of a wind turbine and the characteristics of the emitted sound, other than large wind turbines rotate slower so the blade noise is modulated with a lower period.

Do wind turbines emit infrasound, and is this dangerous?

Wind turbines also emit infrasound, which is sound at very low frequencies. Infrasound is sensed in the same way as other sounds and is audible to the human ear if sufficiently strong. When infrasound is audible, it becomes annoying. Where infrasound is inaudible, it does not affect health.

The wind turbines we know in Denmark today emit very weak infrasound, which is below hearing threshold, even when in close proximity. Infrasound does therefore not pose a problem in regard to modern wind turbines. The technical definition of infrasound is sound that is lower in frequency than 20 Hz (fewer than 20 cycles per second).

What is the new limit value for low frequency noise?

The new regulation is based on a 20 decibels (dB) limit for the low frequency noise level, calculated indoors, for wind speeds both of 6 and 8 m/s.

The limit value for noise from wind turbines is 44 dB outdoors near residences in the open country and 39 dB in residential areas, for a wind speed at 8 m/s.

What are the consequences of the new limit value for low frequency noise?

After the new noise regulation has entered into force on January 1st 2012, wind turbines registered with municipalities will have to comply with both the current limit values for the 'normal noise' and the new limit value for low frequency noise

The municipality has an obligation to inspect wind turbines to ensure that noise disturbance is not excessive and can require wind turbine owners to have the noise generated by their turbines measured to ensure that regulations are complied with. This also applies to the new limit for low frequency noise.

What about existing wind turbines?

The rules do not affect turbines that are registered with the municipalities earlier than January 1st, 2012. It will apply only to turbines that are registered after the Statutory Order entered into force January 1st 2012.

When existing wind turbines are renewed, the new regulations will apply to the replacement turbines.

What should I do if I am having problems with low frequency noise?

If noise has become a nuisance and the problem cannot be solved by contacting the company (or wind turbine owner) causing the noise, you can take the matter to the municipality.

Municipalities are the supervisory authority of wind turbine noise monitoring. Only wind turbines registered with the municipality after January 1st 2012 are subject to the binding limit for low frequency noise.

If a wind turbine has recently been registered with the municipalities, will it exceed the new low frequency noise limit value?

In general, the Environmental Protection Agency does not expect problems relating to low frequency noise from wind turbines that keep current limits for the 'normal noise'.

In preparing the new regulations, the Environmental Protection Agency has found that certain serial produced wind turbines may have difficulties complying with the noise limit for low frequency noise in some specific situations.

Danish EPA Strandgade 29 1401 København K

Phone: 72 54 40 00

E-mail: mst@mst.dk

www.mst.dk

VAT: 25798376

EAN: 5798000863002

[Copied Feb. 5, 2013 from:

http://www.mst.dk/English/Noise/wind_turbine_noise/low_frequency_noise_from_wind_turbines/low_frequency_noise_from_wind_turbines_FAQ.htm]

Noise from wind turbines

Wind turbines emit a relatively weak but characteristic noise. The noise is mainly generated by the movement of the blades through the air. This produces a swishing sound in rate with the rotation of the blades, as well as noise from the turbine machinery. Machine noise can have a tonal character which is particularly annoying.

Noise limits are set for both weak and strong winds

Wind turbines must observe the noise limits in accordance with the Statutory Order on wind turbines. The noise limits apply to the total noise from all wind turbines and are set for both weak winds, when noise is found to be most annoying, and stronger winds. When the noise meets the noise limits it do not mean that the noise is inaudible. The limits have been laid down to ensure that no significant disturbance is experienced.

Read more about the Statutory Order on wind turbines (in Danish)

Download noise thermometer (PDF, 120KB), which provides examples of noise generation at various decibel levels.

Noise is calculated, because precise measurements are difficult to achieve

The noise from wind in trees and bushes makes it impossible to take sufficiently precise measurements of wind turbine noise at neighbouring properties under the necessary wind conditions. In addition to the wind noise, traffic noise and sound from birds and from noise sources inside or near the dwelling may disturb measurement of the low noise levels in question. Regulations governing noise experienced by neighbouring properties therefore calculate noise annoyance based on the wind turbines' noise emission.

Noise emission is measured relatively close to the wind turbine using a microphone mounted on a large plate on the ground. Here there is much less influence from the background noise. At the same time the wind speed is measured or preferable derived from the produced power, as this corresponds better to the wind speed acting on the blades. The wind turbine noise emission is determined on this basis.

Noise emissions are measured under both very windy conditions (8 m/s at 10 m height) and less windy conditions (6 m/s) to reflect the two sets of noise limits.

The calculation of the amount of noise emitted to neighbouring properties is very simple, because the noise is emitted from a significant height. The calculation presupposes downwind sound propagation. The calculated noise level is almost always higher than actual noise experienced by neighbouring properties.

Modern turbines emit significantly less noise

The latest wind turbines are considerably quieter than the first models of the 1970s and 1980s. In particular, noise from the gears and generator has been reduced. The modern wind turbine's nacelle is noise insulated and the generator and gears are mounted so that noise is dampened as much as possible. The design of the blades has been developed to mitigate noise.

NOISE FROM WIND TURBINES

Noise from a modern wind turbine is commensurate with that of a tractor. A typical 1980s turbine generating 100 kW and a 1990s turbine generating 500 kW both emit approx. 100 dB. This is only slightly less than a typical modern turbine generating 2-3 MW.

[Read more about regulations on noise from wind turbines](#)

MATUREN & ASSOCIATES, INC.
Real Estate Appraisers - Consultants
1125 E. Milham Avenue
Portage, Michigan 49002
269-342-4800

DT: September 9, 2004
TO: Michigan Wind Working Group
c/o John Sarver, Energy Office
RE: Impact of Wind Turbine Generators on Property Values

First of all I wish to thank you for including me in your email distribution list relative to the proceedings of the Wind Working Group. I have an interest in the topic as a Kalamazoo County Commissioner concerned with land use and regulation and as real estate appraiser interested in the issue of external obsolescence (loss or depreciation to property value from outside the property boundary). That economic obsolescence can come from adverse (nuisance) impacts such as visual (loss of viewshed), blade flicker (strobe effect), noise, ice throw from blades in winter, and other environmental impacts from ancillary installations. I am not aware of any plans to put a wind farm in the vicinity of any property that I own, so I have no personal interest one way or the other in this matter, other than wanting the rights all parties to be respected and protected.

I understand that you have as an item of discussion at your September 9, 2004 meeting the issue of property values. I have had some experience with research on this matter. Unfortunately, I have a prior commitment that day and will likely not be able to attend your meeting. Perhaps your committee is already aware of these valuation issues and studies, but I think that they are important to note in the context of promoting wind farms in our state.

As the Vice Chair of the International Right of Way Association's Valuation Committee, I had the opportunity to moderate a session at our International Education Conference in Philadelphia this June. I invited the authors of the two most often quoted studies on the issue of wind farms and property values. Fred Beck of the Renewable Energy Policy Project (REPP) and Dr. David Tuerck of the Beacon Hill Institute at Suffolk College both presented the findings of their respective studies. Both studies are available on the internet: www.repp.org and www.beaconhill.org.

The REPP study, *The Effect of Wind Development on Local Property Values*, is a 78 page report which was published in May 2003. They studied 10 areas of the country. The study surveyed assessed values and properties within 5 miles of a wind farm and showed no diminution in value to those properties due to the presence of the wind farms. Critiques have been made regarding the methodology used in that study.

The Beacon Hill Institute issued an initial 53 page report in October 2003 - *Blowing in the Wind: Offshore Wind and the Cape Cod Economy* and a follow up 34 page report in March 2004 - *Free but Costly: An Economic Analysis of a Wind Farm in Nantucket Sound*. The studies focus on Nantucket Sound in Massachusetts relative to the Cape Wind Associates proposed 130 wind turbine generator (WTG) offshore wind farm. The 2003 study projected 1) a small decline in tourism resulting in a loss of 1,173 to 2,533 jobs and 2) a decline in property values of 4.6% (10.9% for waterfront property) or \$1.35 billion and a concomitant loss in tax revenue to the area of \$8 million. Criticisms of that report have also been made.

Attachment 3

The Tennessee Valley Authority (TVA) study on a proposed wind farm in Tennessee consisting of 13 to 16 WTGs reviewed literature on the issue. Appendix F of the study cites several studies on wind farms and their impacts. Among those are:

1. The April 1996 Danish study: Social Assessment of Windpower - Visual Effect and Noise from Windmills - Quantifying and Evaluation. It concluded that 13% of people living near windmills considered them a nuisance. Property values showed a loss in housing prices from \$2,900 (for one WTG) to \$16,000 (for a 12 unit wind farm).
2. The ongoing study in Wisconsin thought to be done in 2003. My conversation with Steve Brick of the Energy Center of Wisconsin indicated that as of this Spring their study was not finished.
3. The TVA study does mention the value of a viewshed as a percentage of the value of improved property at 8% in Fairfax, Virginia and a South Carolina analysis regarding vacant lot premiums of 147% for an ocean view, 115% for a creek or marsh view, and 39% for a golf course view.

The 2002 Strutt & Parker study of the Edinbane Windfarm on the Isle of Skye notes that the proposed 41 turbines would have a major impact on the locality. They estimated that nearby property values would decline by over \$1 million. They also note at 6.18 of their report that "In Germany, Estate Agents report diminution in values of between 20% to 30% for properties in sight of wind farms. We understand that FPD Savills have reported similar levels of depreciation for properties in Norfolk."

The report of the Township of Lincoln Wind Turbine Moratorium Committee, Kewaunee, Wisconsin (2000 to 2002) notes that the Town of Lincoln building inspector compiled a list of home sales. The list compared the property's selling price as a function of the distance to an existing 22 WTG farm in the area. His conclusions were:

1. Sales within 1 mile of the wind farm prior to the installation were 104% of the assessed values and
2. Properties selling after the wind farm introduction in the same area were at 78% of the assessed value.

Anecdotal evidence from real estate agents near Victoria, Australia indicates a 20% to 30% decrease in property values for homes near WTGs.

A court case referenced in the February 14, 2004 edition of the Daily Telegraph (UK) refers to a house near Askam in the Lakes District. The buyers were not informed of the pending installation of 4 WTGs which were 360' tall and 550 yards from their new home. No mention was made in the seller's disclosure form, despite the fact that the seller had protested the proposed wind farm installation to the local government indicating a large loss in value to their property. The court, after listening to chartered surveyors (appraisers) for both sides, concluded that the property had suffered a 20% decline in value.

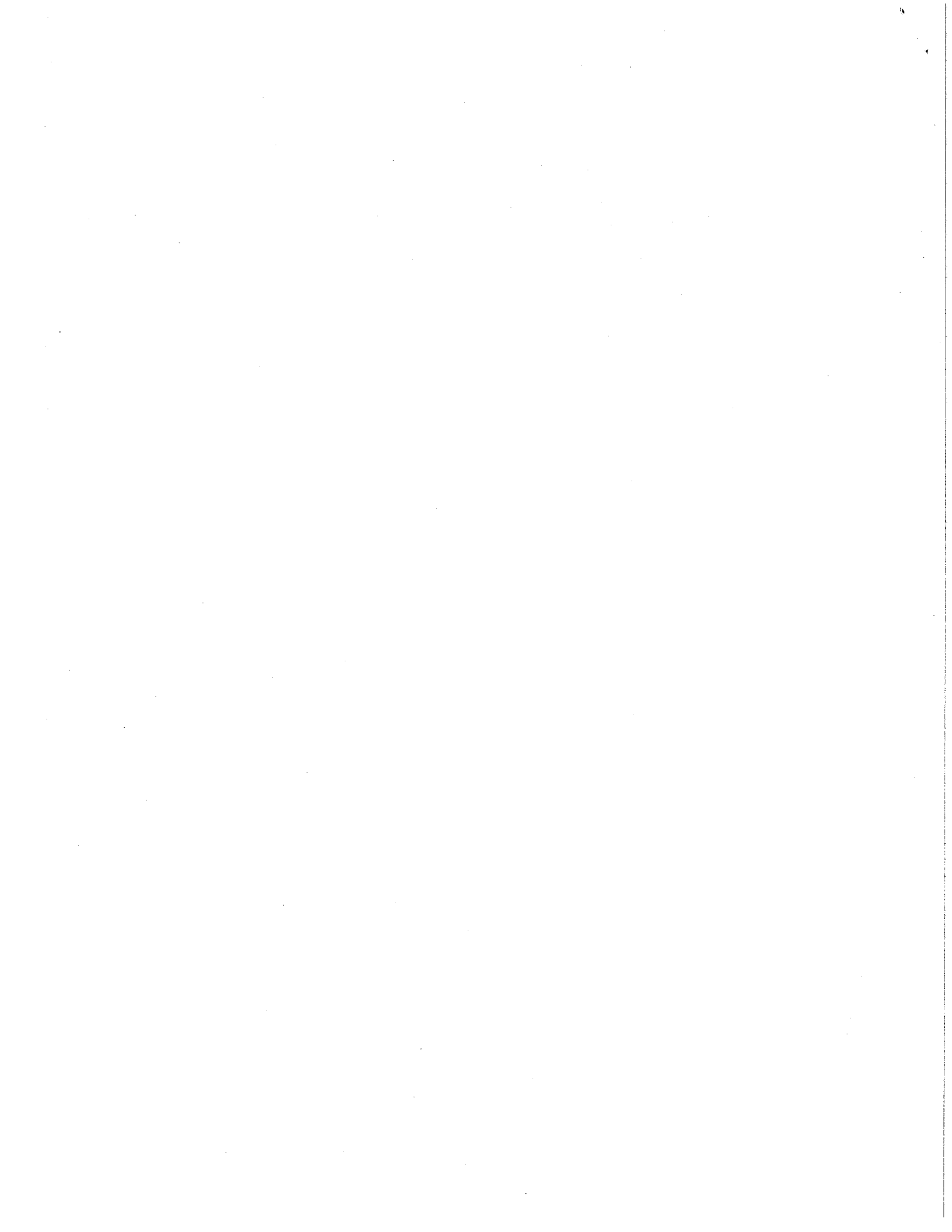
The above listing is not exhaustive, but a brief mention of studies that discuss the impact on communities and nearby property values by WTGs.

Is the "jury" still out on the impact of WTGs on property value? Yes, though there do appear to be several indications that a loss in value to neighboring properties is real possibility. Can any state agency conclude that wind farms do not have the potential for causing a nuisance and devalue nearby properties and cause a "taking"? No. Whatever report the Wind Working Group comes up with, it should be informational only, include the differing opinions that are out there, not be used to usurp local land use authority in regulating WTGs just like any other land use nor to deny property owners their rights. In

our quest for "energy independence" for our society in general, let us not forget the potential for economic loss to individuals as an unintended consequence. We should be prepared to compensate adjacent owners for any property rights (value) taken as a result of the introduction of wind farms.

Sincerely,
David C. Maturen, SR/WA
Certified General Real Estate Appraiser
Kalamazoo County Commissioner

Original document in pdf format [here](#).



WE, THE UNDERSIGNED, PETITION THE CITY OF SAN LEANDRO TO
 REQUIRE THE HALUS WIND TURBINE PROJECT TO COMPLETE AN
 ENVIRONMENTAL IMPACT REPORT (EIR) DUE TO ITS POTENTIAL
 ADVERSE IMPACT ON THE ENVIRONMENT AND THE
 PUBLIC'S HEALTH AND PROPERTY.

Printed Name	Signature	Address, City, Zip Code	Phone	E-mail
Guy Co Hon	[Signature]	317 Santa Paula	510-323-6918	guycohon@yahoo.com
Stan Metzger	[Signature]	317 Santa Paula	352-3296	None
Ursula Sung	[Signature]	315 Santa Paula		—
John Grannell	[Signature]	310 Santa Paula	510 667 0807	—
Virginia Wood	[Signature]	302 Santa Paula	510-367-1773	—
Lynda Ponzillo	[Signature]	223 Santa Susana	510-352-2823	
KVRI THOMAS	[Signature]	437 SANTA MONICA	510 828 9193	
STEVE THAMES	[Signature]	16115 E 14 ST	510-258-3503	—
Mike Siegfried	[Signature]	314 Santa Paula	510 614 7074	—
Dorothy Curtis	[Signature]	320 Santa Paula	510-895-8767	—
George Young	[Signature]	322 Santa Paula	510-614-7625	
Cj/ Dr. D. Young	[Signature]	324 Santa Paula	483 8453	
Robert Brink	[Signature]	362 Santa Paula	569-9056	
Vickie Beckman	[Signature]	362 Santa Margarita	510-483-8314	—
Sande Silva	[Signature]	144 Santa Teresa	362-5920	NA
Marlene Rabacker	[Signature]	131 Santa Teresa		
Karen Saitta	[Signature]	361 Santa Paula	510-347-1804	
Ida Jones Miller	[Signature]	253 Santa Susana	510 357-5294	
Jane Grayson	[Signature]	116 Santa Teresa	415-290-2782	
Frankie Arrington	[Signature]	428 Santa Monica	510-352-0478	

COMM. DEVEL. DEPT.

Return to: Heron Bay HOA, PAS, INC. 42612 Christy St. Fremont, CA 94538

MAR 12 2013

SAN LEANDRO
RECEIVED

Penaranda, Elmer

From: Josephine [josephine_zhao@yahoo.com]
Sent: Saturday, March 23, 2013 12:24 PM
To: Penaranda, Elmer
Subject: 4/1/2013 Oppose Wind Turbine

Dear Planner Penaranda,

Have received the public hearing notice for the appeal. And our family of 7, as well as the 10 families of half dozen people each (about 50 of us), oppose the approval of the enacting of the Halus wind turbine. What a monster backdrop! It disturbs the serene living community, the beautiful open space, the environment for the wildlife, including the rare swallows that make homes outside of our homes, and the draft and bad vibes it'll bring to the most beautiful section of San Leandro bay line. Don't forget, all streets in this particular community are named after a species of bird. If this project worsens, disturbs, expels, or hurts any of the bird population or any wildlife, or our human and community well being, San Leandro government is to be blamed. Are you and your department willing to take the blame for one little project?

Josephine
The Zhao Families
(650)238-8382

P.S., Would you please submit this to be our public comment on 4/1. Thanks!

GRANT AVE

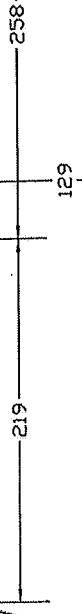
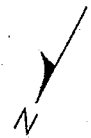
DRIVEWAY

PARKING

HALUS FACILITY

PROPOSED
TURBINE
LOCATION

PLN2012-00006
Exhibit A-Site Plan
February 7, 2013



SITE PLAN
SCALE (APPROX): 1" = 100'

NOTES:

DIMENSIONS IN FEET, UNLESS NOTED OTHERWISE.

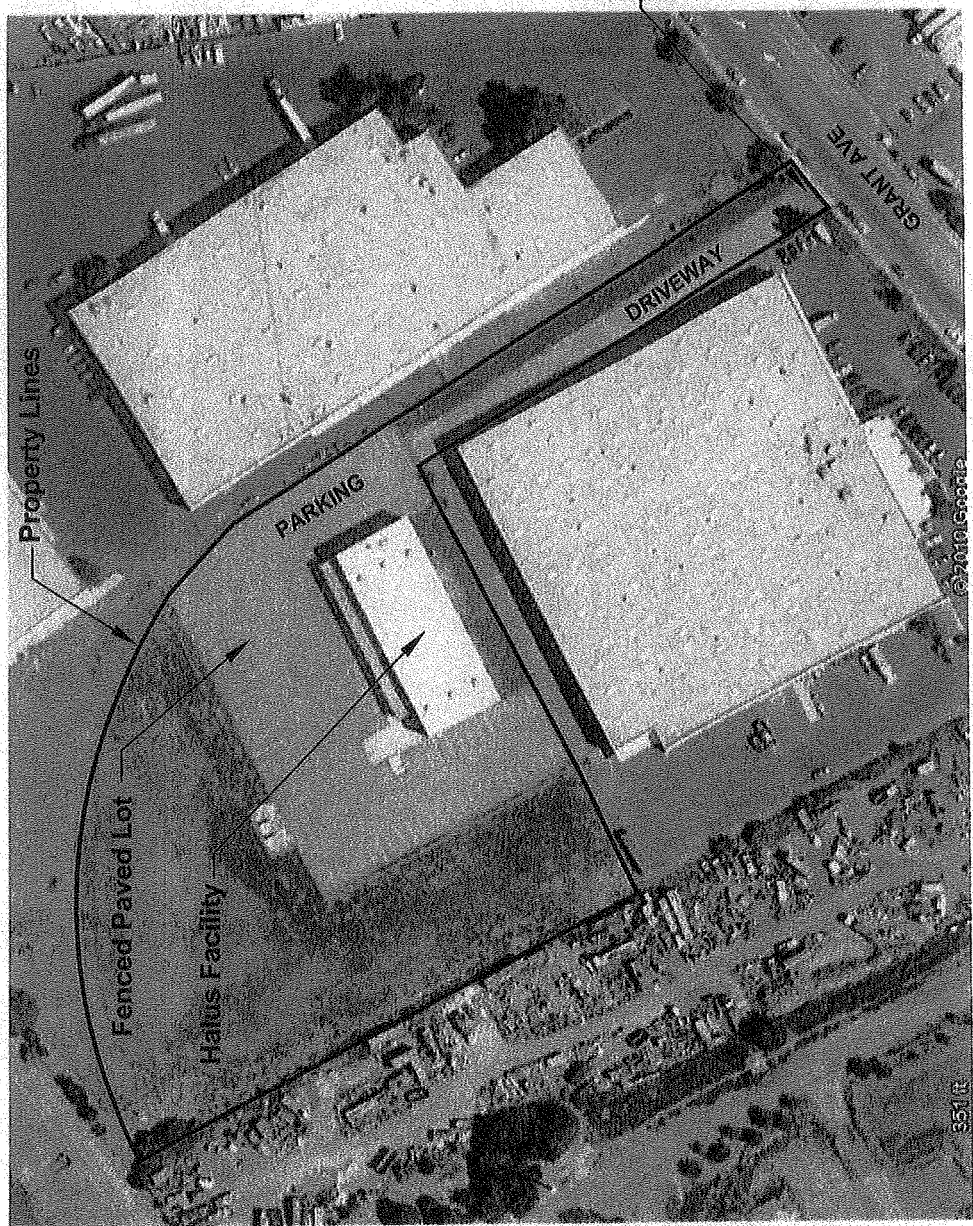
HALUS
POWER SYSTEMS

San Leandro, CA 94579
4150 278-2222 Fax: 4150-278-2224
www.halus.com

Business Name: Halus Power Systems

Facility Address:
2539 Grant Ave, San Leandro, CA 94579

SIZE	SCALE	DATE	DATE	SHEET	TOTAL
A	1" = 100'	3/2/12		3	4



HALUS
POWER SYSTEMS

2539 Grant Ave
San Leandro, CA 94579
510 278-2212 Fax: 510 278-2211
www.halus.com

Business Name: Halus Power Systems

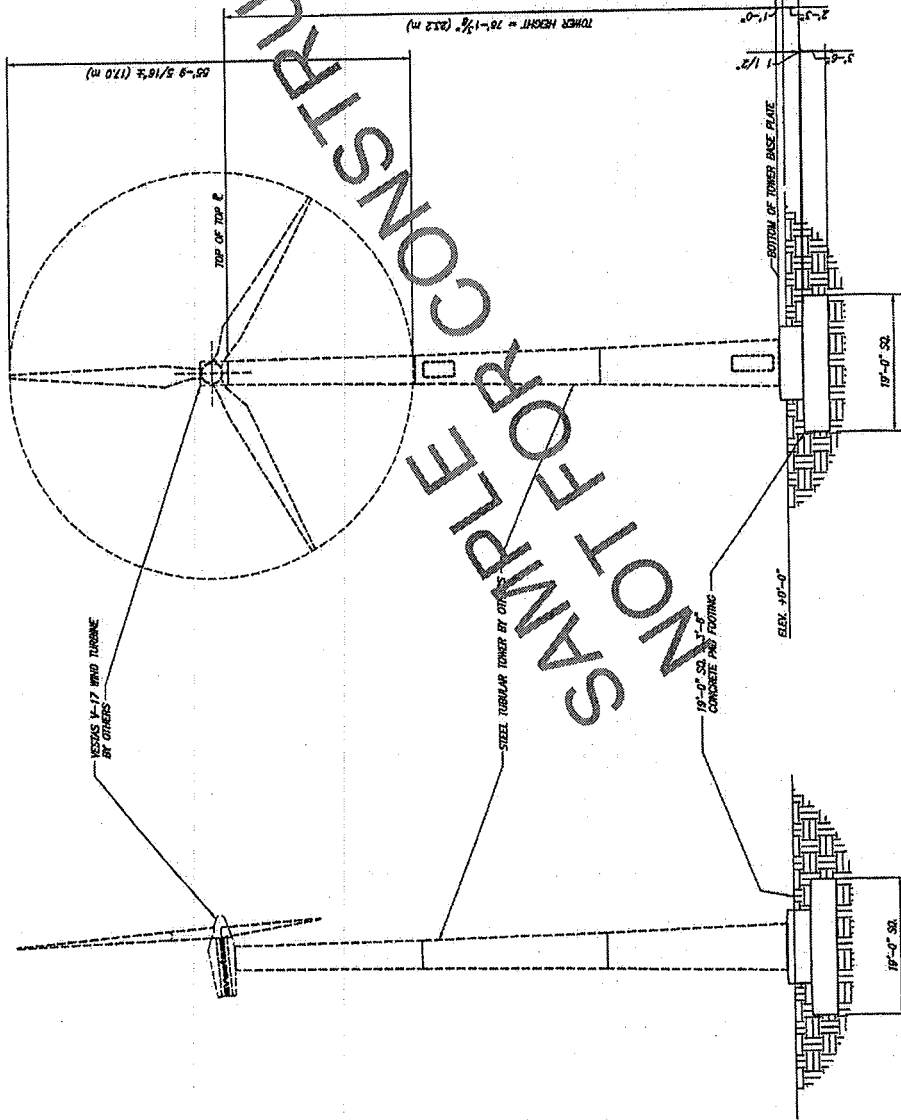
Facility Address:
2539 Grant Ave, San Leandro, CA 94579

SIZE	PERSON NO.	DWG NO.	REV
A			
SCALE	DATE	SHEET	
	3/1/12	2	4

FACILITY MAP
SCALE (APPROX): 1" = 140'

PLN2012-00006
Exhibit B-Aerial Photograph with
Existing Site Conditions
February 7, 2013

VESTAS V-17 WIND TURBINE FOUNDATION 23 METER TOWER • 3 SECTION



SHEET INDEX

No.	SO.	TITLE
1	SO.0	TITLE SHEET
GENERAL NOTES		
2	SO.0	GENERAL NOTES
3	SO.1	GENERAL NOTES
4	SO.2	GENERAL NOTES
FOUNDATION DETAILS		
5	SO.0	FOUNDATION PLAN, SECTIONS AND DETAILS
6	SO.1	FOUNDATION DETAILS

EDGEWOOD WIND ENERGY PROJECT
EDGEWOOD, NEW MEXICO, USA
FOUNDATION

HALLS POWER SYSTEMS
1200 W. 10TH ST.
DENVER, CO 80202

Nestor A. Aguirre
Professional Engineer



Nestor A. Aguirre
SIGNATURE (OR DIGITAL SIGNATURE ON ELECTRONIC FILE)
DATE 01.21.2011

TITLE SHEET

MINNER, STINNETT, KOO & AGRAYANI
STRUCTURAL & CIVIL ENGINEERS
1214 W. 5TH STREET, SACRAMENTO, CALIFORNIA 95811
PHONE (916) 524-0294 FAX (916) 524-3118

VESTAS V-17
WIND TURBINE FOUNDATION
23 METER • 3 SECTION

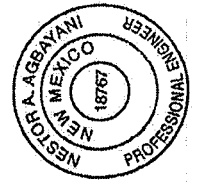
JOB NO. 11-0008
DATE 2011-01-27
SHEET 00.0

PLN2012-00006
Exhibit C- Elevations
February 7, 2013

NOTES: 02-084/03-037 SMLAR

EXETERWOOD WIND ENERGY PROJECT
EXETERWOOD, NEW MEXICO, USA
FOUNDATION

HULLIS POWER SYSTEMS
200 SOUTH AVENUE
200 UNIVERSITY, ST. LOUIS, MO 63103
TEL: (314) 782-2001



Nestor A. Agbayani
SIGNATURE (OR DIGITAL SIGNATURE ON ELECTRONIC FILE)
DATE 01-27-2011

GENERAL NOTES

MINNER, STINNETT, KOO & AGRAYANI
STRUCTURAL & CIVIL ENGINEERS
2715 94th STREET, SACRAMENTO, CALIFORNIA 95828
PHONE (916) 224-1722 FAX (916) 224-5166

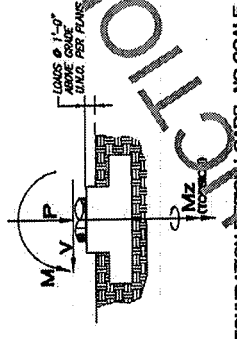
WIND TURBINE FOUNDATION
VESTAS V-17
23 METER • 3 SECTION

JOB NO. 11-008 DATE 2011-01-27 SHEET
NAME: *Thibault* CHECKED: *Thibault* DRAWN: *Thibault* PROJECT: *Thibault*
S1.0

VERTICAL (UNFACTORED) LOADS (1)
AT BOTTOM OF TOWER BASE FLANGE

	DEAD	WIND (2)
F (k)	29.6	-
V (k)	-	16.8
Mx (k-ft)	-	1011
Mz (k-ft)	-	0

NOTES:
(1) SPECIFIED BY OWNER/CONTRACTOR. PROVIDED BY OTHERS.
(2) TOWER STRUCTURE ENGINEER OF RECORD.
(3) TOWER FOUNDATION ENGINEER OF RECORD.
(4) COMPLETE FOR USE WITH ASCE 7-05 1.6 WIND LOAD FACTOR.



GENERAL NOTES

CODE DESIGN DATA (FOR FOUNDATION ONLY)
STATEMENT OF DESIGN CODE COMPLIANCE:
THE STATE BUILDING CODE BASED ON THE IRC.
LOAD CALCULATIONS ARE IN ACCORDANCE WITH ASCE 7-05 FOR COMPARABILITY WITH THE STATE BUILDING CODE. THE WIND SPEED AND WIND DIRECTION ARE BASED ON THE ASCE 7-05 MAPS. THE LOCAL WIND SPEED BUILDING CODES BASED ON THE ASCE 7-05 MAPS. THE LOCAL WIND SPEED BUILDING CODES BASED ON THE ASCE 7-05 MAPS. THE LOCAL WIND SPEED BUILDING CODES BASED ON THE ASCE 7-05 MAPS. THE LOCAL WIND SPEED BUILDING CODES BASED ON THE ASCE 7-05 MAPS.

NO.	ITEM	DESIGN VALUE	SITE VALUE	COMMENT
1	BASIC WIND SPEED	30	SAME	
2	WIND IMPORTANCE FACTOR	1.15	SAME	ICC, CH. II
3	EXPOSURE	C	SAME	
4	EXPOSURE COEFFICIENT (MAX.)	1.193	SAME	
5	WIND PRESSURE FOR SOLID ROOF THRESHOLD	0.678	SAME	
6	OTHER WIND DESIGN DATA	N/A	N/A	
7	TOPOGRAPHIC FACTOR (MAX.)	1.0	SAME	
8	VELOCITY PRESSURE (MAX.)	27	SAME	
9	EAST EFFECT FACTOR	0.857	SAME	
10	AIR DENSITY	1.225	SAME	

NOTES:
1. [NOT USED]
2. WIND DESIGN LOAD COMBINATIONS (PER STRUCTURE DESIGN):
 $U = (0.9 \text{ OR } 1.2) + (1.1) \text{ OR } 1.3 \text{ OR } 1.0$
3. [NOT USED]
4. ESTIMATED BY AREA FOR FOUNDATION ONLY - TOWER DESIGN IS BY OTHERS.

NO.	ITEM	DESIGN VALUE	SITE VALUE	COMMENT
1	SEISMIC IMPORTANCE FACTOR	1.0	SAME	SECTION 1607.0
2	SEISMIC RESPONSE COEFFICIENT	0.05	SAME	
3	SEISMIC RESPONSE COEFFICIENT	0.05	SAME	
4	SEISMIC RESPONSE COEFFICIENT	0.05	SAME	
5	SEISMIC RESPONSE COEFFICIENT	0.05	SAME	
6	SEISMIC RESPONSE COEFFICIENT	0.05	SAME	
7	DESIGN BASE SHEAR	7.1	SAME	
8	SEISMIC RESPONSE COEFFICIENT	0.05	SAME	
9	RESPONSE MODIFICATION FACTOR	1.0	SAME	See Note 1.
10	ANALYSIS PROCEDURE			RESPONSE SPECTRUM ANALYSIS
11	OTHER:			
	TOWER FUNDAMENTAL FREQUENCY	1	SAME	$\theta = 1/4$ HORIZONTAL
	FOUNDATION FUNDAMENTAL FREQUENCY	1	SAME	
	FOUNDATION FUNDAMENTAL STIFFNESS	1	SAME	
	FOUNDATION FUNDAMENTAL STIFFNESS (HORIZONTAL)	1	SAME	

NOTES:
1. SEISMIC DESIGN LOAD COMBINATIONS (PER STRUCTURE DESIGN):
PER CODE: $U = (0.9 \text{ OR } 1.2) + 1.4E + 1.6D + 0.5S$ OR $1.2D + 0.5S$
PER E.C. $U = 1.4E + 1.6D + 0.5S$

STRUCTURAL OBSERVATIONS
 When the 2008 IBC is the applicable code, refer to the applicable code for the local building code, refer to the applicable code for the local building code, refer to the applicable code for the local building code, refer to the applicable code for the local building code.

When the 1999 IBC is the applicable code, refer to the applicable code for the local building code, refer to the applicable code for the local building code, refer to the applicable code for the local building code, refer to the applicable code for the local building code.

GENERAL NOTES

STEEL PER IBC TABLE 1704.3

Verification and Inspection Task	Continuous	Periodic
1. Material verification of high-strength bolts, nuts and washers: a. Identification markings to conform to ASTM specifications specified in the approved construction documents. b. Manufacturer's certificate of compliance req'd.		X
2. Inspection of high-strength bolting: a. Pre-tensioned joints. b. Pre-tensioned and slip-critical joints using turn-of-nut with monitoring, break-of-bolt or direct tension indicator methods of installation. c. Pre-tensioned and slip-critical joints using turn-of-nut with monitoring of calibrated wrench methods of installation.	X	X
3. Material verification of structural steel and cold-formed steel deck: a. For structural steel, identification markings to conform to AISC 360. b. For other steel, identification markings to conform to ASTM standards specified in the approved construction documents. c. Manufacturer's certified test reports.		X
4. Material verification of weld filler materials: a. Identification markings to conform to AWS specifications in the approved construction documents. b. Manufacturer's certificate of compliance req'd.		X
5. Inspection of welding: 1) Structural steel and cold-formed steel deck 2) Complete penetration groove welds 3) Non-penetration groove welds 4) Fillet welds 5) Single-pass fillet welds 6) Double-pass fillet welds 7) Flux cored fillet welds 8) Reinforcement 9) Verification of reliability of rebar/relaxing steel 10) Verification of reliability of rebar/relaxing steel force in intermediate and special moment frames, and boundary elements of special reinforced concrete shear walls and shear reinforcement. 11) Shear reinforcement. 12) Other rebar/relaxing steel. 13) Application of steel joint details for compliance with approved construction documents. 14) Details such as bracing and stiffeners. 15) Member locations. 16) Application of joint details at each connection.	X	X

STATEMENT OF SPECIAL INSPECTION (SOSI)
 The data are general and match the extent of the Code tables. All items are not necessarily applicable to the project. Refer to the applicable code for the local building code, refer to the applicable code for the local building code, refer to the applicable code for the local building code, refer to the applicable code for the local building code.

TOWER FOUNDATION
 TOWER FOUNDATION DESIGN IS BY OTHERS.
 CONCRETE FOUNDATION-RELATED ITEMS LISTED HERE ARE ONLY FOR THE DESIGNER'S REVIEW.
 DESIGN CHANGES BY OTHERS SHALL OBTAIN.

SOSI PER IBC TABLE 1704.7

Verification and Inspection Task	Continuous	Periodic
1. Verify materials below footings are adequate to achieve the design bearing capacity.		X
2. Verify settlements are adequate to proper depth and have reached proper material.		X
3. Perform classification and testing of controlled RI materials (where occurs per table report).		X
4. Verify use of proper materials, quantities and fit, including proper placement and compaction of controlled RI (where occurs per table report).	X	
5. Prior to placement of controlled RI, observe and verify that site has been prepared properly.		X

CONCRETE PER IBC TABLE 1704.4

Verification and Inspection Task	Continuous	Periodic
1. Inspection of reinforcing steel, including prestressing tendons and placement.		X
2. Inspection of rebar/relaxing steel welding in accordance with IBC Table 1704.3, Item 5B.		
3. Impact tests to be included in concrete prior to final curing placement of concrete.	X	
4. Inspection of anchors installed in hardened concrete.		X
5. Verify use of required design mix.		X
6. At the time fresh concrete is prepared to fabricate formwork, perform slump and air content tests, and determine the temperature of the concrete.	X	
7. Inspection of concrete and substrate placement for proper application techniques.	X	
8. Inspection for maintenance of specified curing temperature and techniques.		X
9. Inspection of prestressed concrete: a. Application of prestressing forces. b. Grouting of bonded prestressing tendons in the eddy-current-resisting system.	X	X
10. Erection of precast concrete members.		X
11. Verification of in-situ concrete strength prior to structural slab.		X
12. Inspect formwork for shear, flexure and dimensions of the concrete member being formed.		X

EDGEMOND WIND ENERGY PROJECT
EDGEMOND, NEW MEXICO, USA
FOUNDATION

HALLUS POWER BREIERS
2638 CHAMBER AVENUE
SALT LAKE CITY, UT 84143
TEL: (801) 700-0801
FAX: (801) 700-0504



Nestor A. Agbayani
SIGNATURE (OR LEGAL SIGNATURE AND ELECTRONIC FILE)
DATE 01.27.2011

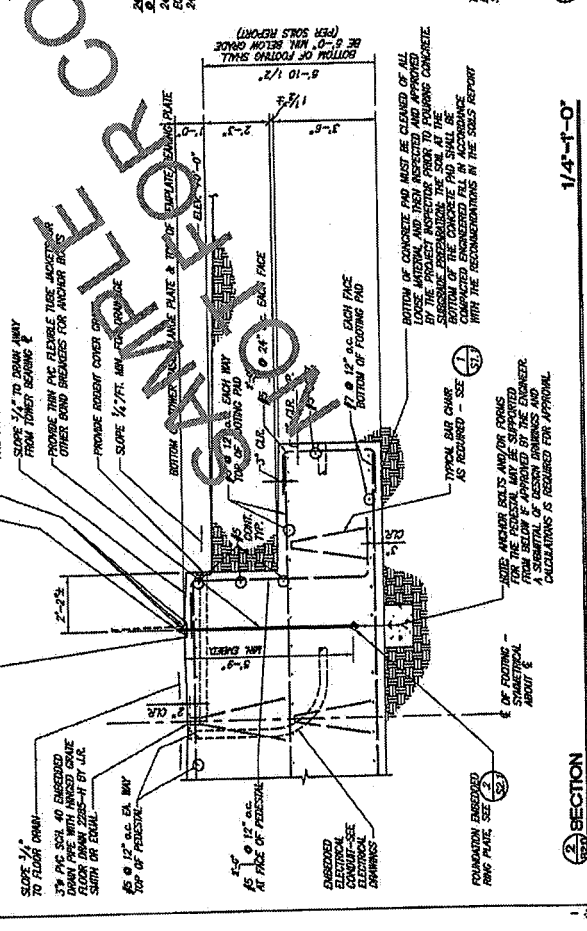
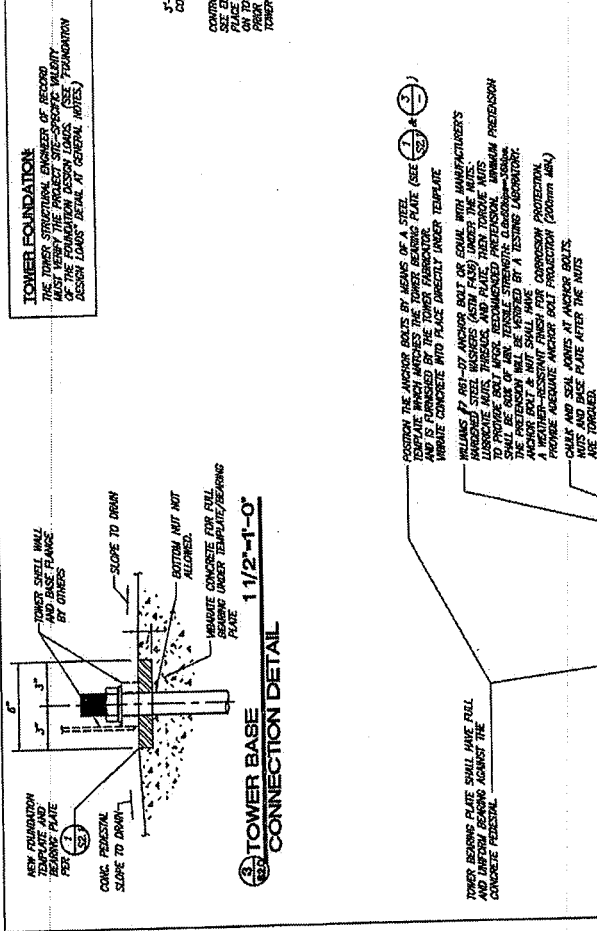
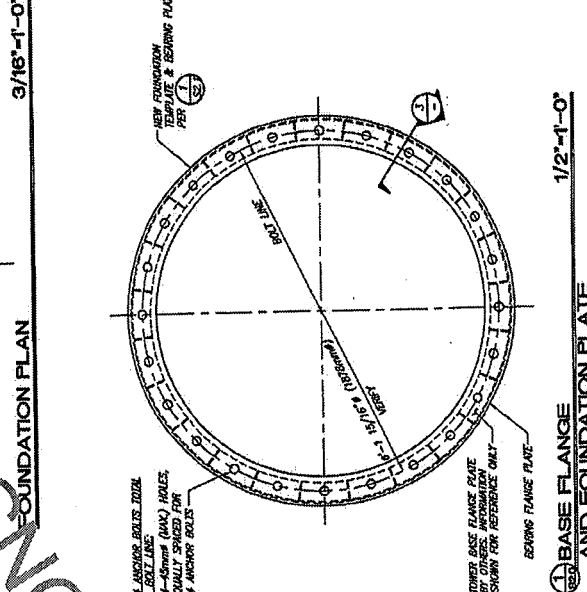
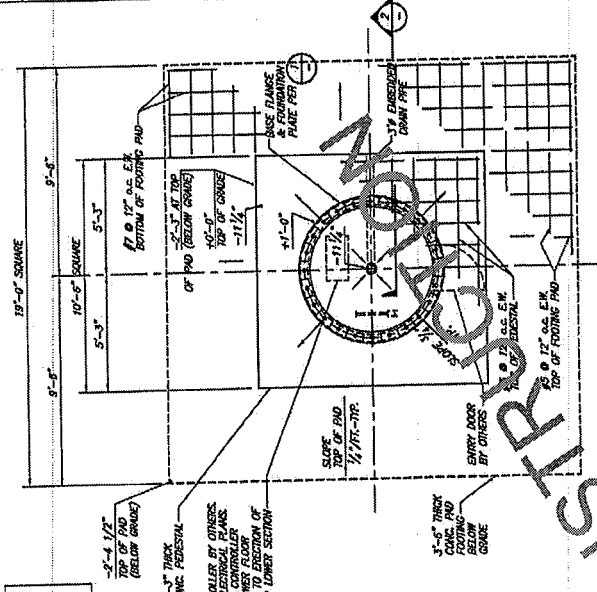
FOUNDATION PLAN,
SECTIONS AND DETAILS

MINNER, STINNETT, KOO & AGBAYANI
STRUCTURAL & CIVIL ENGINEERS
1000 UNIVERSITY AVENUE, SUITE 100
SALT LAKE CITY, UT 84103
TEL: (801) 524-4000
FAX: (801) 524-2418

VESTAS V-17
WIND TURBINE FOUNDATION
23 METER • 3 SECTION

DATE 2011-01-27
DRAWN: Nestor Agbayani
CHECKED: Nestor Agbayani
PROJECT: Edgemo

SHEET # S2.0



1 TOWER FOUNDATION
THE TOWER STRUCTURAL ENGINEER OF RECORD MUST VERIFY THE PROPOSED FOUNDATION DESIGN LOADS DETAIL AT GENERAL NOTES.

2 TOWER BASE CONNECTION DETAIL
1 1/2'-1'-0"

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98 SECTION
1 1/2'-1'-0"

99 SECTION
1 1/2'-1'-0"

100 SECTION
1 1/2'-1'-0"

PLN2012-00006
Exhibit C- Elevations
February 7, 2013

EDGWOOD WIND ENERGY PROJECT
 EDGWOOD, CALIFORNIA, USA
 HALLIBURTON SERVICES
 2329 BRADY AVENUE
 SAN LEONARD, CA 94577
 TEL: (916) 790-0091
 FAX: (916) 790-0054



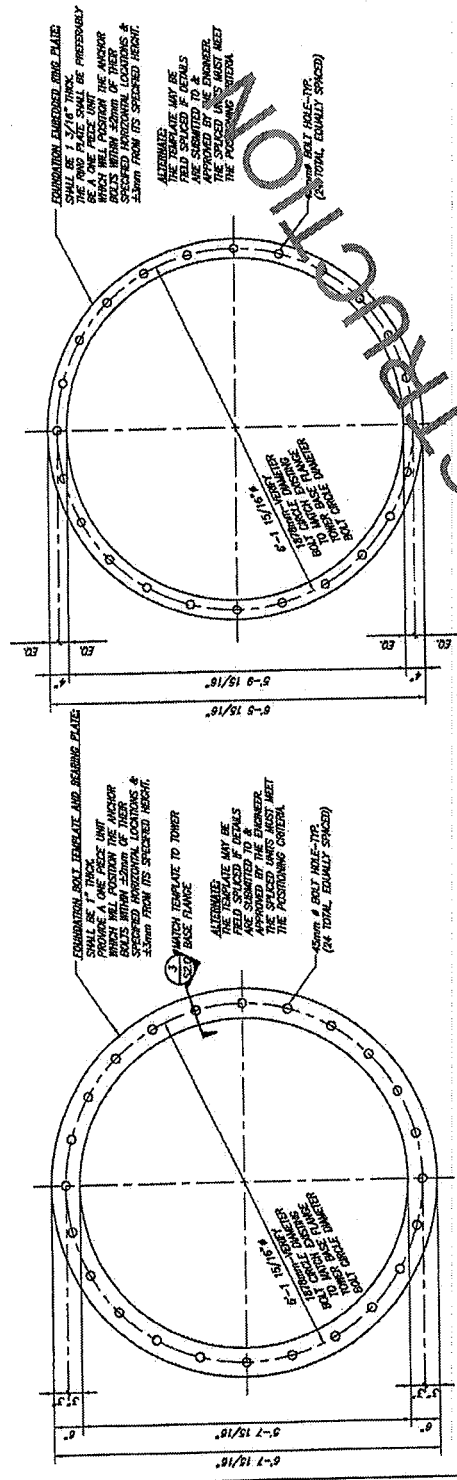
Nestor A. Agbayani
 SIGNATURE FOR DIGITAL SIGNATURE OF ELECTRONIC FILE
 DATE 01.27.2011

FOUNDATION DETAILS

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VESTAB V-17
 WIND TURBINE FOUNDATION
 23 METER • 3 SECTION

SHEET	DATE	BY	CHKD
S2.1	2011-01-27	T. Agbayani	T. Agbayani
DESIGN	DESIGN	DESIGN	DESIGN



FOUNDATION BOLT TEMPLATE AND BEARING PLATE N.T.S.

FOUNDATION EMBEDDED RING PLATE N.T.S.

SAMPLE FOR COMMENTS
 NOT FOR CONSTRUCTION

PLN2012-00006
 Exhibit C- Elevations
 February 7, 2013



City of San Leandro

Meeting Date: April 1, 2013

Resolution - Council

File Number: 13-141

Agenda Section: PUBLIC HEARINGS – CITY COUNCIL

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Cynthia Battenberg
Community Development Director

FINANCE REVIEW: Not Applicable

TITLE: ADOPT: Resolution Affirming the Board of Zoning Adjustments Decisions to Adopt a Mitigated Negative Declaration and Mitigation Monitoring Program and to Approve a Height Variance for the Halus Wind Turbine Application and Denying the Heron Bay Homeowners Association Appeal, Case Number PLN2013-00009

WHEREAS, Halus Power Systems (Applicant) proposes to construct a single wind turbine on an approximately 4.7 acre site at 2539 Grant Avenue. The turbine structure would include an 80 foot tall pole, the turbine mounted on top of the pole, and three blades with a diameter of 20 feet each, making it 100 feet tall at the top rotation point. The base of the structure would be approximately six feet in diameter and taper to three feet in diameter at the top and attachment of the turbine. The proposed use is permitted by right, however the height exceeds zoning ordinance standards; therefore, the Applicant has requested a variance from the height standards. The proposal, case number PLN2012-00006, is referred to herein as the Project; and

WHEREAS, the Project site is a flag-shaped lot on the north side of Grant Avenue, zoned IG-Industrial General, and developed with a warehouse and outdoor storage of equipment and turbine structures. To the north of the Project site are the San Lorenzo Creek flood control channel and the Heron Bay residential development. Existing developed industrial sites are south, east and west of the site; and

WHEREAS, the Board of Zoning Adjustments approved the Project on February 7, 2013, as further set forth in attached Resolution 02-13 (Attachment 1, incorporated herein by reference) and adopted a related Mitigated Negative Declaration (MND or revised MND) and Mitigation Monitoring Program, as further set forth in Resolution 01-13 (Exhibit A of Resolution 02-13); and

WHEREAS, the Heron Bay Homeowners Association (HOA) filed a timely appeal of the Board of Zoning Adjustments decisions to the City Council on February 21, 2013, which

appeal is incorporated herein by reference. The appeal is based on 3 specified grounds: 1) an Environmental Impact Report should have been prepared rather than the MND, 2) approval of the height variance was not supported by required findings, and 3) possible prejudice to the Board of Zoning Adjustments; and

WHEREAS, a staff report, dated April 1, 2013 and incorporated herein by reference, described and analyzed the MND, the Project, the Board of Zoning Adjustments approvals, and the appeal; and

WHEREAS, the staff report recommended that the City Council affirm the Board of Zoning Adjustments decisions, and further recommended an additional variance finding to address existing trees that obstruct on-shore winds if the turbine is limited to the zoning ordinance height standard, which finding is set forth below. The staff report also described and analyzed a February 7, 2013 comment letter from Howard Beckman, and discussed the alleged prejudice issue; and

WHEREAS, the City Council reviewed the staff report, the adopted MND, the Project, the Beckman letter, the Board of Zoning Adjustments approvals in Resolutions 01-13 and 02-13, and the appeal, at a noticed public hearing on April 1, 2013 at which time all interested parties had the opportunity to be heard; and

WHEREAS, the record of proceedings for the Project includes, but is not limited to, the Project application and related materials, reports, photo simulations; the MND; technical reports prepared in connection with the Project and MND; the responses to comments on the MND; Board of Zoning Adjustments staff report and resolutions; City Council staff report; other related project and environmental documents. The documents and materials constituting the record of proceedings, including all of the documents incorporated herein by reference, are available for review in the Planning Services Division at the City of San Leandro City Hall, 835 East 14th Street, San Leandro, California 94577, during normal business hours. The location and custodian of the draft revised MND and other documents that constitute the record of proceedings for the Project is the City of San Leandro Planning Services Division, attn: Elmer Penaranda.

NOW, THEREFORE, BE IT RESOLVED THAT:

- A. The foregoing recitals are true and correct and made a part of this resolution.
- B. The City Council reviewed and considered the Mitigated Negative Declaration adopted through Resolution 01-13, prior to acting on the appeal.

BE IT FURTHER RESOLVED that the adopted Mitigated Negative Declaration adequately describes the environmental impacts of the Project. On the basis of the whole record before it, the City Council affirms the Board of Zoning Adjustments decisions in Resolution 01-13 that a) the Project, as mitigated, would avoid or reduce the potentially significant biology, geology and airport hazard impacts to a point where clearly no significant effects would occur; and, b) there is no substantial evidence that the Project as mitigated may have a significant effect on the environment with respect to aesthetics, biology, geology, airport hazards, noise, or any other environmental resource. In affirming the MND decision,

the City Council hereby modifies and updates the findings in Paragraph 3 of Resolution 01-13 as follows:

1. Based on the whole record, including but not limited to the revised MND with responses to comments, and all supporting information, studies, and evidence, there is no substantial evidence supporting a fair argument of significant impact from the Project as mitigated.
2. The revised MND was prepared and considered in a fully public process, consistent with all public notice and participation requirements of CEQA and the CEQA Guidelines.
3. Extensive comments were submitted on the revised MND but none of the comments constitutes substantial evidence of a fair argument of significant environmental impact, as further detailed in the Project application, supporting materials and studies, City staff reports, written responses to comments, and other materials and documents in the record, as summarized briefly below.

Aesthetics. There are no public scenic views or vistas substantially affected by the Project. The Bay Trail is not adjacent to the Project site; the Project site is in the opposite direction of the bay and marshlands relative to the Bay Trail. The Project site is not in or adjacent to the bay and marshlands; it is inland of them. The "trail" adjacent to the Project site is a gated flood control maintenance area where public use and access are not authorized. Photographs in the record are among the factual bases for the revised MND conclusions on public views and vistas. The City recognizes that personal observations may be relevant on non-technical subjects such as aesthetics, however, the observations must still be based on facts. No factual evidence of public views or vistas substantially affected by the Project was presented.

Many of the personal observations on aesthetics addressed private views from individual backyards. The number of affected personal views is limited to a few homes along the south Heron Bay boundary, over 500' away from the Project. This is not a substantial impact under CEQA as any potential impact is limited to a small number of private views.

The revised MND conclusion of no potential for significant impact due to shadowing was supported by a technical study from an ESA expert on the subject. Paul Taylor, on behalf of the Association, shows no evidence of expertise on the subject.

Biology. The revised MND was circulated to both of the public agencies primarily concerned with biological resources along the bayfront, especially avian species: The State Department of Fish and Game (now known as Department of Fish and Wildlife, or CDFW), and the East Bay Regional Parks District. Neither agency submitted any comments on the revised MND. The CDFW's recommendations were incorporated into the revised MND. The revised MND was further based on a technical study by ESA, a well-known Bay Area environmental consulting firm with experience in biological and avian resources in the nearby bay and marsh areas. The Association's purported expert shows no expertise in biological resources generally or avian resources or shorebirds; his evidence is not expert advice supported by facts.

Aircraft navigational radar. The revised MND discloses the pertinent permit requirements from the ACALUC and FAA, which are incorporated as mitigation measures. The Project has since received clearance from the FAA, which clearance is included in the responses to comments. The Association's purported expert shows no expertise in radar, aeronautics, airport operations or regulations; his evidence is not expert advice supported by facts.

Noise. The revised MND finds no potential for significant impact, based on the manufacturer's noise specifications showing noise levels would not exceed 55 dB at the Project property line, which complies with City standards for industrial (and residential) uses. The Association's purported expert shows no expertise in noise analysis; his evidence is not expert advice supported by facts. As further discussed in the City Council staff report, the Beckman comments are not fact-based as to the Project and are not substantial evidence of the potential for a significant noise impact.

Property values and economic hardship. Social and economic changes are not an environmental impact under CEQA.

Risk of failure or abandonment. The Project must comply with all applicable building code and other development requirements. There is no substantial evidence, e.g., studies, opinions based on fact from a qualified expert on turbine systems to support the Association speculations on this subject.

BE IT FURTHER RESOLVED as follows based on the whole of the record:

A. The City Council hereby affirms the Board of Zoning Adjustments decision to approve the height variance to allow a wind turbine structure with a maximum height of 100 feet, based on the variance findings and subject to the conditions of approval, all as set forth in attached Resolution 02-13, incorporated herein by reference.

B. In addition, the City Council hereby finds the higher the pole, the more efficient the turbine can operate and the more power the wind system can produce. There are existing obstructions in the southwesterly direction from the Project on other properties. Approximately 280 to 400 feet from the turbine are various groupings of tall trees (i.e., acacias and eucalyptuses). These are broadleaf evergreen trees that are approximately 40- to 65-foot tall with large canopies. Their canopies will continue to grow in height and width. The existing trees create a special circumstance applicable to the Project property in that their physical location and size would obstruct the southwesterly on-shore winds without the height variance for the turbine. Further, strict application of the height standard would result in peculiar and exceptional difficulty to the property owner in that a lower height is not a viable option in operating a turbine. The variance to permit a taller height is to resolve a practical difficulty to effectively operate the turbine as it is a fact that wind speeds increase with height, thus the turbine needs to be mounted on a pole. The higher the pole, the more efficient the turbine can operate and the more power the wind system can produce. These considerations would not be applicable to other permitted uses in the same zoning district that are not dependent on wind energy and that are more typically conducted within a building, or involve ground level equipment or storage.

BE IT FURTHER RESOLVED that the City Council determines there was no prejudice to the Board of Zoning Adjustments for the reasons stated in the staff report.

BE IT FURTHER RESOLVED that the City Council hereby denies the Heron Bay Homeowners Association appeal on all grounds.