



City of San Leandro

Meeting Date: June 16, 2014

Staff Report

File Number: 14-242

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.F.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Rich Pio Roda
City Attorney

FINANCE REVIEW: Not Applicable

TITLE: Staff Report for a Resolution Vacating Approvals of Resolution No. 01-13, 02-13, 2013-043 and Suspending and/or Refraining from Undertaking Any Construction Pursuant to or in Reliance on the Vacated Project Approvals (Halus Power Systems)

SUMMARY AND RECOMMENDATION

Staff recommends that the City Council approve a resolution rescinding prior approval of: Board of Zoning Adjustments Resolution 01-13 adopting the Mitigated Negative Declaration and Mitigation Monitoring Program Project for the Halus Power Systems Wind Turbine project (the "Project") pursuant to the California Environmental Quality Act ("CEQA"); Board of Zoning Adjustments Resolution 02-13 approving a height variance for the Project pursuant to the City of San Leandro's Zoning Code; and City Council Resolution 2013-043 affirming the Board of Zoning Adjustments' decision to adopt the Mitigated Negative Declaration and Mitigation Monitoring Program for the Project and approve a height variance. The Resolution further advises the City to order Halus to suspend or refrain from undertaking any construction of the "Project" or any activity pursuant to or in reliance on the vacated "Project" approvals (Resolution Nos. 01-13, 02-13, and 2013-043) unless and until the City fully complies with CEQA pursuant to the Statement of Decision and Peremptory Writ of Mandate issued by the Alameda County Superior Court.

BACKGROUND AND ANALYSIS

Halus Power Systems ("Halus") owns an approximately 5-acre property in an existing industrial site located in the City of San Leandro where it manufactures wind turbines used to generate electricity. On February 28, 2012, Halus applied for permission to build a 100-foot tall single wind turbine on its property at the industrial site. Between February 28, 2012 and May 21, 2012, the City conducted an Initial Study taking note of impacts. The City's Board of Zoning Adjustments ("BZA") considered the Project and adopted the Mitigated Negative Declaration for the Project through the adoptions of Board of Zoning Adjustments Resolution Nos. 01-13 and 02-13 on February 7, 2013. Following an appeal by the Heron Bay

Homeowners Association to the City Council, the City Council affirmed the BZA's decision and denied the appeal on April 1, 2013 through the adoption of City Council Resolution No. 2013-042.

On May 1, 2013, Heron Bay Homeowners Association appealed the City Council Resolution No. 2013-042 by filing a Petition for Writ of Mandate in Alameda County Superior Court. On April 24, 2014, the Alameda County Superior Court granted Heron Bay Homeowners' Association's writ of mandate and ordered the City to set aside and vacate the aforementioned resolutions as well as previously adopted Project approvals and findings.

The City must comply with the Court's order; not doing so would cause the City, and possibly individual City Councilmembers, to be in contempt. Therefore, staff recommends that the City Council approve a resolution to vacate Board of Zoning Adjustments Resolution Nos. 01-13 and 02-13 and City Council Resolution No. 2013-043, and order Halus Power Systems to refrain from undertaking or suspend any construction of the Project or any activity pursuant to or in reliance on the vacated Project approvals in order to comply with the Alameda County Superior Court's order. This will ensure that the City effectuates, fulfills and complies with the Court's order.

PREPARED BY: Richard D. Pio Roda, City Attorney



City of San Leandro

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Resolution - Council

File Number: 14-243

Agenda Section: CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Rich Pio Roda
City Attorney

FINANCE REVIEW: Not Applicable

TITLE: RESOLUTION Setting Aside and Vacating City Council Resolution No. 2013-043 that Affirmed the Board of Zoning Adjustments' Decision to Adopt the Mitigated Negative Declaration and Mitigation Monitoring Program Project and Approving a Height Variance as Set Forth in Board of Zoning Adjustments ("BZA") Resolution No. 01-13 Adopting the Mitigated Negative Declaration and Mitigation Monitoring Program Project for the Halus Power Systems Wind Turbine Project ("The "Project") Pursuant to the California Environmental Quality Act ("CEQA"); and BZA Resolution No. 02-13 Approving a Height Variance for the Project Pursuant to the City of San Leandro's Zoning Code; and Prohibiting Halus from Undertaking and/or Suspending Any Construction of the Project or Any Activity Pursuant to or in Reliance on the Vacated Project Approvals (Board of Zoning Adjustments Resolution Nos. 01-13, 02-13, and City Council Resolution No. 2013-043) Unless and Until the City Fully Complies with CEQA; All in Accordance with a Peremptory Writ of Mandate Issued by the Alameda County Superior Court (complies with writ of mandate)

WHEREAS, an application was received from Halus Power Systems ("Halus") for a proposed development project ("Project") that included building a 100-foot tall single wind turbine on its property on an industrial site; and

WHEREAS, the City of San Leandro processed the application in accordance with applicable laws and procedures and the application was reviewed and considered by the City's Board of Zoning Adjustments ("BZA"); and

WHEREAS, on February 7, 2013, the BZA adopted Resolution No. 01-13, adopting a Mitigated Negative Declaration and Mitigation Monitoring Program for the Halus Wind Turbine Application; and

WHEREAS, on February 7, 2013, the BZA adopted BZA Resolution No. 02-13 approving a Height Variance for the Halus Wind Turbine Project; and

WHEREAS, on April 1, 2013, the City Council adopted Resolution No. 2013-043 affirming the Board of Zoning Adjustments' Decision 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's Appeal; and

WHEREAS, on May 1, 2013, Heron Bay Homeowners Association challenged the City's adoption of a Mitigated Negative Declaration and Mitigation Monitoring program, and approval of a height variance to allow a 100-foot tall horizontal axis wind turbine (the "Project") by filing a writ of mandate in the Alameda Superior Court; and

WHEREAS, on April 24, 2014, the Alameda County Superior Court issued a peremptory writ of mandate commanding the City to set aside and vacate BZA Resolution Nos. 01-13 and 02-13, and City Council Resolution No. 2013-043 as well as any and all previously adopted Project approvals and findings; and

WHEREAS, the City Council, acting as the governing body of the City of San Leandro, shall exercise its police power over its subordinate boards and commissions, to take all actions in the best interests of the City, and as ordered by a State Court having jurisdiction over the City.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of San Leandro:

1. Through the exercise of its police power, in compliance with the peremptory writ of mandate issued by the Alameda County Superior Court, sets aside and vacates:
 - a. Board of Zoning Adjustments Resolution No. 01-13 adopting the Mitigated Negative Declaration and Mitigation Monitoring Program Project for the Halus Power Systems Wind Turbine project pursuant to the California Environmental Quality Act ("CEQA"); and
 - b. Board of Zoning Adjustments Resolution No. 02-13 approving a height variance for the Project pursuant to the City of San Leandro's Zoning Code; and
 - c. City Council Resolution No. 2013-043 affirming the Board of Zoning Adjustments' decision to adopt the Mitigated Negative Declaration and Mitigation Monitoring Program Project and approve a height variance.
2. In compliance with the peremptory writ of mandate issued by the Alameda County Superior Court, hereby prohibits Halus from undertaking any construction of the "Project" or any activity pursuant to or in reliance on the vacated "Project" approvals (BZA Resolution Nos. 01-13, 02-13, and City Council Resolution No. 2013-043) unless and until the City fully complies with CEQA as set forth in the Judgment and Statement of Decision.
3. Directs the City Attorney to file a return to the peremptory writ of mandate issued by the Alameda County Superior Court, demonstrating the City's compliance with the writ.