



## Legislation Text

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**File #:** 13-141, **Version:** 1

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**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 14<sup>th</sup> 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-feet 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.