



## Legislation Text

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**File #:** 14-242, **Version:** 1

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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.

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