

**COUNTY OF ALAMEDA  
ALTAMONT PASS WIND RESOURCE AREA  
ADAPTIVE MANAGEMENT PLAN PROPOSAL**

This Adaptive Management Plan Proposal (the “County Plan”) has been prepared by the County of Alameda (the “County”) for review by the Altamont Pass Wind Resource Area (“APWRA”) Scientific Review Committee (“SRC”) and the County pursuant to Condition 5 of the Conditional Use Permits. The County Plan is based, in part, upon two separate Adaptive Management Plan Proposals submitted to the County on March 15, 2010 by and on behalf of Golden Gate Audubon Society, Ohlone Audubon Society, Mount Diablo Audubon Society, Santa Clara Valley Audubon Society, and Marin Audubon Society (collectively, “Audubon”) and Californians for Renewable Energy (“CARE”)(referred to as the “Audubon/CARE Plan”) and by and on behalf of ESI Bay Area GP, Inc., ESI Altamont Acquisitions, Inc. on behalf of Green Ridge Power, LLC, and ESI Tehachapi Acquisitions on behalf of Altamont Power, LLC (collectively, “ESI”), enXco, Inc., and SeaWest Power Resources, LLC (collectively, along with ESI, the “Wind Power Companies”)(referred to as the “Wind Companies’ Plan”).

**RECITALS**

The County Plan is submitted with respect to the following recitals of fact:

1. On September 22, 2005, the Alameda County Board of Supervisors approved conditional use permits (“CUPs”) for the operation of wind turbines by the Wind Power Companies, among other entities, at the APWRA. The Alameda County Board of Supervisors, County of Alameda concluded that its decision to issue the CUPs was categorically exempt from the California Environmental Quality Act (“CEQA”).
2. On or about October 31, 2005 and as amended on or about November 29, 2005, Audubon and CARE petitioned the Alameda County Superior Court for a writ of mandate (Case Nos. RG05239552 and RG05239790) to set aside the County’s issuance of the CUPs on various grounds, including that such action violated the County’s General Code and CEQA. The Audubon/CARE writ petitions are collectively referred to as the “Action”. The Wind Power Companies were Real Parties in Interest in the Action. Audubon, CARE, the Wind Power Companies, and the County are referred to individually as a “Party” and collectively as the “Parties” to the Action.
3. On January 2007, the Parties entered into a settlement agreement (“Settlement Agreement”) that resolved the Action. Also, on January 11, 2007, the County modified the CUPs for the Wind Power Companies consistent with the terms of the Settlement Agreement. The Settlement Agreement applies to the wind turbines for which the Wind Power Companies hold CUPs with the County and that are owned beneficially solely by the Wind Power Companies, with no non-settling party beneficial interest (the “Applicable Turbines”). Settlement Agreement, § 2(a).
4. Altamont Winds, Inc. (“AWI”) did not participate in the Settlement Agreement and the only wind power company operating in the Alameda County portion of APWRA who is

not subject to the terms and conditions provided in Resolution No. 2007-111 or of this proposed Adaptive Management Plan, but is subject to the terms and conditions of Resolution No. 2005-453.

5. The Settlement Agreement states, “The Wind Power Companies shall achieve a 50% reduction in raptor mortality within three (3) years of the effective date of this Agreement. [] The baseline for determining the percentage reduction in raptor mortality at the APWRA is thirteen hundred (1300)...The percentage reduction in raptor mortality shall be determined using field monitoring data collected in accordance with the CUPs and scaling factors for searcher efficiency and scavenging as approved by the ...SRC. [] In the event the above-referenced scaling factors exceed 2.5, the Wind Power Companies, Audubon, and the County, in consultation with the SRC, along with any other individuals or entities that both the Wind Power Companies, Audubon and the County agree to, shall meet and confer to re-determine a mutually acceptable baseline for determining raptor mortality and/or reduction percentage in raptor mortality that triggers adaptive management measures as specified in section 3(c) of this Agreement.” Settlement Agreement, § 3(a)(ii) and (iii).

6. The Settlement Agreement further states, “Adaptive management measures will be implemented if a 50% reduction in raptor mortality is not achieved by November 1, 2009. [] The SRC will prioritize management measures, including an evaluation of management measures that have not reduced raptor mortality at the expense of energy production, after analyzing field monitoring data. The SRC shall use its best efforts to achieve prioritization of management efforts by June 1, 2009. [] By August 1, 2009, Wind Power Companies and Audubon will propose an adaptive management plan to the SRC/County for review pursuant to Condition 5 of the CUP if a 50% reduction in raptor mortality has not previously been achieved and is not projected to be achieved by November 1, 2009. The adaptive management plan will be designed to achieve a 50% reduction in raptor mortality with the least impact on energy production, and may include the elimination or reduction of seasonal shutdowns. The SRC shall act (pursuant to Condition 5 of the CUPs, as necessary) on the adaptive management plan for the Applicable Turbines by November 1, 2009.” Settlement Agreement, § 3(c)(ii) and (iii).

7. On August 24, 2009, ESI sent the County a letter that states, in pertinent part, “[In] [t]he latest study on raptor mortality released by the monitoring team...the scaling factors used to determine the raptor mortality from 2005 to 2007 greatly exceed 2.5. It is our concern that the final report under the current monitoring study...will also use scaling factors greater than 2.5...[I]f the scaling factor will exceed 2.5 for the current program then the Settlement Agreement requires the Wind Power Companies, Audubon and the County to come together and develop a new mutually acceptable approach to measure raptor mortality reductions and/or mortality reduction percentage that requires adaptive management measures. Adding further complication to the comparison, the baseline sample set and the current sample set of turbines are from geographically distinct populations making the comparisons biased. We feel that there needs to be an adjustment for this inherent bias in the comparison. We hope that further discussions in the next few months will bring resolution to these two items.”

8. On December 2009, the monitoring team issued a draft report that analyzed the field monitoring data as contemplated by section 3(c)(i) of the Settlement Agreement, entitled “Altamont Pass Wind Resource Area Bird Fatality Study” (the “draft Monitoring Report”).

Given that the draft Monitoring Report was not issued until December 2009, it was impossible to comply with the timing of the milestones contemplated by section 3(c) to develop an adaptive management plan, if necessary.

9. The draft Monitoring Report asserts the following conclusions: “(1) There is little or no evidence of a 50% reduction in raptor fatalities in the APWRA. (2) There is little or no evidence that the 2005-2009 seasonal shutdown has significantly reduced raptor fatalities in the APWRA. (3) There is substantial evidence that repowering of the APWRA with larger modern turbines would substantially, if not significantly, reduce the number of raptors killed per megawatt of power produced at the APWRA.”

10. On January 13 and 14, 2010, SRC meetings took place at which the SRC discussed the draft Monitoring Report (the “January 2010 SRC Meetings”). The SRC provided comments and criticisms to the draft Monitoring Report and required that a further draft Monitoring Report be submitted to them for further comments and suggestions before a final Monitoring Report is issued.

11. At the January 2010 SRC Meetings, the SRC agreed with the draft Monitoring Report’s conclusion that “[t]here is little or no evidence of a 50% reduction in raptor fatalities in the APWRA.” Accordingly, the SRC unanimously put forth its prioritization of management measures to achieve a 50% reduction in raptor mortality as follows: (1) Repowering, including careful siting; (2) High Risk Turbine Removals; (3) Seasonal Shutdown; (4) Burrowing Owl Behavioral Study; and (5) Research on Adjustment Factors.

12. On February 3, 2010, the County sent the Parties a letter with an enclosed memorandum. The letter states, “On January 13, 2010, the Scientific Review Committee (SRC) expressed their unanimous opinion that the Wind Power Companies had not achieved a 50% reduction in raptor mortality... [and] [b]ecause the 50% goal was not achieved by November 1, 2009, the implementation of adaptive management is required.” The enclosed memorandum further states, “[T]he County hereby modifies the conditional use permits adaptive management timelines to require the settling Wind Power Companies and Audubon to propose an adaptive management plan to the SRC/County by March 15, 2010 and for the SRC to act on the adaptive management plan for the Applicable Turbines by June 15, 2010.”

13. On February 4, 2010, the County sent the Parties an e-mail, which attached ESI’s August 24, 2009 letter, that states, “The County wishes to convene a meeting or series of meetings among the settling Wind Companies, Audubon, the County and Care [sic] to ‘meet and confer to re-determine a mutually acceptable baseline for determining raptor mortality and/or reduction percentage in raptor mortality.’” As noted in Mr. Ergas’ letter of August 24, 2009 ..., these discussions are permitted by Section 3(a) of the Settlement Agreement. ¶¶ It is our hope to advance the tentative discussions on this topic that have begun among the parties in the Fall of 2009. Recent discussions of the ...SRC... have only emphasized the need to establish a new metric for measuring progress toward minimizing avian mortality in the APWRA.”

14. The Wind Power Companies, Audubon, and CARE made a good faith effort to try to agree to an adaptive management plan, however, after reaching an impasse in their negotiations of a joint plan, on March 15, 2010 the Wind Power Companies and Audubon/CARE

did submit to the County/SRC separate Adaptive Management Plan Proposals. After the submission of their separate Proposals, the Parties continued their efforts to negotiate a joint adaptive management plan.

15. In response to a request to the SRC from the Parties made for the purposes of identifying high risk turbines for removal pursuant to the SRC's prioritized list of management measures, on March 8-10, 15 and 17, 2010, two members of the SRC conducted field surveys and assigned hazardous turbine rankings to 2,648 previously unranked turbines in the APWRA (the "2010 HRT Rankings").

16. Given the Parties continuing inability to reach consensus and the necessity of acting on an adaptive management plan by June 15, 2010, the County, after considering the separate Plans submitted by Audubon/CARE and the Wind Power Companies, has developed this County Adaptive Management Plan Proposal, which it submits to the SRC for review pursuant to Condition 5 of the CUPs for the Applicable Turbines. The terms and conditions of the County Plan are as follows.

**1. REMOVAL AND RELOCATION OF HIGH RISK TURBINES AND TOWERS**

(a) High Risk Turbines ("HRT") shall be defined as Applicable Turbines rated 7-10 by the SRC consistent with the "Hazardous Rating Scale of the SRC", document P69 (Final 2-1-08). HRT do not include turbines or towers located on the Santa Clara site.

(b) On or before May 1, 2010, the County shall provide to the Wind Companies a list of their respective turbines and their corresponding rating (the "Turbine Ratings") from the 2010 HRT Rankings.

(c) On or before May 17, 2010, each Wind Company shall confirm its' list of HRT, and shall submit to the County a detailed map identifying the location and site numbers for the confirmed HRT attributed to it.

(f) Each Wind Company shall remove HRT, not including HRT located on the Santa Clara site, as follows:

(i) By September 30, 2010:

A. ESI shall remove all of its HRT's ranked 9 through 10; provided, however, that ESI may continue to operate one (1) KVS-33 (400 kW capacity) turbine ranked 9 and one KVS-33 (400 kW capacity) turbine ranked 10, in exchange for removing four (4) Kenetech 56-100 turbines ranked 8.5.

B. enXco shall remove all of its HRTs ranked 9 through 10.

C. SeaWest shall remove all of its HRTs ranked 9.5.

(ii) By February 15, 2011:

- A. ESI shall remove all of its HRT's ranked 8.0 and 8.5.
- B. enXco shall remove all of its HRTs ranked 8.0 and 8.5.
- C. SeaWest shall remove all of its HRTs ranked 8.0 and 8.5.

(iii) By February 15, 2012:

- A. ESI shall remove all of its HRTs ranked 7.5.
- B. enXco shall remove all of its HRTs ranked 7.5.
- C. SeaWest shall remove all of its HRTs ranked 7.5.

(g) If a wind company removes HRT for purposes of a repowering project, then it shall receive credit for such removals toward these removal requirements on a one-to-one basis for each HRT rated 7.5 or higher and it shall receive a credit as follows for the removal of each turbine rated 7.0 or below:

<u>HRT Ranking</u>	<u>#Turbines Ranked 7.0 or below</u>
10	_____
9.5	_____
9	_____
8.5	_____
8.0	_____
7.5	_____

(h) HRT subject to a removal requirement above shall not be relocated to turbines sites rated 7 through 10 and should not be relocated within any areas identified for the initial phase of be repowering (discussed in section 6 below). On or before July 1, 2010 the Wind Power Companies shall submit relocation plans for the 2010 and 2011 removals to the SRC for review and approval prior to relocating or re-siting removed turbines. On or before November 1, 2011 the Wind Power Companies shall submit a relocation plan for the February 15, 2012 removals to the SRC for review and approval prior to relocating or re-siting removed turbines. The SRC will review and recommend approval of relocation plans within thirty (30) days of submittal.

**2. SEASONAL SHUTDOWN**

(a) The Wind Companies shall shut down Applicable Turbines in accordance with

the CUPs; provided, however, that the Wind Companies shall shut down their turbines on a one-time universal basis per season commencing on November 1 (i.e., the Wind Companies will not shut down half the turbines in the staggered cross-over design required under the CUPs).

(b) Within 14 days after the requirement to initiate or complete seasonal shutdown as specified in the CUPs, (a) ESI shall submit operational data maintained in the normal course of operations to the Compliance Monitor demonstrating operating time per day for each Applicable Turbine for the duration of the seasonal shutdown since its commencement; and (b) SeaWest and enXco shall submit meter readings maintained in the normal course demonstrating power generation for all Applicable Turbines under their control for the duration of the seasonal shutdown since its commencement.

### 3. **UNPRODUCTIVE TURBINES AND TOWERS**

(a) Unproductive Turbines and Towers are: (a) Applicable Turbines that have remained non-operational for 12 consecutive months and (b) Applicable Turbine sites with towers only. Unproductive Turbines and Towers do not include turbines or towers located on the Santa Clara site.

(b) The current allotment of allowable Unproductive Turbine and Tower sites for each Wind Company is as follows:

- (i) ESI – 30 turbines;
- (ii) enXco – 15 turbines; and
- (iii) SeaWest – 12 turbines.

(c) On or before September 30, 2010, each Wind Company shall submit to the County, a detailed map that identifies the location and site numbers of Unproductive Turbines and Towers held in reserve as part of each company's annual allotment of Unproductive Turbines and Towers.

(d) By February 28, 2011, each Wind Company shall remove all Unproductive Turbines and Towers such that each Wind Company's final allotment of Unproductive Turbines and Towers held in reserve on February 28, 2011 shall be reduced to zero (0) and thereafter each Wind Company shall remove all Unproductive Turbines and Towers when and as they become unproductive as that term is defined in (a) above. Each Wind Company shall provide the County with written notification of the removal of Unproductive Turbines and Towers within ten (10) days of such removal.

### 4. **CONFIRMATION OF TIMELY REMOVAL/RELOCATION OF HIGH RISK TURBINES AND UNPRODUCTIVE TURBINES AND TOWERS**

(a) By October 15, 2010 and February 15, 2011 each Wind Company shall submit a map to the County detailing the locations to which HRT have been relocated (to the extent they are permitted to be and have been relocated).

(b) The Compliance Monitor shall physically confirm and document by digital photograph the timely removal of HRT and the removal of Unproductive Turbines and Towers as specified in this Plan.

(c) Between October 15 and October 23, 2010 and between February 28 and March 6, 2011, 2013 and 2015, , the Compliance Monitor shall:

(i) confirm the removal of HRT pursuant to section 1 of this Plan and the removal of Unproductive Turbines and Towers pursuant to section 3 of this Plan;

(ii) randomly inspect between five (5) and ten (10) relocation areas (i.e., groupings of turbines) to confirm that relocated turbines were relocated consistent with Section 3 of the SRC Relocation Guidelines, document P70 (1-30-2008); and

(iii) physically confirm and document by digital photograph the timely removal of any Unproductive Turbines and Towers that may be required to be removed pursuant to section 3 above by randomly inspecting at least eight (8) groups of approximately fifty (50) turbines.

(d) Within 14 days of any of the Compliance Monitor deadline in this Plan, the Compliance Monitor shall notify the applicable Wind Company, the County and Audubon of any purported noncompliance (the "Notice"). The Compliance Monitor shall schedule a meet and confer with the applicable Wind Company, County and Audubon concerning any potential noncompliance with 14 days of the Notice.

(e) The Wind Companies shall contribute \$15,000 to fund the additional services required of the Compliance Monitor in the Fall of 2010 that were neither anticipated by nor included in the Agreement to Terminate Mediation.

## **5. BURROWING OWL AND ADJUSTMENT FACTOR STUDIES**

(a) The SRC included two studies in its prioritization of management measures to achieve a 50% reduction in raptor mortality: (1) burrowing owl behavioral study; and (2) research on the adjustment factors (collectively, "Additional Studies").

(b) If the SRC finds that the burrowing owl behavior study will be beneficial to the analysis of future repowering projects and the Planning Director concludes that the SRC is able to design an effective burrowing owl behavioral study that will inform repowering within the APWRA, then that study shall be conducted.

(c) If the Planning Director determines that the adjustment factors research does not duplicate studies being conducted by others (e.g., CalWEA) then the adjustment factors research shall be conducted.

(d) If the Planning Director determines that either or both of the Additional Studies are to be conducted, then they shall be funded by the Wind Companies in proportion to the rated megawatt (MW) capacity of the facility as listed in Resolution No. R-2007-111, Exhibit F, as

amended and adjusted annually.

(e) The cost of the Additional Studies may be off-set by reductions in the level of effort required of the Monitoring Team, including (i) a reduction in the number of turbines sampled, (ii) an increase in the search interval from 30 days to 45 or 60 days, (iii) discontinuing the collection of information for nonnative species; and, (iv) such other methods as are recommended by the SRC.

## **6. REPOWERING, INCLUDING CAREFUL SITING OF TURBINES**

(a) The SRC's first priority recommended management measure is the repowering of the Wind Companies existing wind turbine operations at the APWRA "as soon as possible, including careful siting." Repowering generally refers to the replacement of existing, first generation wind turbines with larger modern, second or later generation turbines. While repowering is contingent upon the completion of the requisite environmental reviews, the removal of existing turbines and towers is not. The Parties previously acknowledged that future repowering of the APWRA "will play an important role in the adoption of adaptive management measures ... and/or in the development of the NCCP or similar agreement." Resolution R-2007-111, Exhibit G-1, Section 6.c.

(b) By February 28, 2011, the Wind Power Companies each shall have submitted to the County a detailed repowering proposal. The proposal may be phased, but shall address no less than 25% of each Wind Power Companies' individually-owned existing turbines (the "1<sup>st</sup> Phase"). These repowering proposals shall be used for the project-specific portion of the Programmatic EIR for the APWRA. The following permanent removals of existing (non-repowered) turbines will be considered to constitute the first steps toward repowering:

(i) ESI.

(A) By December 31, 2011, barring delays by state or federal agencies, action by the Planning Director, or other factors outside of ESI's control, and subject to a new conditional use permit and a development agreement under similar terms to repowering projects the APWRA (with both the CUP and development agreement involving Contra Costa County), ESI intends to repower 25 % of its individually-owned existing turbines in the Contra Costa portion of the APWRA. In anticipation of this repowering project, ESI shall have ceased operation and permanently removed 25% of its individually-owned existing turbines by May 30, 2011.

(B) If and only if by September 30, 2014, a 50% reduction in raptor mortality is not achieved, ESI shall have ceased operation of and permanently removed 50% of its Applicable Turbines by February 15, 2015,. The denominator for this equation is the number of Applicable Turbines on the date of the CUPs. Any Applicable Turbine removed since the date of the CUPs counts toward the 25% reduction required under this provision.

(ii) SeaWest.



(A) If and only if by September 30, 2012, a 50% reduction in raptor mortality is not achieved, SeaWest shall have ceased operation of and permanently removed 25% of its Applicable Turbines by February 15, 2013. The denominator for this equation is the number of Applicable Turbines on the date of the CUPs and does not include turbines or towers located on the Santa Clara site. Any Applicable Turbine removed since the date of the CUPs counts toward the 25% reduction required under this provision.

(B) If and only if by September 30, 2014, a 50% reduction in raptor mortality is not achieved, SeaWest shall have ceased operation of and permanently removed 50% of its Applicable Turbines by February 15, 2015,. The denominator for this equation is the number of Applicable Turbines on the date of the CUPs and does not include turbines or towers located on the Santa Clara site. Any Applicable Turbine removed since the date of the CUPs counts toward the 50% reduction required under this provision.

(iii) enXco.

(A) If and only if by September 30, 2012, a 50% reduction in raptor mortality is not achieved, enXco shall have ceased operation of and permanently removed 25% of its Applicable Turbines by February 15, 2013. The denominator for this equation is the number of Applicable Turbines on the date of the CUPs. Any Applicable Turbine removed since the date of the CUPs counts toward the 25% reduction required under this provision.

(B) If and only if by September 30, 2014, a 50% reduction in raptor mortality is not achieved, enXco shall have ceased operation of and permanently removed 50% of its Applicable Turbines by February 15, 2015. The denominator for this equation is the number of Applicable Turbines on the date of the CUPs and does not include turbines or towers located on the Santa Clara site. Any Applicable Turbine removed since the date of the CUPs counts toward the 50% reduction required under this provision.

(c) The timing of the foregoing removals assumes ample time to complete the requisite environmental reviews, including the combined NCCP/HCP EIR/EIS and the EIR for the County CUP, renegotiating or obtaining new land lease contract, renegotiating power purchase contracts, and obtaining environmental approvals.

## **7. UPDATE OF ADAPTIVE MANAGEMENT PLAN**

(a) Updates to this Adaptive Management Plan will be implemented if a 50% reduction in raptor mortality is not achieved by September 30, 2013. The SRC will prioritize adaptive management measures, including an evaluation of management measures that have not reduced raptor mortality at the expense of energy production, after analyzing field monitoring data. The SRC shall use its best efforts to achieve it prioritization of management efforts by January 1, 2014.

(b) By April 1, 2014, Wind Power Companies and Audubon will propose updates to this Adaptive Management Plan to the County for review pursuant to Condition 5 of the CUP. The updates will be designed to achieve a 50% reduction in raptor mortality with the least impact

on energy production, and may include the elimination or reduction of seasonal shutdowns. If the Wind Power Companies and Audubon are not able to agree upon updates to the Adaptive Management Plan, they shall submit separate update proposals to the County by April 1, 2014.

(c) After receipt of the update proposal or proposals, the County shall consult the SRC and, after considering the SRC's recommendations, the County shall act (pursuant to Condition 5 of the CUPs, as necessary) on the updates to this Adaptive Management Plan by July 1, 2014.

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April 2, 2010

**VIA E-MAIL & FEDERAL EXPRESS**

Albert Lopez, Planning Director  
Sandra Rivera, Assistant Planning Director  
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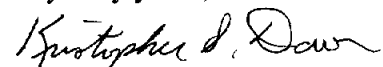
**Re: Wind Companies' Proposed Adaptive Management Plan Pursuant  
to January 2007 Settlement Agreement**

Dear Director Lopez and Assistant Director Rivera:

Enclosed please find the updated proposed adaptive management plan (the "Plan") submitted on behalf of ESI Bay Area GP, Inc., ESI Altamont Acquisitions, Inc. on behalf of Green Ridge Power, LLC, and ESI Tehachapi Acquisitions on behalf of Altamont Power, LLC, enXco, Inc., and SeaWest Power Resources, LLC (collectively, the "Wind Power Companies") pursuant to paragraph 3(c)(ii) of the Settlement Agreement. As I stated in my March 15, 2010 cover letter enclosing the Wind Power Companies' original Plan, the Wind Power Companies intended to supplement the original Plan upon receipt of the turbine ratings for the newly rated turbines. Enclosed is the updated Plan that takes into account the new turbine ratings.

For ease of reference, the only changes to the enclosed Plan from the previously submitted Plan are in Sections 1(f), 3(e)(i), 3(e)(ii), and 4(c)(i). Section 1(f) provides the Wind Power Companies' proposed high risk turbine removals. Sections 3(e)(i) & (ii) reflect ESI's and enXco's proposed reduction of allotted Unproductive Turbines to five (0) and zero (0), respectively, as discussed in recent conference calls with the Settling Parties. Section 4(c)(i) provides enXco's proposed additional removal/repowering schedule if the 50% raptor mortality reduction goal is not achieved.

Very truly yours,



Kristopher S. Davis

Enclosure

cc: Bill Barnes, AES Wind Generation (via e-mail)  
Ross Newlin, enXco, Inc. (via e-mail)  
Emre Ergas, NextEra (via e-mail)  
Martin Homec, Esq., on behalf of CARE (via e-mail)  
Andrea Weddle, Esq., Alameda County Counsel's Office (via e-mail)  
Zachary Walton, Esq., on behalf of NextEra (via e-mail)  
Bill Yeates, Esq., on behalf of Audubon (via e-mail)

## **SETTLING WIND POWER COMPANIES' ADAPTIVE MANAGEMENT PLAN PROPOSAL**

This Adaptive Management Plan Proposal (the "Plan") is submitted on behalf of ESI Bay Area GP, Inc., ESI Altamont Acquisitions, Inc. on behalf of Green Ridge Power, LLC, and ESI Tehachapi Acquisitions on behalf of Altamont Power, LLC (collectively, "ESI"), enXco, Inc. ("enXco"), and SeaWest Power Resources, LLC ("SeaWest," and collectively, along with ESI and enXco, the "Wind Power Companies").

### **PRELIMINARY STATEMENT**

The Settlement Agreement requires the implementation of adaptive management measures if a 50% reduction in raptor mortality was not achieved by November 1, 2009. The agreement charges the Wind Power Companies and Golden Gate Audubon Society, Ohlone Audubon Society, Mount Diablo Audubon Society, Santa Clara Valley Audubon Society, and Marin Audubon Society (collectively, "Audubon") with the responsibility for proposing the adaptive management plan to the SRC/County for review pursuant to Condition 5 of the CUP. The County has mandated the submission of this proposed adaptive management plan by March 15, 2010. Because the Wind Power Companies and Audubon are at an impasse in their negotiations of a joint plan, each is submitting their own proposed adaptive management plan.<sup>1</sup>

Adaptive management consists of eight steps: (1) definition of the problem; (2) determination of goals and objectives for management of ecosystems; (3) determination of the ecosystem baseline; (4) development of conceptual models; (5) selection of future restoration actions; (6) implementation of management actions; (7) monitoring and ecosystem response; and (8) evaluation of restoration efforts and proposals for remedial actions. Adaptive management differs from prescriptive regulation in that after implementation of specific restoration activities and procedures, the status of the ecosystem is regularly and systematically reassessed and described. Comparison of the new state with the baseline state is a measure of progress toward objectives. The evaluation process feeds directly into adaptive management by informing the implementation team and leading to testing of management hypotheses, new simulations, and proposals for adjustments in management experiments or development of wholly new experiments or management strategies.

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<sup>1</sup> The Wind Power Companies submit this proposal in the interests of preserving each Wind Power Company's rights to propose the adaptive management plan under paragraph 3(c)(ii) of the Settlement Agreement and in the interests of complying with the County's March 15, 2010 submittal date. But this submission does not constitute, and shall not be construed as, a waiver of any Wind Power Company's right to challenge the submittal of separate adaptive management proposals by the Wind Power Companies and Audubon as a violation of paragraph 3(c)(ii) of the Settlement Agreement. Indeed, the Wind Power Companies expressly reserve all rights in this regard.

## RECITALS

This Plan is submitted with respect to the following recitals of fact:

1. On September 22, 2005, the Alameda County Board of Supervisors approved conditional use permits ("CUPs") for the operation of wind turbines by the Wind Power Companies, among other entities, at the Altamont Pass Wind Resources Area ("APWRA"). The Alameda County Board of Supervisors, County of Alameda ("County") concluded that its decision to issue the CUPs was categorically exempt from the California Environmental Quality Act ("CEQA").

2. On or about October 31, 2005 and as amended on or about November 29, 2005, Audubon and CALifornians for Renewable Energy ("CARE") petitioned the Alameda County Superior Court for a writ of mandate (Case Nos. RG05239552 & RG05239790) to set aside the County's issuance of the CUPs on various grounds, including that such action violated the County's General Code and CEQA. The Audubon/CARE writ petitions are collectively referred to as the "Action". The Wind Power Companies were Real Parties in Interest in the Action. Audubon, CARE, the Wind Power Companies, and the County are referred to individually as a "Party" and collectively as the "Parties" to the Action.

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4. The Settlement Agreement states, "The Wind Power Companies shall achieve a 50% reduction in raptor mortality within three (3) years of the effective date of this Agreement. [] The baseline for determining the percentage reduction in raptor mortality at the APWRA is thirteen hundred (1300)...The percentage reduction in raptor mortality shall be determined using field monitoring data collected in accordance with the CUPs and scaling factors for searcher efficiency and scavenging as approved by the Scientific Review Committee ("SRC"). [] In the event the above-referenced scaling factors exceed 2.5, the Wind Power Companies, Audubon, and the County, in consultation with the SRC, along with any other individuals or entities that both the Wind Power Companies, Audubon and the County agree to, shall meet and confer to re-determine a mutually acceptable baseline for determining raptor mortality and/or reduction percentage in raptor mortality that triggers adaptive management measures as specified in section 3(c) of this Agreement." Settlement Agreement, § 3(a)(ii) & (iii).

5. The Settlement Agreement further states, "Adaptive management measures will be implemented if a 50% reduction in raptor mortality is not achieved by November 1, 2009. [] The SRC will prioritize management measures, including an evaluation of management measures that have not reduced raptor mortality at the expense of energy production, after analyzing field monitoring data. The SRC shall use its best efforts to achieve prioritization of management efforts by June 1, 2009. [] By August 1, 2009, Wind Power Companies and

Audubon will propose an adaptive management plan to the SRC/County for review pursuant to Condition 5 of the CUP if a 50% reduction in raptor mortality has not previously been achieved and is not projected to be achieved by November 1, 2009. The adaptive management plan will be designed to achieve a 50% reduction in raptor mortality with the least impact on energy production, and may include the elimination or reduction of seasonal shutdowns. The SRC shall act (pursuant to Condition 5 of the CUPs, as necessary) on the adaptive management plan for the Applicable Turbines by November 1, 2009.” Settlement Agreement, § 3(c)(ii) & (iii). (emphasis added)

6. On August 24, 2009, ESI sent the County a letter that states, in pertinent part, “[In] [t]he latest study on raptor mortality released by the monitoring team...the scaling factors used to determine the raptor mortality from 2005 to 2007 greatly exceed 2.5. It is our concern that the final report under the current monitoring study...will also use scaling factors greater than 2.5...[I]f the scaling factor will exceed 2.5 for the current program then the Settlement Agreement requires the Wind Power Companies, Audubon and the County to come together and develop a new mutually acceptable approach to measure raptor mortality reductions and/or mortality reduction percentage that requires adaptive management measures. Adding further complication to the comparison, the baseline sample set and the current sample set of turbines are from geographically distinct populations making the comparisons biased. We feel that there needs to be an adjustment for this inherent bias in the comparison. We hope that further discussions in the next few months will bring resolution to these two items.”

7. On December 2009, the monitoring team issued a draft report that analyzed the field monitoring data as contemplated by section 3(c)(i) of the Settlement Agreement, entitled “Altamont Pass Wind Resource Area Bird Fatality Study” (the draft “Monitoring Report”). Given that the draft Monitoring Report was not issued until December 2009, the timing of the milestones contemplated by section 3(c) to develop an adaptive management plan, if necessary, was impossible and impractical to comply with.

8. The draft Monitoring Report asserts the following conclusions: “(1) There is little or no evidence of a 50% reduction in raptor fatalities in the APWRA. (2) There is little or no evidence that the 2005-2009 seasonal shutdown has significantly reduced raptor fatalities in the APWRA. (3) There is substantial evidence that repowering of the APWRA with larger modern turbines would substantially, if not significantly, reduce the number of raptors killed per megawatt of power produced at the APWRA.”

9. The draft Monitoring Report does not include, among other things, any bird utilization or abundance studies at the APWRA.

10. On January 13 & 14, 2010, SRC meetings took place at which the SRC discussed the draft Monitoring Report (the “January 2010 SRC Meetings”). The SRC provided comments and criticisms to the draft Monitoring Report and required that a further draft Monitoring Report be submitted to them for further comments and suggestions before a final Monitoring Report is issued. The SRC stated that a bird utilization study is necessary to analyze reductions in raptor mortality at the APWRA.

11. At the January 2010 SRC Meetings, the SRC agreed with the draft Monitoring Report's conclusion that "[t]here is little or no evidence of a 50% reduction in raptor fatalities in the APWRA." Accordingly, the SRC put forth its prioritization of management measures to achieve a 50% reduction in raptor mortality as follows: (1) Repowering, including careful siting; (2) High Risk Turbine Removals; (3) Seasonal Shutdown; (4) Burrowing Owl Behavioral Study; and (5) Research on Adjustment Factors.

12. On February 3, 2010, the County sent the Parties a letter with an enclosed memorandum. The letter states, "On January 13, 2010, the Scientific Review Committee (SRC) expressed their unanimous opinion that the Wind Power Companies had not achieved a 50% reduction in raptor mortality...[and] [b]ecause the 50% goal was not achieved by November 1, 2009, the implementation of adaptive management is required." The enclosed memorandum further states, "[T]he County hereby modifies the conditional use permits adaptive management timelines to require the settling Wind Power Companies and Audubon to propose an adaptive management plan to the SRC/County by March 15, 2010 and for the SRC to act on the adaptive management plan for the Applicable Turbines by June 15, 2010."

13. On February 4, 2010, the County sent the Parties an e-mail, which attached ESI's August 24, 2009 letter, that states, "The County wishes to convene a meeting or series of meetings among the settling Wind Companies, Audubon, the County and Care [sic] to 'meet and confer to re-determine a mutually acceptable baseline for determining raptor mortality and/or reduction percentage in raptor mortality. As noted in Mr. Ergas' letter of August 24, 2009 (attached for reference), these discussions are permitted by Section 3(a) of the Settlement Agreement. [¶] It is our hope to advance the tentative discussions on this topic that have begun among the parties in the Fall of 2009. Recent discussions of the Scientific Review Committee (SRC) have only emphasized the need to establish a new metric for measuring progress toward minimizing avian mortality in the APWRA."

14. The Wind Power Companies deny that adaptive management measures are required under the Settlement Agreement at this time because, among other things: (1) the final Monitoring Report has not been issued (which will have to take into account further comments and suggestions from the SRC which have not been provided because the second draft of the Monitoring Report has not been released yet); (2) the draft Monitoring Report does not include any analysis of bird utilization data in the APWRA which is necessary to analyzing raptor mortality reductions; and (3) the Wind Power Companies, Audubon and the County have not met and conferred, pursuant to section 3(a)(iii) of the Settlement Agreement to re-determine a mutually acceptable baseline and/or reduction percentage as expressly requested by the County in its February 4, 2010 e-mail. The Wind Power Companies, however, in the interests of complying with the County's February 3, 2010 letter and in resolving the adaptive management dispute amicably, hereby submit this Plan. The Wind Power Companies intend to engage in further discussions with Audubon to attempt to resolve the dispute.

15. The Wind Power Companies submit this Plan to the County/SRC for review pursuant to Condition 5 of the CUPs for the Applicable Turbines. The terms and conditions of this Plan are set forth below.

**1. IDENTIFICATION, REMOVAL AND RELOCATION OF HIGH RISK TURBINES AND TOWERS**

(a) High Risk Turbines shall be defined as Applicable Turbines rated 8-10 by the SRC consistent with the "Hazardous Rating Scale of the SRC", document P69 (Final 2-1-08). High Risk Turbines do not include turbines or towers located on the Santa Clara site.

(b) In March 2010, or as soon thereafter as possible, the SRC shall rate the turbines that were not previously rated as part of its November/December 2007 site visit. The SRC shall provide to the Parties a document that lists the newly rated turbines and its corresponding rating (the "Turbine Ratings").

(c) Each Wind Company shall, within 15 days of receipt of the Turbine Ratings, submit a list of High Risk Turbines attributable to it to the County for confirmation.

(d) The County, with consultation with the SRC, shall confirm the status of High Risk Turbines within 21 days of receipt of each Wind Companies' list (pursuant to subsection (c) immediately above). The County shall distribute the confirmed list of High Risk Turbines to the Compliance Monitor, Audubon and the Wind Companies.

(e) Each Wind Company shall, within 14 days of receipt of its confirmed list of High Risk Turbines, submit to Audubon, the County and Compliance Monitor a detailed map identifying the location and site #s for the confirmed High Risk Turbines attributed to it.

(f) Each Wind Company shall remove High Risk Turbines as follows:

(i) By September 30, 2010, ESI shall remove its High Risk Turbines rated 9-10 in the Turbine Ratings; provided, however, that ESI may continue to operate two (2) KVS-33 (400 kW capacity) turbines rated 9-10, in exchange for removing four (4) 56-100 High Risk Turbines rated 8.5 in the Turbine Ratings.

(ii) By September 30, 2010, enXco shall remove its High Risk Turbines rated 9-10 in the Turbine Ratings. By February 15, 2011, enXco shall remove its High Risk Turbines rated 8.5 in the Turbine Ratings.

(iii) By September 30, 2010, SeaWest shall remove its High Risk Turbines rated 9-10 in the Turbine Ratings. By February 15, 2011, SeaWest shall remove its High Risk Turbines rated 8.0-8.5 in the Turbine Ratings. High Risk Turbines do not include turbines or towers located on the Santa Clara site.

(g) High Risk Turbines subject to a removal requirement above shall not be relocated to turbines sites rated 8-10. Wind Companies shall make best efforts to relocate turbines consistent with Section 3 of the SRC Relocation Guidelines, document P70 (1-30-2008). If any Wind Company has a question about a relocation site, the Wind Company is encouraged to consult with the SRC before relocating or re-siting a removed turbine.



## **2. SEASONAL SHUTDOWN**

(a) The Wind Companies shall shut down Applicable Turbines in accordance with the CUPs; provided, however, that the Wind Companies shall shut down their turbines on a one-time universal basis per season commencing on November 1 (i.e., the Wind Companies will not shut down half the turbines in the staggered cross-over design required under the CUPs).

(b) Within 14 days after the requirement to initiate or complete seasonal shutdown as specified in the CUPs, (a) ESI shall submit operational data maintained in the normal course of operations to the Compliance Monitor demonstrating operating time per day for each Applicable Turbine for the duration of the seasonal shutdown since its commencement; and (b) SeaWest and enXco shall submit meter readings maintained in the normal course demonstrating power generation for all Applicable Turbines under their control for the duration of the seasonal shutdown since its commencement.

## **3. UNPRODUCTIVE TURBINES AND TOWERS**

(a) Unproductive Turbines and Towers are: (a) Applicable Turbines that have remained non-operational for 12 consecutive months and (b) Applicable Turbine sites with towers only. Unproductive Turbines and Towers do not include turbines or towers located on the Santa Clara site.

(b) The allotment of allowable Unproductive Turbine and Tower sites for each Wind Company is as follows:

- (i) ESI – 30 turbines;
- (ii) enXco – 15 turbines; and
- (iii) SeaWest – 12 turbines.

(c) On February 21, 2011, and annually thereafter, each Wind Company shall submit to Audubon, the County and Compliance Monitor, a detailed map that identifies the location and site #s of Unproductive Turbines and Towers held in reserve as part of each company's annual allotment of Unproductive Turbines and Towers.

(d) Each Wind Company shall remove by February 28, 2011, and February 28 of each year thereafter, Unproductive Turbines and Towers in excess of its annual allotment.

(e) If no further high risk turbines (other than the High Risk Turbine removals required pursuant to section 1 of this Plan) are required to be removed pursuant to a further adaptive management plan approved by the County or a future agreement or amended agreement between the Parties, then each Wind Company's final allotment on February 28, 2011 shall be:

- (i) ESI – 5 turbines;

- (ii) enXco – 0 turbines; and
- (iii) SeaWest – 0 turbines.

#### 4. **REMOVAL/REPOWERING SCHEDULE**

(a) ESI

(i) By December 31, 2011, barring delays by state or federal agencies, action by the Planning Director, or other factors outside of NextEra Energy's control, and subject to a new conditional use permit and a development agreement under similar terms to repowering projects in the APWRA, NextEra Energy shall repower 25 percent of its individually-owned existing turbines.

(b) SeaWest

(i) If and only if by September 30, 2013, a 50% reduction in raptor mortality is not achieved, SeaWest shall have removed 25% of its Applicable Turbines by September 30, 2013. The denominator for this equation is the number of Applicable Turbines on the date of the CUPs and does not include turbines or towers located on the Santa Clara site. Any Applicable Turbine removed since the date of the CUPs counts toward the 25% reduction required under this provision.

(c) enXco

(i) If and only if by September 30, 2013, a 50% reduction in raptor mortality is not achieved, enXco shall have removed all of its High Risk Turbines rated 8.0 in the Turbine Ratings by September 30, 2013.

#### 5. **BURROWING OWL AND ADJUSTMENT FACTOR STUDIES**

(a) The SRC included two studies in its prioritization of management measures to achieve a 50% reduction in raptor mortality: (1) burrowing owl behavioral study; and (2) research on the adjustment factors (collectively, "Additional Studies").

(b) These Additional Studies shall be funded by the Wind Companies provided that the Additional Studies are performed within the existing annual monitoring costs and any costs associated with hiring staff for the NCCP/HCP. The Parties expressly understand that the existing monitoring scheme will likely need to be modified in order to perform the Additional Studies within the annual budgetary constraint.

# **Adaptive Management Plan**

(March 15, 2010; Revised March 22, 2010)

## **Overview**

**Golden Gate Audubon Society and Santa Clara Valley Audubon Society on behalf of Ohlone Audubon Society, Mount Diablo Audubon Society, and Marin Audubon Society (“Audubon”) submit the following adaptive management plan to the Scientific Review Committee and Alameda County Planning Department pursuant to Condition of 7 the Alameda County Board of Supervisor’s January 11, 2007 Resolution No. R-2007-111, which amended the Permittees’ (*aka* Wind Power Companies in the 2007 Settlement Agreement) Conditional Use Permit(s) (“CUPs”).**

**The Scientific Review Committee (“SRC”) unanimously concluded on January 13, 2010, at its January 13-14, 2010 meeting in Emeryville, California that the Settling Wind Power Companies’ (“Companies”) existing wind turbine operation failed to achieve a 50% reduction in raptor mortality by November 1, 2009. After the SRC concluded that the Companies’ existing wind turbine operation had failed to achieve the 50% reduction in focal raptor species mortality, section 2(c) of the Settling Parties’ Avian Wildlife Protection Program & Schedule (“AWPPS”) requires the implementation of adaptive management measures. Pursuant to subdivision (2) of Section 2(c) of the Settling Parties’ AWPPS, Audubon and the Companies have a duty to propose an adaptive management plan to the SRC and County.**

**On February 3, 2009, Alameda County’s Community Development Director wrote a letter to representatives of the Companies and Audubon re-affirming the SRC’s unanimous conclusion that the Companies’ existing wind turbine operation had failed to achieve the required 50% reduction in raptor mortality and that implementation of adaptive management is required. Attached to the Community Development Director’s letter was a memorandum from the Alameda County Planning Director addressed to the Settling Parties informing them that he had amended the adaptive management timelines to allow Audubon and the Companies the time to complete the tasks described in Section (2)(c)(2) of the Settling Parties’ AWPPS (Exhibit G-1). Pursuant to the Planning Director’s amendments Audubon and the Companies must propose an adaptive management plan to the SRC and County by March 15, 2010.**

**Although Audubon and the Companies have not been able to reach consensus on an adaptive management plan, Audubon believes it has a responsibility to**

propose an adaptive management plan to the SRC and County by March 15, 2010, while it continues to work with the Companies on a joint adaptive management plan.

The SRC prioritized the following four management measures at the conclusion of the January 13-14, 2010 SRC meeting:

1. Repowering, as soon as possible, including careful siting;
2. Two interim management measures,
  - a. High Risk Turbine Removal, and
  - b. Seasonal Shutdown;
3. Burrowing Owl Behavior Study
4. Research on Adjustment Factors

## **Adaptive Management Plan**

**Audubon's Perspective on Adaptive Management:** Adaptive management is a reiterative process in which assumptions, management actions and mitigation measures are monitored, evaluated, learned from and improved upon.

### **I. Proposed Audubon Adaptive Management Plan**

#### **A. Repowering the Companies' Wind Turbine Operations at APWRA**

The SRC's first priority recommended management measure is the repowering of the Companies' existing wind turbine operation at APWRA. Audubon concurs with the SRC's recommendation. The schedule for repowering is based on the removal of existing turbines -- not an online date for the operation of new repowered turbines. The permanent removal of existing turbines is more likely to reduce avian fatality than the potential reductions achieved by repowering projects over a phased period of time.

Audubon recommends the following repowering schedule:

1. 25% of the Companies' permitted turbines are removed for purposes of repowering by April 1, 2011;
2. 50% of the Companies' turbines are removed for purposes of repowering by April 1, 2012; and,
3. 100% of the Companies turbines are removed for purposes of repowering by April 1, 2014.

According to NextEra's document Wind Repowering 101 the Permitting Process for Repowering has the following requirements and estimated timelines:

1. Two years of avian monitoring data;
2. Preparation and certification of an environmental impact report, which is estimated to take two years; and,
3. Completion of the process from start to operation ("start to finish") is three years.

1. **Monitoring Data.** The County and Companies should be able to take advantage of the past monitoring data of the existing wind turbine operation at APWRA.

2. **Environmental Review/CEQA Compliance.**

Audubon is recommending Alameda County prepare a Program and Project EIR for the review of the initial 25% phase of repowering. In order to expedite this first phase of the repowering program, the Companies shall identify which 25% of existing turbine sites will be repowered by September 30, 2010.

(a) **Program EIR for Repowering APWRA.** The programmatic portion of the EIR shall evaluate the broader environmental consequences of repowering the entire APWRA by 2014 addressing the baseline environmental conditions at APWRA, cumulative impacts, alternatives (including the No Project Alternative), greenhouse gas emissions and reduction, and program-wide onsite measures such as rodent and ground squirrel control and offsite mitigation measures to reduce a re-powered wind turbine operation's programmatic impacts on the APWRA and surrounding region.

(i) **Siting Protocol.** The programmatic portion of the EIR shall establish the protocol for siting the new wind turbines to avoid bird mortality to the greatest extent possible using the best scientific information available about bird behavior at APWRA. The program-wide siting protocol shall be utilized for the siting of turbines in the later phases. The initial group of 25% of the Companies' wind turbines shall be monitored and the siting protocol shall be updated and reviewed in subsequent project-specific environmental review documents.

(ii) **Burrowing Owl Behavior Study.** As part of the programmatic portion of the EIR and related to the siting protocol the Companies shall fund a Burrowing Owl Behavior Study recommended by the SRC.

(iii) **Golden Eagle Study.** Based on the results of the monitoring effort, recent monitoring by Doug Bell and the East Bay Regional Park District, and Hunt and Hunt (2006), Audubon is greatly concerned with the cumulative impact of wind turbine operation at APWRA on local and regional Golden Eagle populations. As part of the programmatic portion of the EIR, and related to the siting protocol for repowered turbines, the Companies shall fund or secure funding for a local and regional Golden Eagle population study as a follow up to the CEC-funded study by Hunt in 2006.<sup>1</sup> The design of the study shall be determined by the SRC in consultation with the Settling Parties and state and federal wildlife agencies.

(b) **Project EIR portion for 1<sup>st</sup> 25% Phase of Repowering.** The project-specific portion of the EIR shall evaluate the environmental consequences of repowering the first 25% of the APWRA focusing on project specific impacts, siting, project specific mitigation, alternative operating schemes, and monitoring.

(b) **Subsequent Environmental Review of Later Phases.** Subsequent project-specific, focused EIRs shall incorporate by reference and tier from the initial certified Program/Project EIR for the next two phases of repowering the remainder of the APWRA.

(c) **Timing.** The deadlines for repowering each phase of the Companies' wind turbine operation at the APWRA incorporates the time to complete the environmental review, coordination among the Companies on, and the decommissioning and removal of existing equipment in order to expedite site preparation for repowering.

(d) **Restoration Bond.** Consistent with Condition 4 of the CUPs:

**The Permittee shall post a bond or provide an equivalent financial instrument to ensure an adequate sum of money (the specific amount to be determined by the Planning Director with input from the Scientific Review Committee as part of this adaptive management plan), is available to guarantee**

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<sup>1</sup> Hunt & Hunt, The Trend of Golden Eagle Territory Occupancy in the Vicinity of the Altamont Pass Wind Resource Area: 2005 Survey (PIER Final Project Report, June 2006).

reclamation of abandoned facilities and restoration of properties to pre-installation conditions, in the event of failure by the Permittee to implement the terms of the conditions herein except as determined by the Planning Director for reasons outside of the Permittee's reasonable control or ability to foresee.

Except for the initial 25% of the turbines that will be subject to decommissioning and removal for repowering as part of the adaptive management plan required by the Settling Parties' AWPPS, the Companies shall post all restoration bonds as specified in Condition 4 of Resolution No. R-2007-111 for the remaining 75% of the turbines.

These restoration funds shall be assessed and expended on an annual basis to cover all costs of restoration including funding for ongoing compliance monitoring of the enforcement of the Settling Parties' AWPPS' adaptive management plan, as specified by the Planning Director in consultation with the SRC and Settling Parties.

The Planning Director in consultation with the SRC and Settling Parties will use the EIR process to determine the appropriate bonding amounts which entire amount will be posted by the Companies immediately after certification of the Final Program/Project EIR. The bonding requirement is subject to change based on lessons learned from the initial 25% of the turbines that will be subject to decommissioning and removal as part of the new AWPPS.

(e) **Compensatory Mitigation.** The Companies will provide compensatory mitigation for any ongoing significant and unavoidable adverse impacts of wind turbine operations on the four focal raptors and other wildlife. The Planning Director in consultation with the SRC and Settling Parties will use the EIR process to determine the appropriate mitigation consistent with Condition 9 of Resolution No. R-2007-111, which states:

**Preliminary On-Site/Off-Site Habitat Mitigation**

**Implementation Program:** The Planning Director, with input from the SRC and the County consultant, shall develop a program that the Permittee(s) shall fund and otherwise participate in, to provide for protection and enhancement of the habitat of raptors and other wildlife through conservation easements or other means on suitable properties to compensate for avian mortality and injury effects that remain unaffected by the [AWPPS]. The properties on which habitat enhancement is provided should be within Alameda County to the greatest

extent possible, and the selection of properties and administration of the program shall be based on the recommendations of the SRC. The Mitigation Implementation Program will require the SRC to investigate formulae, criteria, techniques and costs of conservation easements or similar strategies to be carried out by the Permittee(s). Any properties selected for use in carrying out this program, including on-site portions of properties leased by the Permittee(s) must be appropriately separated from active windfarm turbine fields, represent viable, favorable raptor habitat, and have significant potential to protect and enhance raptor habitat as determined by the SRC.

(f) Deadlines/timelines: Timelines and deadlines for the preparation and completion of each phase of the repowering program shall be strictly enforced. However, if litigation is filed by any non-Settling Parties challenging the County's environmental review, or any project approvals, or both, the schedule will be stayed pending a final judicial decision or settlement of the dispute. If the County, the Companies, or both fall behind schedule the Settling Parties shall convene and assess the situation in order to get the project back on schedule or re-adjust the timeline, if necessary.

If the Companies fail to remove existing wind turbines for purposes of repowering within the agreed upon timeframes for each phase of repowering, the Companies will be assessed a daily penalty of \$1,000 for each day after the scheduled deadline until the existing wind turbines are decommissioned and removed in proportion to the rated MW capacity of the facility as listed in Exhibit F of the CUPs. Any penalties shall be contributed to an on-site/off-site habitat mitigation fund to provide for protection and enhancement of the habitat of raptors and other wildlife through conservation easements or other means on suitable properties to compensate for avian mortality and injury effects that remain unaffected by the Settling Parties' AWPPS. As set forth in Condition 9 of the CUPs, this habitat mitigation implementation program shall be implemented separately or as part of an approved Natural Community Conservation Plan ("NCCP"), or similar long-term conservation plan approved by state and federal wildlife agencies. Any penalties shall not offset financial commitments already agreed to as part of the NCCP.

The deadlines for meeting each phase of the Companies' repowering program are not dependent on the approval or execution of an NCCP, or similar long-term conservation plan at APWRA. Repowering of the Companies' existing wind turbines is designed to achieve a 50% reduction in raptor mortality with



the least impact on energy production. Approval and execution of an NCCP, or similar long-term conservation plan, or the implementation of the mitigation implementation program contemplated in Condition 9 of the CUPs, if an NCCP, or similar conservation plan is not completed, addresses the on-site and off-site habitat mitigation objectives necessary to compensate for the long-term and continued avian mortality and injury effects of wind turbine operations at APWRA that cannot be completely mitigated by project-specific mitigation measures.

**B. Interim Management Measures.**

**1. High Risk Turbine Removal.** After the SRC's field survey and ranking of additional existing wind turbines at APWRA, the Companies shall remove all the highest risk (7 through 10 under the current ranking system) turbines identified by the SRC. The highest risk turbines identified by the SRC shall be removed and relocated by August 30, 2010. Turbines removed pursuant to this section may be relocated to sites rated 6.5 or lower, but should not be relocated within the area that will be repowered within the geographical area of the first phase of the repowering plan, described above. On July 1, 2010 the Companies shall submit a relocation plan to the SRC for review and approval prior to relocating removed turbines. The SRC shall review and approve the Companies' relocation plan by July 15, 2010.

**2. Unproductive, derelict, or non-operating turbines.**

**a. Removal of High Risk unproductive, derelict, or non-operating turbines.** Any remaining unproductive, derelict, or non-operating turbines identified by the SRC as high risk must be removed or relocated no later than 60 days from the SRC and the County's approval of this adaptive management plan.

**b. Relocation of High Risk Turbines and removal of all unproductive, derelict, or non-operating turbines.** The Companies may relocate turbines on any unproductive, derelict, or non-operating turbine sites that are rated 6.0 or lower, which are identified on the relocation plan approved by the SRC. All remaining unproductive, derelict, or non-operating turbine sites that are not included in the SRC-approved relocation plan shall be decommissioned and removed by no later than August 30, 2010.

[Note: Audubon and settling party CALifornians for Renewable Energy are committed to working with the Companies, the SRC, and the County on developing a monitoring program that would evaluate the effect of removing and relocating the high risk turbines. Audubon believes that this work

should include any research on adjustment factors – the 4<sup>th</sup> priority management measure recommended by the SRC.

**Revised Monitoring must include:**

- 1. Continued monitoring of raptor mortality based on the SRC's recommendations of best monitoring practices.**
- 2. Evaluation of success or failure of management actions on raptor mortality on an annual schedule, using SRC recommended evaluation criteria. Failure to achieve a significant reduction in raptor mortality will require additional measures to be immediately implemented by the Companies, as determined by the SRC.**
- 3. Recommendations from annual reporting to be incorporated into subsequent phases of repowering and relocation of turbines.**
- 4. Evaluation of the assumptions that were used in the repowering program and any interim management measures.]**

**3. Seasonal Shutdown. Because monthly patterns of fatality rates vary among species, no particular seasonal shutdown will uniformly benefit all species. Rather than a rigid winter seasonal shutdown, Audubon and CARE recommend temporary shutdowns of the existing wind turbine operation designed to take advantage of the bird fatality data that has been collected. Based on the poor design and execution of the cross-over seasonal shutdown, there shall be no cross-over designed temporary shutdowns.**

**Based on comments made by the SRC, it appears to Audubon that a temporary shutdown of the existing wind turbines in August and September when the existing wind turbines kill larger numbers of raptors is the most appropriate time. Therefore, Audubon recommends a temporary August and September shutdown of all of the Companies' non-repowered turbines until these turbines are removed for purposes of repowering by April 1, 2014. The timing and length of a temporary shutdown in August and September to be determined by the SRC based upon the bird fatality information.**

**Whenever, the non-repowered turbines are to be re-operated after a temporary shutdown the Companies shall initiate an SRC-approved raptor/bird hazing program, which has been developed in consultation with state and federal wildlife agencies, to discourage any raptors and birds that may have temporarily habituated themselves to the shutdown field.**

**4. Deadlines/timelines: Timelines and deadlines for completing interim management measure tasks shall be strictly enforced. If a Settling Company fails to meet any interim management measure timelines or deadlines as determined by the County's compliance monitor, the Settling Company will be assessed a daily penalty of \$1,000 for each day after the scheduled deadline. Any penalties shall be contributed to an on-site/off-site habitat mitigation fund to provide for protection and enhancement of the habitat of raptors and other wildlife through conservation easements or other means on suitable properties to compensate for avian mortality and injury effects that remain unaffected by the Settling Parties' AWPPS. As set forth in Condition 9 of the CUPs, this habitat mitigation implementation program shall be implemented separately or as part of an approved Natural Community Conservation Plan ("NCCP"), or similar long-term conservation plan approved by state and federal wildlife agencies. Any penalties shall not offset financial commitments already agreed to as part of the NCCP.**