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November 13, 2003

Andrew Young
Alameda County Community Development Agency
224 West Winton Ave., Room 111
Hayward, CA 94544

Re: Proposed Conditional Use Permit Renewals for wind turbines in Altamont Pass WRA

Dear Mr. Young:

The Center for Biological Diversity (“CBD”) has learned that Alameda County (“County”) intends to illegally renew Conditional Use Permits (“CUPs”) for indefinite operations of all wind turbines at Altamont Pass Wind Resource Area (“APWRA”) with no review under the California Environmental Quality Act (“CEQA”) and no new mitigation measures for documented raptor mortality and likely illegal take of federally and state listed species. CBD is a non-profit conservation organization that works to protect imperiled species and the ecosystems upon which they depend.

The County as lead agency must prepare an Environmental Impact Report (“EIR”) before approving CUPs for the maintenance and operation of wind turbines in the APWRA. The County’s claims that this action is categorically exempt from CEQA review are patently false and the County’s use of such categorical exemptions is illegal under CEQA.

Operation of the wind turbines at APWRA causes ongoing significant well-documented mortality of numerous raptor species and may be causing illegal take of other state and federally listed endangered species. Operation of the wind turbines has resulted in ongoing violations of several California Fish and Game Codes protecting raptors, non-game birds, and fully-protected species; violations of the federal Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act; and likely violations of the federal Endangered Species Act. The County and the wind turbine operators have been aware of

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the astronomical level of raptor kills for at least 13 years and have taken no meaningful action to reduce, minimize, or mitigate for these mortalities.

Californians for Renewable Energy (“CARE”) and BioResource Consultants (“BRC”) submitted comments to the County regarding these issues in letters of 11/12/03 and 11/10/03, respectively. The Center for Biological Diversity incorporates the comments of CARE and BRC by reference. BRC enumerated the extensive research on avian mortality at APWRA, research the County is aware of. Wind turbine collisions have caused an estimated 22,000 to 44,000 bird fatalities over the past 20 years of operations, including at least: an estimated 400 to 800 golden eagles; 2,980 to 5,960 red-tailed hawks; 2,700 to 5,400 burrowing owls; and numerous other special-status bird species.

Identified bird kills include species protected under the federal Endangered Species Act, 16 U.S.C. §§ 1531-1544; 50 CFR Parts 17, 401-424, 450-453; the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668; the Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712; and several state Fish and Game Codes including § 3503.5 (unlawful to take birds of prey), § 3511 (unlawful to take fully protected birds), § 3513 (unlawful to take migratory nongame birds), and § 3800 (unlawful to take nongame birds).

Additionally, the rodent control program at APWRA may cause illegal take of the California red-legged frog (a federally threatened species and state species of concern), California tiger salamander (a federally proposed threatened species and state species of concern), San Joaquin kit fox (a federally endangered and state threatened species), western burrowing owl (a federal and state species of concern), and other special-status species. Any take of these species would be in violation of the federal Endangered Species Act and the California Endangered Species Act, § 2080.

The County claim that the approval of CUPs is categorically exempt from CEQA is patently false and illegal under the CEQA Guidelines, §§ 15301 - 15329. As documented in the 11/10/03 BRC letter, there is significant new information on the magnitude of raptor mortalities at APWRA since the original CUPs were issued two decades ago. There are well-documented and publicly presented ongoing, significant, cumulative environmental impacts to raptors from operation of the wind facilities. The County has been informed by raptor experts that the ongoing mitigation measures are ineffective and that proposed alternative mitigation measures based on more valid scientific data can easily be implemented which would substantially reduce avian mortality. The County has also been informed that current rodent control measures are exacerbating the avian mortality problem and may also be causing illegal take of federal and state listed species. The rodent control program was never subject to environmental review, a further violation of CEQA, as there are potentially significant impacts to listed species.

The County must prepare an EIR before approving CUPs for any further wind turbine operation in the APWRA. As the lead agency, the County is also legally liable under federal and state wildlife protection laws for past and any future illegal take of protected species as a result of wind turbine operations permitted by the County.

Sincerely,

Jeff Miller
Director, Bay Area Wildlands Project
Center for Biological Diversity