

**COUNTY OF ALAMEDA**  
East County Board of Zoning Adjustments

In the Matter of:	) Conditional Use Permit Nos.
	) C-8161, C-8182, C-8191, C-8201,
Conditional Use Permits (CUPs) for the	) C-8203, C-7853, C-7854, C-8216,
maintenance and operations of existing	) C-8232, C-8233, C-8234, C-8235,
windturbines in the Altamont Pass Wind	) C-8236, C-8237, C-8238, C-8239
Resources Area (APWRA)	) C-8240, C-8241, C-8242, & C-8244

**Request for Environmental Review**

This letter is a request for an environmental review, preferably an Environmental Impact Report (EIR), be prepared by the County of Alameda, as the lead agency under the California Environmental Quality Act (CEQA) in approving the proposed re-issuance of conditional use permits (CUPs) for the maintenance and operations of existing wind turbines in the Altamont Pass Wind Resources Area (APWRA).

County Staff has proposed that the County issue categorical exemptions for the projects under CEQA. CEQA Guidelines sections 15301 to 15329 covers categorical exemptions from CEQA review. According to the Guidelines, “all classes of categorical exemptions are inapplicable where significant cumulative impacts will result over time from successive projects of the same type in the same place.” Also, “categorical exemptions shall not be used for any activity for which there exists a reasonable possibility that significant environmental impacts will result due to unusual circumstances.” Then, the Guidelines state, “When relying on any categorical exemption, the approving agency should be careful to create an administrative record showing that the agency fully considered whether the project might cause significant impacts.” Each of these statements is followed by citations of case law. Just look up Categorical Exclusions in the table of contents of your CEQA Guidelines.

There are ongoing and increasingly substantial cumulative impacts on migratory bird species, the unusual circumstance of the Altamont Pass being a migratory bird route, and the administrative record appears to be missing from the County’s proposed action. Environmental review is required under CEQA because there was no way for the County to predict these impacts would occur twenty years ago when the original CUPs were first issued for wind turbines in the area as these CUPs were issued prior to construction of such turbines.

CARE as one of the state of California's leading opponents to large fossil fuel power plant construction, like FP&L Energy's<sup>1</sup> proposed 1100 MW Tesla Power Plant before the CEC<sup>2</sup> under docket 01-AFC-21 proposed adjacent to these wind farms. We provide a copy of recent litigation filed by CARE in the state Supreme Court over the East Altamont Energy Center (01-AFC-4), also located in Alameda County. We are concerned that as advocates for renewable energy the County's proposed "Action" will illegally give "Wind Power" a **black eye**, nationwide by not dealing with the real cumulative impacts of wind energy on migratory birds, especially raptor species. This will do much to support advocates of fossil fuel energy like FP&L Energy's Tesla Power Plant.

Bird fatalities in the Altamont Pass Wind Resource Area (APWRA) have plagued the wind industry and clouded the public's perceptions of whether the wind can be developed as an environmentally safe, renewable energy resource. The total number of birds killed in the APWRA is unknown, but estimates of 10,000 - 20,000 birds during the past two decades are supportable (Orloff and Flannery 1992, 1996; Thelander et. al 2002). Because of the County's proposed ministerial action in approving the CUPs, however, these significant adverse impacts will be ignored and no protection measures or management programs are in place that will reduce these fatalities, despite years of research and widespread acknowledgement of the problem. How could this happen?

Identified bird kills are species which includes those that are protected under the Bald and Golden Eagle Protection Act (BGEPA), 16 U.S.C. § 668, or the Endangered Species Act (ESA), 16 U.S.C. §§ 1531–1544; 50 CFR Parts 17, 401–424, 450–453, and all which are covered under the Migratory Bird Treaty Act (MBTA), 16 U.S.C. §§ 703–712. If CARE is forced to bring a private enforcement action in the courts against the County of Alameda and the federal US Fish and Wildlife Service, to enforce these federal statutes, it could result in millions of dollars in fines being assessed against the County for allowing this illegal taking of migratory bird species, while guaranteeing the end to these wind farms continued operations producing clean air pollution free renewable energy.

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<sup>1</sup> Florida Power and Light, or FP&L Energy, the owner of the wind farms in question here, are one of those energy companies named by the Federal Energy Regulatory Commission (FERC) [under Docket No. EL03-155-000] to have "appear[ed] to have participated in activities (Gaming Practices), that constitute gaming and/or anomalous market behavior in violation of the California Independent System Operator Corporation's (ISO) and California Power Exchange's (PX) tariffs during the period January 1, 2000 to June 20, 2001[i.e., the California Energy Crises], that warrant a monetary remedy of disgorgement of unjust profits and that may warrant other additional, appropriate non-monetary remedies." Which begs the question, why is Alameda County helping these thieves in high places? See attached FERC Order.

CARE does not wish to give a **black eye**, nationwide to “Wind Power”. For these reasons, and to prepare your administrative records for litigation purposes [in case we have to sue], we have retained the services of BioResource Consultants (BRC) to prepare an expert comment letter on the proposed re-issuance of conditional use permits (CUPs) for the maintenance and operations of existing wind turbines in the Altamont Pass Wind Resources Area (APWRA) which is attached. The qualifications of Dr. Smallwood and Mr. Thelander for commenting on the proposed re-issuance of CUPs are summarized in their short biographies and Curriculum Vitas, which are also attached.

For all the foregoing reasons we respectfully request preparation of an environmental review, preferably an Environmental Impact Report (EIR), be prepared by the County of Alameda, as the lead agency under the California Environmental Quality Act (CEQA) in approving the proposed re-issuance of conditional use permits (CUPs) for the operations of existing or future wind turbines in the Altamont Pass Wind Resources Area.

Respectfully submitted,

By 

Filed Electronically 11-12-03  
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### VERIFICATION

I am an officer of the commenting corporation herein, and am authorized to make this verification on its behalf. The statements in the foregoing document are true of my own knowledge, except matters, which are therein stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 12, 2003, at Soquel, California



CAlifornians for Renewable Energy, Inc. (CARE)

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<sup>2</sup> California Energy Commission