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September 20, 2004

Supervisor Scott Haggerty  
Alameda County Board of Supervisors  
1221 Oak Street, Suite 536  
Oakland, CA 94612

**Re: Appeal of Conditional Use Permits for Altamont Pass wind turbines**

The Center for Biological Diversity, Californians for Renewable Energy, Inc. (CARE), and Golden Gate Audubon Society, the appellants in the matter regarding the appeal of Conditional Use Permits (CUPs) approved by Alameda County for wind turbines at Altamont Pass Wind Resource Area (APWRA), are writing to insist upon a prompt hearing of our appeal by the Board of Supervisors. The appellants filed appeals of the CUPs on November 21, 2003<sup>1</sup> and on February 6, 2004.<sup>2</sup>

The appellants filed these appeals because over the past 20 years, wind turbines at APWRA have illegally killed tens of thousands of birds of prey. The County Board of Zoning Adjustments issued the new permits (some of indefinite duration, some good for the next 20 years) without preparing an EIR or doing any other meaningful environmental review, contrary to the requirements of the California Environmental Quality Act (CEQA). Furthermore, the permits were issued without requiring any mitigation measures whatsoever, without requiring the shutdown of any of the known killer turbines, and without retrofitting of power poles to prevent bird electrocutions. The County approved the permits without implementing mitigations recommended by independent experts at BioResource Consultants retained by CARE. These experts subsequently completed a Public Interest Energy Research (PIER) Program report for the California Energy Commission (CEC), *Developing Methods to Reduce Bird Mortality In*

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<sup>1</sup> C-8161, 8182, 8191, 8201, 8203, 8232-8242 and 8244

<sup>2</sup> C-8023, 8031, 8036, 8037, 8134, 8136, 8137, 8173, 8182, 8224, 8225, 8231, 8232, 8240, and 8263

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*the Altamont Pass Wind Resource Area*, which was peer reviewed and published in August 2004.<sup>3</sup>

Since the filing of our appeals, the County has stonewalled on our permit appeal: the County has continued the hearing for our appeal six times. Appeal hearings originally scheduled for April 1, May 6, June 3, August 12, September 2, and September 10 were all postponed near or at the last minute. These delays have been burdensome to us, our members, the experts we have retained, and our many individual supporters, who have limited resources and time in which to meaningfully participate. Each time we and they have made plans and preparations to participate in the Board hearing only to have it cancelled on us. We have now been told by County Planning staff that the appeals will be heard by the Board of Supervisors on November 4, 2004. If the appeals are heard in November, it will have been almost one year since our original appeal, during which time turbines at APWRA have killed an estimated 880 to 1,300 additional raptors, including 76 to 116 eagles. The appellants, having paid the County a filing fee for the appeals, insist on our right to a prompt hearing and decision on our appeal.

The County has repeatedly delayed the appeals while attempting to identify and secure commitments to mitigation measures from wind power companies after the fact, supporting our contention that the Zoning Board's approval of the permits was ill-conceived in the first place and lacking in the necessary legal basis. The approval process failed to incorporate adequate environmental review that meets the requirements of CEQA.<sup>4</sup> Our organizations and the experts we have retained, as well as state and federal wildlife protection agencies are on record opposing issuance of new permits for the wind turbines until the County conducts further environmental review and imposes effective mitigation measures.<sup>5</sup>

The CEC recently published the aforementioned comprehensive report on bird kills by wind turbines at APWRA. The CEC Report shows that the number of raptors killed each year at APWRA is vastly higher than previously believed, and also recommends numerous methods to reduce bird mortality at APWRA and to compensate for bird deaths through offsite habitat acquisition. Both the County and the wind power industry knew this major environmental study was coming, but rather than sensibly waiting for the CEC report, they chose instead to rush these permits through the approval process without any environmental review, even though many of the existing permits had not expired and would not expire until as late as 2008. This rush to judgment by the Zoning Board - in an effort to "grandfather" in new permits without requiring compliance with meaningful

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<sup>3</sup> The report, Publication # 500-04-052, is on file with the California Energy Commission and is available at [www.energy.ca.gov/pier/final\\_project\\_reports/500-04-052.html](http://www.energy.ca.gov/pier/final_project_reports/500-04-052.html).

<sup>4</sup> CEQA's fundamental "substantive mandate" prohibits an agency from approving a project without ensuring that feasible mitigation has been adopted for all potentially significant impacts. This mandate against allowing unmitigated impacts when mitigation is feasible is at the heart of CEQA's substantive purposes.

<sup>5</sup> These include the U. S. Fish and Wildlife Service, California Department of Fish and Game, California Energy Commission, East Bay Regional Park District, BioResource Consultants, Center for Biological Diversity, Golden Gate Audubon Society, Californians for Renewable Energy, Sierra Club, Mount Diablo Audubon Society, and California Burrowing Owl Consortium.

mitigation conditions - undercuts both a precautionary approach to protecting birds at APWRA and the County's legal obligations under CEQA and federal law.

There should be no more delay regarding our appeal. The appellants in this matter request that the Board commit itself to the November 4, 2004 date for the public hearing and decision on our appeal. The appeal hearing date should be publicized and posted on the County's on-line calendar well in advance of the hearing so that the public will have adequate notice and opportunity to participate in this decision.

The County has also been remiss in providing us with reasonable notice regarding the hearing of our appeal. For a number of the previously-scheduled Board hearings, we received no official notice either of the scheduling of the hearing or of its postponement. Several of the postponements we learned of from staff telephone messages just days before the calendared hearing. The appellants request that we be given notice for any hearing or meeting dates at least 10 days in advance and that we be given any materials prepared by staff at least 72 hours in advance so that we may interact meaningfully with them. If our appeal is delayed further, we may be impelled to take appropriate legal action to prevent further unlawful bird kills.

A summary of the issues regarding the APWRA wind turbine permit appeals is attached and further information can be found on the Center for Biological Diversity's web site at [www.biologicaldiversity.org/swcbd/programs/bdes/altamont/altamont.html](http://www.biologicaldiversity.org/swcbd/programs/bdes/altamont/altamont.html)

Thank you for your prompt attention to this matter.

Sincerely,

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