

## CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET  
SACRAMENTO, CA 95814-5512

Andrew N. Young  
Development Planning Division  
Alameda County Community Development Agency  
224 W. Winton Ave.  
Hayward, CA 94544

November 13, 2003

*RE: Proposed CUP renewals for wind turbines at the Altamont Pass Resource Area*

Dear Mr. Young:

This letter is in response to notifications, dated October 31 and November 4, 2003, the Energy Commission received on the proposed re-issuance from "various applications" of conditional use permits (CUPs) for the maintenance and operations of existing wind turbines in the Altamont Pass Wind Resources Area (APWRA). The Energy Commission has sponsored research on avian fatalities from collision with wind turbines in the APWRA since 1986, and is currently preparing a report and risk prediction model specific to a five-year research project at APWRA, focused on understanding factors responsible for collision risk and suggested management practices to reduce that risk. Preliminary findings have been shared with your agency, U.S. Fish and Wildlife Service, and wind turbine operators at the APWRA. A draft of that report is expected to be released in December 2003.

The County's notifications state that the proposals to re-issue CUP's are Categorically Exempt from the California Environmental Quality Act and is basing that justification, in part, from an Environmental Impact Report (EIR) prepared in 1998. However, given the breadth of new information available on the extent of, and factors related to, the occurrence of bird fatalities from striking turbine blades in the APWRA, I believe that the County is obligated in considering these applications to review this current and very pertinent information.

The 1998 EIR noted that avian fatalities were a significant adverse and unmitigated impact. We now know that at least 1,080 birds, mostly raptors and nearly all species protected under the Migratory Bird Treaty Act, are killed annually from collisions with wind turbines at the APWRA. Under this Act, there are no provisions for take, yet no mitigation measures have been enacted that show a reduction in the incidence of fatalities. Additionally, a rodent control program initiated there was not addressed in the 1998 EIR, has negative impact implications for several other species of concern at the APWRA, and has in fact been shown to greatly increase collision risk for some species, including the burrowing owl and red-tailed hawk.

The Energy Commission supports the expansion of wind energy and other renewable energy sources in the state, but has consistently maintained that this must be done in an environmentally responsible manner. The Energy Commission's Public Interest Energy Research Program has funded millions of dollars in research projects to promote development, improve technology, and understand how to reduce the risk of bird collisions. We understand the economic hardship the wind industry has experienced in the current energy market and have devoted funds for the avian research without matching funds from the industry. We have through a series of meetings with APWRA operators over the last two years, coordinated our research, shared preliminary

findings, and suggested potential interim mitigation measures until our findings were complete and finalized. It is our intention to develop the risk assessment model to help the industry reduce the numbers of bird fatalities and we have, after years of scientifically rigorous data collection and analyses, identified a series of topographical, turbine, design, and land management features that if incorporated into future planning efforts will significantly reduce bird collisions at APWRA.

As stated above, the risk assessment model and final report are scheduled to be completed in December 2003. The Energy Commission will provide if deemed necessary, any preliminary results we have to date. We respectfully request that the review of the several applicants for re-issuing the CUP's at the APWRA take into account our years of scientifically sound information, as well as information that has been made available since the preparation of the EIR fourteen years ago, before approving these applications. This request is highly appropriate given both the significance of our research to these proposals and the legal requirements of CEQA.

Thank you for the opportunity to comment. The Commission looks forward to a continued cooperative relationship with Alameda County.

Sincerely,

Linda Spiegel  
Energy Commission Specialist II – Wildlife Biologist  
Public Interest Energy Research





# United States Department of the Interior



FISH AND WILDLIFE SERVICE  
Sacramento Fish and Wildlife Office  
2800 Cottage Way, Room W-2605  
Sacramento, California 95825-1846

IN REPLY REFER TO:  
PPN 3165

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Andrew N. Young  
Development Planning Division  
Alameda County Community Development Agency  
224 West Winton Avenue  
Hayward, California 94544

Dear Mr. Young:

The U.S. Fish and Wildlife Service (Service) has reviewed your letters, dated October 31, and November 4, 2003, regarding conditional use permit applications for wind power projects in the Altamont Pass Wind Resource Area (APWRA), Alameda County, California. These comments are intended to assist you in your review of the proposal, and will not take the place of any formal comments that we may provide under the provisions of the Fish and Wildlife Coordination Act or through consultation under the Endangered Species Act as amended.

Alameda County has determined that these projects are Categorical Exempt from the requirements of the California Environmental Quality Act. The Service is concerned that the environmental impacts of these projects have not been adequately addressed. In particular, the Service is concerned with ongoing avian mortalities in the APWRA. Avian mortality due to wind energy development has been an ongoing problem in the APWRA. The Service has been working closely with the California Energy Commission (CEC), Alameda County, Contra Costa County, and industry representatives in an attempt to reduce avian mortality in the APWRA. The Service has recently issued its *Interim Guidance on Avoiding and Minimizing Wildlife Impacts from Wind Turbines*, and the CEC is currently developing a predictive model specific to the APWRA which will provide guidance for the placement of new turbines during the repowering process.

The Migratory Bird Treaty Act (16 U.S.C. 703-712) (Act) prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Department of the Interior. While the Act has no provision for allowing unauthorized take, it is recognized that some birds may be killed at structures such as wind turbines even if all reasonable measures to avoid it are implemented. The Service believes that the potential to minimize mortalities in the APWRA have not been fully explored, and further analysis and implementation of avian mortality minimization techniques is warranted at this time. The Service's Division of Law Enforcement carries out

its mission to protect migratory birds not only through investigations and enforcement, but also through fostering relationships with individuals and industries that proactively seek to eliminate their impacts to migratory birds. While it is not possible under the Act to absolve individuals or companies from liability, the Division of Law Enforcement and Department of Justice have used enforcement and prosecutorial discretion in the past regarding individuals or companies who have made good faith efforts to avoid the take of migratory birds.

The Service looks forward to working with all parties involved in the APWRA to reduce avian mortalities. If you have any questions concerning these comments, please contact Larry Butcher at (916) 414-6583.

Sincerely,

A handwritten signature in black ink that reads "David L. Harlow". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David L. Harlow  
Acting Field Supervisor

cc:

AES, Portland, OR

MBSP, Portland, OR (Mike Green)

California Energy Commission, Sacramento, CA (Linda Spiegel)

CDFG, Yountville, CA (Janice Gan)