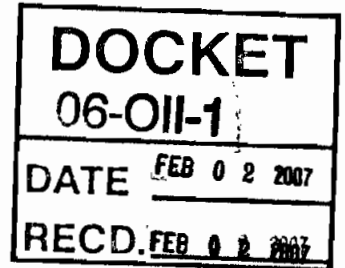


**STATE OF CALIFORNIA  
ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION**

Development of Statewide Guidelines for	)	Docket No. 06-OII-1
Reducing Wildlife Impacts from Wind	)	Developing Statewide Avian
Energy Development	)	Guidelines

**COMMENTS OF THE  
CALIFORNIA WIND ENERGY ASSOCIATION  
ON STAFF DRAFT GUIDELINES  
(Part 2 of 2)**



The California Wind Energy Association (“CalWEA”) submits this “Part 2” as a companion to Part 1, submitted on January 23, 2007. These comments address, in much greater detail, our concerns regarding the December 2006 Staff Draft Report, “Statewide Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development” (“Staff Draft”). We provide overall suggestions for revising the draft, followed by specific comments on the chapters.

**I. OVERALL SUGGESTIONS FOR REVISING THE STAFF DRAFT**

**A. Principles**

Without repeating our prior comments in the workshop process, we highlight here some of the principles that we believe should be reflected in the Guidelines. Our detailed comments on the Staff Draft in section II, below, are made in the context of these principles:

1. The Guidelines should encourage wind development by providing streamlined protocols wherever possible and appropriate.
2. The Guidelines should take into account the various and evolving characteristics of wind projects in California, including physical components and site characteristics and the knowledge bases surrounding each.
3. The Guidelines should be set in the context of CEQA and the steps a “lead agency” makes in determining the proper level of CEQA review. The Guidelines:

- *should* provide guidance regarding the information that is necessary to support determinations of biological significance and the types of mitigation measures that a local agency could, in its discretion, choose from if it finds that a wind project would have a significant impact on biological resources.
  - *should* encourage streamlined CEQA review for certain categories of wind projects deemed to have less-than-significant impacts (e.g., small wind projects, in-fill projects within designated wind resource areas, certain repowers), subject to site-specific reconnaissance confirming that criteria have been met.<sup>1</sup>
  - *should not* encourage local agencies to require extensive studies or to make findings of significance when they might not otherwise do so simply to gain legal protections against “zero tolerance” wildlife laws.
  - *should not* vest members of the public or state or federal wildlife agencies with authority over pre-permitting and permitting decisions that are the lead agency’s to make under CEQA.
4. The Guidelines should support the use of any data which is scientifically defensible and credible for meeting the information need, providing guidance and examples.
- A risk assessment approach should be used to determine what level of pre-permitting and operational studies should be conducted.
  - The Guidelines should not include a “standard” course of study for determining impacts; rather, the guidelines should recognize that a wide variety of circumstances exist and should discuss each scientific method that can, depending on the circumstance, provide the needed information.
  - Similarly, the Guidelines should avoid making rigid declarations such as “all data more than five years old is invalid,” “repowering requires

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<sup>1</sup> Holding repowers, for example, to the same standard as projects in new development areas serves as a disincentive to pursue these projects. We note with interest the Commission’s January 2007 decision enabling the repowering of the El Centro natural gas power plant to proceed under a mitigated negative declaration under CEQA rather than a full-blown EIR (the type of approach CalWEA recommends for wind project repowers). The El Centro plant will be increasing its capacity from 44 MW to 128 MW. According to the CEC’s press release, the Energy Commission may, under PRC Section 25541, grant exemptions for changes to existing power plants that do not add more than 100 MW of capacity if the modifications do not adversely affect the environment or energy resources. (See [http://www.energy.ca.gov/releases/2007\\_releases/2007-01-03\\_elcentro\\_approves.html](http://www.energy.ca.gov/releases/2007_releases/2007-01-03_elcentro_approves.html).)

pre-permitting studies using the same methods as those described above for new projects,” and “at least one year of study is necessary.”

5. When mitigation is necessary to reduce impact to less-than-significant levels, the Guidelines should strongly encourage lead agencies to provide certainty (e.g., some bounded range of duration and costs) regarding the required mitigation set forth as a condition in the land-use permit.
6. The Guidelines should take care not to hold wind projects to a higher standard than other structures and energy projects, such as a requirement to convene scientific advisory committees, which will unnecessarily delay and could prevent wind’s larger benefits from being fully realized.
7. The Guidelines should not reference research that has been shown to be faulty.

## **B. Suggested Reorganization of the Document**

We suggest that the Staff Draft be refocused and reorganized so that it will provide practical assistance to lead agencies in the environmental review process as well as guidance to developers. In particular:

1. The document should be refocused to discuss the *information that is needed* to make determinations of biological significance under CEQA, and the *various scientifically valid ways* in which this information can be obtained.
2. The Guidelines should be designed as a methods resource document that users can refer to in developing appropriate methods for pre-permitting assessment and operations monitoring. The material in Chapter 3 should be reorganized and expanded so that the discussion of each method is preceded by an explanation of what the method is used for and the circumstances in which it is appropriately applied, followed by a discussion of the how the method is appropriately conducted.
3. The prescriptive recommendations and “standardization” of when and what methods to be used for how long should be deleted, as there is no single approach that is appropriate at every site and for the study of every species.
4. Chapter 2 on the Science Advisory Committee concept should be eliminated in favor of a recommendation to consult with state and federal wildlife agencies, as well as local wildlife groups, as early in the development process as is practicable.

## II. COMMENTS ON THE CHAPTERS

Although we provide many detailed comments here, our comments are not exhaustive. Rather, they are illustrative of our major concerns with the draft. We urge the Committee to instruct staff to prepare a revised draft document, which we would comment on more comprehensively.

### A. Comments on the Preface

The preface states that participants at a January 2006 conference encouraged the Commission and CDFG to establish voluntary guidelines. CalWEA participated in that conference and did not offer such encouragement. We later stated that the Commission had not yet studied local siting processes, nor documented any problem with them.<sup>2</sup> Thus we expressed concern about the undefined problem that this process was aiming to address (a concern that still remains). Therefore, we request that the preface be revised to remove the false implication that the entire wind industry was supportive of the initiation of this process.

### B. Comments on the Executive Summary

In general, we will assume that changes made in the rest of the document will be reflected in the Executive Summary. However, we comment on the types of general statements that are inappropriate:

- p. E-1 (emphasis added): “This document is a tool to help *ensure compliance* with relevant [state and federal wildlife protection] laws and regulations ...” It is not possible to “ensure compliance” with wildlife laws, such as the MBTA, that do not allow for the take of even one bird or bat and do not provide for any take permits. Rather, the goal of the document should be to provide a reference for the lead agency and stakeholders to use in developing a given project’s plan to assess environmental impacts under CEQA and, if deemed necessary, subsequent mitigation.
- p. E-2 (emphasis added): “Both wind energy proponents as well as bird and bat populations will benefit from the *consistent application* of the Guidelines. This document offers *uniform methods* ...” These terms imply “one-size-fits-all,” which should not be the aim of the Guidelines. Rather, the document should be a robust information resource that can be applied appropriately to projects in a wide variety of circumstances.
- p. E-2: The words “Endangered Species Act” should be replaced with “Environmental Quality Act.” (“The Guidelines exclusively addresses the impacts of wind energy development and operation on birds and bats and does not address impacts to other biological resources, nor does it address air quality,

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<sup>2</sup> See the transcript for the May 24, 2006, CEC Business Meeting - [http://www.energy.ca.gov/business\\_meetings/index\\_2006.html](http://www.energy.ca.gov/business_meetings/index_2006.html).

cultural resources, water resources, soils or issue analyzed in a typical California ENVIRONMENTAL QUALITY ACT ~~Endangered Species Act~~ review.)

- P. E-3: “Repowering ... requires pre-permitting studies similar to those for new projects.” The Guidelines should avoid making such gross generalizations, particularly given the CEC’s authority to reduce study requirements for 100-MW expansions of existing thermal facilities (such as for the gas plant noted in footnote 1).

### **C. Comments on Chapter 1: Preliminary Site Screening**

#### **General comments:**

- The chapter should be oriented toward the goal of collecting enough information to make determinations regarding biological significance under CEQA. Pre-screening should be used to identify project impacts that may be biologically significant and therefore justify more extensive study.
- The thresholds of federal wildlife laws, such as the MBTA, are so low that a single bird kill would constitute a violation; therefore, they are not useful as a preliminary screening mechanism.

#### **Specific Comments:**

- **Page 1, para 1:**
  - Re: “Data and information gathering should be conducted early in the siting and development process, such as when the wind energy developer is seeking landowner agreements and investigating transmission capacity.” Although general knowledge of the area may be available, the Guidelines should recognize that developers do not have access to the land at this stage of development, and that even aerial photos (as suggested later) may be inappropriate. The document should instead reference resources such as database and other “desktop” screenings during this early development stage.
  - The last two sentences should be deleted. (“Early information gathering also allows time to seek a different site if unavoidable impacts seem likely despite careful turbine siting. The developer should make such decisions early in the process, before committing to substantial investments in a site.”) First, not all unavoidable impacts are biologically significant under CEQA. Second, local agencies may override significant unavoidable impacts under CEQA and may determine certain impacts, such as the take of a single protected species, to be significant and unavoidable to be legally conservative under CEQA. Thus, the potential for “unavoidable impacts” alone should not necessarily rule out sites for wind development but rather a decision should be made by local agencies after review of the data and weighing all factors that go into the

permitting decision. Such determinations should not eliminate, and have not eliminated, such sites for wind development.

- **Page 3, third full paragraph** regarding the discussion of “fatal flaws” -- Local agencies may, and often do, approve land-use projects despite significant environmental impacts, including birds and bats. CEQA requires the agency to analyze and disclose impacts but allows approval of projects with significant impacts if there are overriding benefits.<sup>3</sup> Therefore, the Staff Draft’s implicit assertion that possible “substantial” mortality (which is undefined) should necessarily result in site abandonment is inappropriate and should be removed. The word “substantial” should be replaced with “significant” impact under CEQA. The discussion should state that impacts that appear to be significant based on the preliminary assessment would require further study. If such impacts are then predicted, compensatory mitigation would be required if project proponents choose to proceed.
- p. 3 The paragraph on site screening and assessment should be amended as follows:

“If a project moves forward despite indications that SIGNIFICANT AND UNAVOIDABLE ~~substantial~~ bird or bat mortality might occur, there may be on-going impacts through the life of the project THAT WILL REQUIRE COMPENSATORY OR OTHER MITIGATION, ~~that must be evaluated on an on-going basis. However, if preliminary information gathering does not reveal potential for substantial bird or bat mortality in the proposed wind energy project area.~~ The next step is to determine the kinds of studies and level of effort needed for pre-permitting surveys. . .”

Again, a site should not necessarily be eliminated from consideration due to evidence of unavoidable impacts. While mitigation responsibilities may flow from selecting such sites, the determination whether to proceed with such sites should be made by the local decision-makers after a thorough assessment of the benefits of the project in relation to the impacts.

Similar revisions are needed elsewhere in the document, including on pages 7 and 28.

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<sup>3</sup> For example, the CPUC recently issued a Proposed Decision that would approve the first segment of the Tehachapi Renewable Transmission Project despite significant impacts that cannot be mitigated. Among the overriding considerations is that the project would “enable compliance with the State’s RPS Program, which requires retail sellers of electricity such as SCE and PG&E to increase their sale of electricity produced by renewable energy sources to 20 percent by 2010.” (See “Opinion Granting a Certificate of Public Convenience and Necessity,” Proposed Decision in Application 04-12-007, January 30, 2007.)

- **Page 4:** The Staff Draft suggests that all field work more than five years old is automatically invalid. In fact, whether or not data is invalid depends upon the type of data in question. Data on species occurrence may be valid even if decades old; information on migratory pathways may be valid if a decade old; data on local movement of individuals of a species should be more recent. Likewise, the “newness” of information does not necessarily make it credible.<sup>4</sup> Rather, the document should advocate the use of data and information that is credible and defensible relative to the scientific method to be used for evaluating a project area’s avian and bat impacts.
- **Table 1:** The table (used again in Chapter 8) is not useful as a screening tool because the vagueness of the questions require a “yes” answer in almost all cases. Certainly a “yes” answer to any of the questions should not be perceived as “fatal flaw” on the site. The table should be recast in terms of the information that will provide insight into the types of studies that may be necessary to determine significance under CEQA. The following is an example.
  - Questions 1, 2, and 3 of Table 1 deal with question of species presence or occurrence on site. For many locations and species, this information can be derived from bird lists, Christmas Bird Counts, and field guides. In these cases, additional studies such as bird use counts (BUCs) are not necessary. If this information is not available, the user should be directed to various methods to collect this information.
  - If information on the species of interest is available, then next tier questions should address abundance including seasonal abundance.

The abundance sub-question to questions 1, 2, and 3 is “Are the species present at the site rare or common?” This includes seasonality. Before settling on a specific method for determining abundance, the following question should be addressed: Does qualitative or quantitative information on abundance need to be developed to address the risk to a given species? Very simple qualitative information can be derived from Audubon bird lists and guides to California birds which may be sufficient in addressing risk. These bird lists indicate the presence of a particular species, what season it occurs in, whether it breeds in the area, and if it is common, uncommon, rare, etc.

If a species is common to the area, then it can be presumed to occur on the site and a BUC would not be necessary, because BUCs are used to indicate relative measures of abundance.

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<sup>4</sup> See, e.g., the CEC’s independent review of Smallwood and Thelander, 2004, which concludes that the study “should not be considered as the basis for developing siting requirements for future wind energy projects.” The many references to this study in the Staff Draft should therefore be removed.

- If it is necessary to quantify abundance or if there is uncertainty regarding whether a species occurs on the site in a certain season, then various sampling methods can be used.

The next question to ask is whether a species is more abundant in one season or another. If the species of concern is known to occur in a particular season(s), then it may not be necessary to conduct seasonal monitoring. If the seasonality is unknown and this information is important in determining risk, then appropriate annual monitoring should be considered.

#### **D. Comments on Chapter 2: Science Advisory Committee**

**An Unfair Burden on Wind.** The concept of the Science Advisory Committee, as presented, is not required for any other type of development project, including gas-fired energy plants, transmission lines, or housing and commercial developments. The Staff Draft refers to the “chronic nature” of wind energy impacts compared to other types of development, but wind projects are no different from buildings, cars, or transmission lines in terms of the on-going nature of the impacts. The Science Advisory Committee would create unnecessary burdens during the planning process. Comments on methodology can now be made by state and federal wildlife agencies as well as wildlife groups during the scoping process for projects (pre-environmental review) as well as during the comment period on environmental documents prepared under CEQA.

**Contrary to CEQA.** The insertion of such committees into the process for every project would be truly burdensome to the wind industry and is at odds with current practice. SACs are now rarely created and serve in a purely advisory role. A SAC has been created in the Altamont (where there is some evidence of possible significant impact) as an advisor to the county, and in Solano for interpretation of post-construction monitoring only. These SACs do not make decisions. Vesting SACs with decision making authority (as the Staff Draft does, e.g., on pages 11, 53 and 60) would be contrary to CEQA, which delegates such authority to local agencies. Moreover, involving members of the public in a non-public process invites concerns to be claimed without the benefit of the standard public policy making processes. Planning staff have expressed alarm to us about the concept of inserting SACs into the permitting process in the manner proposed. There are many opportunities for both the resource agencies and conservation groups to comment on and provide advice on the permitting process, including at the time of the Notice of Preparation of an EIR, at scoping sessions, during the public comment period on the EIR, and at hearings to consider the adequacy of the EIR and the merits of the project.

**Unfounded Assumptions.** The concept of the SAC as presented assumes wrongly that (a) lead agencies are incapable of obtaining objective scientific opinions, (b) each of the organizations designated to serve on the committee place a priority on every wind project development, and (c) that each of the entities have qualified staff and



resources available to participate on such a committee.<sup>5</sup> Moreover, the establishment of a “committee” and the recommendation for a “facilitator” implies that the group should meet together, which would present extreme logistical difficulties and delays. Further, designating the group as a “committee” suggests that the group should have a formal deliberative role in the permitting process, which would require the members of the group to agree on recommendations. Stalemate could easily occur, causing confusion and delay, not to mention litigation targets, which could be devastating to the proposed project’s viability.<sup>6</sup>

### **Needed Changes**

- The chapter on SACs should be replaced with a recommendation elsewhere in the document to consult with local environmental groups and state and federal wildlife agencies as early in the permitting process as possible, and to encourage local permitting agencies to reach out to these groups at the time of scoping of environmental impacts and circulation of environmental documents for review.<sup>7</sup> No entity other than the lead agency should be given any formal "approval" role for any permitting or pre-permitting decision.
- If the SAC concept is retained, a SAC should (a) be recommended only for complex or controversial cases, (b) serve in a purely advisory role at the specific request of the local agency, (d) not include lead agency staff (since it is advisory to the lead agency), and (e) be comprised entirely of a manageable number of qualified biologists (e.g., no more than three), not necessarily drawn from any particular interest group.
- SACs should not be constituted for “the life of the project” (as stated on p. 6). SACs should be consulted only on specific items at the specific request of the lead agency for guidance on a particular issue. Requiring consultation with and approval by a SAC on the range of issues suggested by the Staff Draft would create a bureaucratic nightmare not imposed on any other type of development project in California of which we are aware.

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<sup>5</sup> Wind developers contact wildlife agencies as a matter of course in project developments, but are not always successful in getting their attention.

<sup>6</sup> Power purchase agreements frequently require developers to meet milestones demonstrating progress in project development. In addition, developers must secure turbines in a globally tight market; once obtained, the turbines must be used. If the intended site is not available, then an alternative development (likely out of state) will be found.

<sup>7</sup> The Guidelines should recognize the sensitivity of sharing proprietary information with members of the public early in the process before control of land is secured. The guidelines should encourage early engagement with lead agencies and the guidelines themselves should provide appropriate guidance during the early stage of the process.

## E. Comments on Chapter 3: Pre-Permitting Assessment

### General Comments:

- **The focus of pre-permitting assessment should be on the information that is necessary to inform decision-making.** Rather than set forth presumptions about the types and lengths of studies that are necessary at “most” sites, the guidelines should recognize that proposed projects will exist within a wide variety of circumstances, e.g., types of land (desert vs. forest), different geographic regions, new or existing wind resource areas, and with differing existing levels of information about wildlife in the area. The Guidelines should help lead agencies to understand *what information is needed* to make determinations of significant impact: species presence, abundance and behavior at the project site. This information can be collected from different information sources and methods including correlation with existing studies – similar habitat, similar species, and similar wind facilities.<sup>8</sup> A risk assessment approach should be used as a screening tool for identifying what pre-permitting and operational studies should be conducted. (See CalWEA’s July 28, 2006, comments in this process.)

A decision to reduce the duration of study to less than one year on certain sites should not require “approval by CDFG, USFWS and the science advisory committee.” This improperly transfers important decision-making authority now made by lead agency staff to other agencies and individuals. Lead agencies may consult with the resources agencies about study methodologies but approval authority should remain with the local lead agencies.

- **The wind industry should not be asked to fill large research voids.** CDFG’s bat experts have stated in this process that little is known about bats - their populations, the stability of those populations, bat behaviors, etc. It has also been the experience of our members that, when they are asked to conduct detailed studies on bats, at significant expense, the information does not change siting decisions because it exists within an information vacuum and thus serves no real purpose. Until there is sufficient information about bats for site-specific data to be meaningful, detailed and expensive studies should not be recommended for all projects. The wind industry would support greater state funding for research on these wildlife issues, and members of the wind industry are now participating in research to understand these issues, and will continue to do so. These funding issues are outside the scope of these Guidelines, however.

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<sup>8</sup> For example, rather than stating that “caution is warranted in extrapolating existing data to unstudied nearby sites,” the Guidelines should discuss when correlation is appropriate and how it is useful.

- **The Guidelines should provide a discussion of the pros and cons, and appropriate application, of various studies.** Chapter 3, as written, contains a laundry list of potential studies and contains an inference (top of p. 12) that any or all would be appropriate for site-specific risk assessment. The chapter contains little discussion of the circumstances under which each type of study is appropriately used,<sup>9</sup> its relative cost, and the pros and cons of each. Such a discussion is needed and would be useful to lead agencies. The discussion should also indicate which types of studies are appropriate for site-specific risk assessment, and which are appropriate for larger research purposes.

**Specific Comments:**

- **Re: use of terms** (e.g., p. 11) – The term “risk” and “impact” or “low level of impact” are used here and throughout the report. Is risk used to mean the “probability of a hazard”? How do these vague terms inform decision making? Once estimated impacts have been determined to fall within a certain range (e.g., 3 to 5 birds per turbine per year) -- which, depending on the species, will usually indicate whether or not the impacts will be significant under CEQA, conducting further studies to put a finer point on the estimate (e.g., 4.2 birds per turbine per year) serves no regulatory purpose but will significantly raise costs.
- **Re: Diurnal Avian Surveys** -- Clarify (p. 13) that “spatial” (2<sup>nd</sup> line) does not necessarily mean bird flight behavior, e.g. flight height, unless designed to do so. Clarify (p. 16) the use of the term “migratory routes.” Some species of birds migrate in a broad front that could include the entire state. Are these “fronts” considered “migratory routes”? The Guidelines should distinguish between route, corridor and flyway.
- **Re: References to Smallwood and Thelander, 2004** – The reference on p. 12 and several other places should be removed from the document, along with any studies that are based on this report. See footnote 5 above.
- **Re: Ridgelines** – The overbroad statement on p. 17 (“if wind turbines are proposed on ridgelines within a migratory corridor or near a favored migratory stopover, they might pose a risk to nocturnally migrating birds and/or bats”) should be revised to eliminate the suggestion that all ridgelines pose unusual risks.
- **Add Nexrad** -- Nexrad weather radar monitoring can also be used as a tool to identify comparative bird activity at different sites.

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<sup>9</sup> For example, as Wally Erickson pointed out at the last workshop, daily bat carcass searches have been determined through research not to be necessary at all sites.

**F. Comments on Chapter 4: Impact Analysis and Conformance with Laws**

- The introductory discussion (top of p. 22) refers to a project's "ability to comply" with state and federal wildlife laws (and this is stated again on pp. 25, 32 and 36). The Guidelines should indicate that, for many of these laws, compliance is not possible in practice because the take of even one bird (even if the species is not threatened) is not legally permitted. It should be stated, therefore, that "ensuring compliance" is not possible in practice as most wind projects will, at some point over their lifetimes, result in the taking of at least one migratory bird. The Guidelines should not leave the impression that "absolute avoidance" of impact (p. 32) is necessary – otherwise, no wind project would ever be built.
- The discussion of CEQA should state that an agency may approve a project with significant and unavoidable environmental impacts if it finds that the social, economic, technological, environmental or other benefits of the projects override the impact by adopting a Statement of Overriding Considerations. (See footnote 4, above.)
- On p. 24 (second to last paragraph), relating to wildlife protection laws, the text should state that direct consultation with CDFG is required when take of state-listed species is forecasted rather than implying that such consultation is required in all cases.
- Top of page 29: What is meant by "low, moderate or high"? Later in the paragraph, it states that risk should be expressed in terms of birds or bats per MW of installed capacity per year. It would be useful for the Guidelines to indicate what the ranges are for "low" "moderate" and "high" rates. Additionally, it should further be discussed how this range varies with a species' presence within a project's area and/or region as well as the biological standing of the species itself (i.e., how robust and stable a given species is should have weight with regard to quantifying the suggested ranges).
- On p. 30, relating to cumulative impact studies, the word "much" should be removed from the text in bullet number 2, and another sentence should be added to read, "A wind resource area may provide a suitable geographic area."

**G. Comments on Chapter 5: Impact Avoidance, Minimization, and Mitigation**

- Again, the focus should be on avoidance of and compensation for "significant" impacts under CEQA. Requiring "additional mitigation above and beyond that required by CEQA as conditions of the permit" to avoid, minimize, and fully mitigate "impacts" (as is stated in Chapter 6, p. 37) is

impossibly vague and contrary to the requirements under CEQA. Nor is such mitigation authorized under any other local, state, or federal law of which we are aware.

- The Guidelines should eliminate the various suggestions that mitigation should be open-ended and should include major changes in project operations. As is standard practice in the permitting process, compensation for predicted significant impacts (perhaps varying levels of compensation within a predicted range of possible impacts) should be determined up front to provide certainty to the developer and their investors regarding mitigation costs. The open-ended concept of “adaptive management” – especially measures that would dramatically affect project revenues, such as “seasonal shutdowns” -- runs contrary to the goal of providing certainty and would make it difficult, if not impossible, to finance a project. At a minimum, unbounded notions of adaptive management would raise project costs as investors would have to assume the worst. If the concept is retained, it should be paired with the need to provide reasonable boundaries and cost certainty.
- Mitigation banks, off-site habitat restoration and enhancements should be discussed and encouraged as a mitigation tool that lead agencies should consider.
- Regarding Buffer Zones (p. 33): While nests and other high-use sites should be protected, what is the size of the buffer zone that is being suggested? Buffer zones should be determined in consideration of the flight paths and feeding areas of raptors and other species, as well as other potential impacts, e.g. placing a turbine in another high-risk area. The effectiveness and practicality of buffer zones will be affected by the fact that birds will likely move over the entire site.

#### **H. Comments on Chapter 6: Permitting**

As was discussed at the workshop, this chapter adds very little to the document. It repeats many of the problems which we address elsewhere in these comments. Any useful parts of the chapter could be folded into what is now Chapter 8.

#### **I. Comments on Chapter 7: Operations Monitoring and Reporting**

- No operational monitoring should be required where there is confidence in the determination of less-than-significant impact. Operational monitoring may not be needed when a determination of significance was made and there is confidence in the level of the expected impacts (perhaps because a conservative determination was made), and acceptable mitigation measures have been adopted. If operational monitoring is conducted, and post-construction studies confirm that mortality is in the range that was predicted, further studies should not be required.

- The chapter should not make prescriptive recommendations about the types of studies that should be conducted in all cases. In particular, the statement that “two years of (post-construction) acoustic monitoring is recommended” (p. 41) should be removed. Acoustic monitoring is rarely done for birds or bats because the effectiveness of the method has not been shown and the cost is substantial. Acoustic monitoring should be considered only if mortality levels are of concern. As stated above in section II.E, discussions of the various studies, their pros and cons, etc., should be contained in an appendix to the document.

#### **J. Comments on Chapter 8: Implementing the Guidelines – A Step-by-Step Approach**

Many of the concerns addressed above are also reflected in this chapter and should be remedied. In addition, this chapter presents “standard” courses of study which should be removed, as there are many valid approaches and widely varying circumstances at each site. (For example, the length and type of study that is required at a particular site will depend on the particular species that is of concern at that site.) Moreover, the state of knowledge regarding the usefulness of different types of study is evolving. Therefore, one-size-fits-all “standards” are likely to be misapplied in particular cases. If “standard” approaches are retained, they must be accompanied by a greatly expanded discussion of when more or less study is appropriate, including specific examples.

Instead, CalWEA recommends consideration of a tiered approach to selecting appropriate methods, such as the standards for risk assessment developed by the Australian Wind Energy Association.<sup>10</sup> They have developed a three-tiered approach; depending upon which level the project or species fall into, different levels of risk assessment and methods are recommended. These guidelines are especially useful in that the level of risk frames the approach. By contrast, the Staff Draft does not emphasize the issue of risk and how it can be characterized. (On p. 28, staff devote just one paragraph to risk assessment and describe only in a general fashion how the information in the guidelines can be used in risk assessments.) A risk assessment approach should be used as a screening tool for identifying what pre-permitting and operational studies should be conducted.

The Guidelines can also play an important role in expediting wind development by encouraging streamlined CEQA review for certain categories of wind projects presumed to have less-than-significant impacts, subject to site-specific reconnaissance confirming that criteria have been met. (See CalWEA’s October 9, 2006, comments in this process, and footnote 1 above.)

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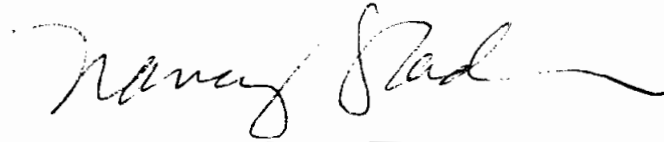
<sup>10</sup> “Auswind’s Wind Farms and Birds: Interim Standards for Risk Assessment” is available at [http://www.auswind.org/auswea/downloads/Bird\\_Report.pdf](http://www.auswind.org/auswea/downloads/Bird_Report.pdf).

### III. CONCLUSION

As currently drafted, the Guidelines impose unnecessary regulatory burdens on wind development that have not been imposed on other types of energy development in the State of California. The fact that the Guidelines are intended to be "voluntary" is meaningless, as they will be regarded as the default standard by local agencies, the resource agencies and litigants. Wind development will become even more expensive in California. As has already started to occur, developers will turn to other states to site and permit wind projects, leaving California with weaker tools in its tool box to reduce greenhouse gas emissions through renewable energy generation.

We appreciate the Commission's attention to our concerns.

Respectfully submitted,



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Nancy Rader  
Executive Director  
California Wind Energy Association  
2560 Ninth Street, Suite 213-A  
Berkeley, CA 94710  
(510) 845-5077  
[nrader@calwea.org](mailto:nrader@calwea.org)

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