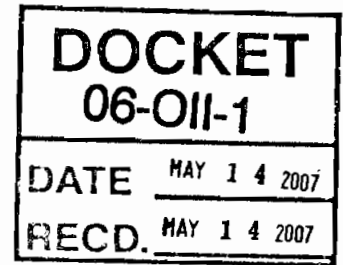


From: "Stu Webster" <SWebster@ClipperWind.com>
To: <docket@energy.state.ca.us>
Date: 5/14/2007 4:50 PM
Subject: Docket # 06-O11-1 - Developing Statewide Avian Guidelines
Attachments: Clipper-Comments-CADraftSitingGuidelines-May07.doc

CC: "Nancy Rader" <nrader@igc.org>, <ryork@energy.state.ca.us>
 Good Afternoon,



Attached for consideration are comments on the Apr 07 draft California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development. Clipper thanks the CA CEC for facilitating this process and allowing us to provide formal comments to the second draft. As noted in the comments, Clipper concurs with the comments and recommendations made by CalWEA. Questions or need of clarification can be directed to me, contact information provided below. Hardcopy, signed copies will be overnight shipped tomorrow, 15 May 07.

Best Regards,

Stu S. Webster
 Manager, Permitting

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RE: Comments on the CA CEC Apr 07 draft *California Guidelines for Reducing Impacts to Birds and Bats from Wind Energy Development (Guidelines)* Clipper Windpower Development, Inc.

In General

Review of the guidelines has noted a significant improvement from the Dec 06 draft. Specifically, there is an appreciable clarification present throughout the document that emphasizes the voluntary nature of the guidelines and the intent to be a resource to the well-established CEQA process. However, likely an artifact of the prior draft's state, this second draft needs additional refinement in order to accomplish the following major points:

- 1) To further emphasize the voluntary nature of the guidelines by eliminating language that implies regulatory requirements predicated exclusively on what the *Guidelines* state as recommendation or suggestion;
- 2) Provide more concise language that summarizes the various resources available to a developer, agency, and other stakeholders. There are 78 pages of language that is implied as stand alone reference and without need of further qualification. The intent of the *Guidelines* is, as stated in the Executive Summary, a flexible source of applicable resources for the local and regional concerns;
- 3) Eliminate content that is technical-based conjecture but can be construed as absolute in all but unique circumstances (as exemplified by the carcass removal estimates starting on page 75);
- 4) Improve the robustness of the document by providing links or contact information to suggested and referenced resources; and
- 5) Consider, in order to preserve its usefulness, the nature of market competition in suggesting the development of a central repository for raw data.

As a case in point regarding the importance of further refinement and consistency of the information conveyed, a word search of the document has resulted in the following word use that confuses the reader as to whether the guidelines are indeed voluntary or not:

- 1) Use of terms such as "must" (17 times in similar context as Line 1932), "require"(22 times in similar context as Line 206 and 2001), "necessary"(11 times in similar context as Line 214-215 and 361), "should"(44 times in similar context as Line 1411), and "will"(19 times in similar context as Line 340 and 1028) that implies a prescriptiveness to the voluntary guidelines that is likely not intended; as opposed to the following:
- 2) Use of terms such as "recommend (13 times in similar context as Line 163)", "suggest (5 times in similar context as Line 994)" and "might (12 times in similar context as 1668)" that imply a propositional approach to the guidelines that is more in line with the declared voluntary intent.

The following specific comments are made as examples of these general points. Additionally, the comments submitted to the CA CEC by CalWEA were crafted with Clipper's input and therefore it should be understood that Clipper endorses CalWEA's comments and recommendations as well.

EXECUTIVE SUMMARY

Line 72 should qualify the supplementary intent of the *guidelines* to existing permitting and environmental review processes (i.e., CEQA) by concluding the sentence with “...in intended for use throughout the state as a supplement to existing applicable permitting processes.”

Line 86 should read “...to provide information and protocols for a permitting agency, developer, and other stakeholders to select from in order to assess, evaluate, and determine the level of project effects on bird and bat species.” This robust intention is explicitly further noted in **Line 96**.

Line 110 should qualify what “existing guidance” it complements. Nowhere in the document is referenced alternative or comparable guidance for agencies to reference in addition to the *guidelines*.

INTRODUCTION

Line 188 A “...consistent application of the *Guidelines*...”, as currently written, does not invoke the “flexible” intent as stated in the Executive Summary and therefore further complicates how one approaches and utilizes the *Guidelines*. A consistent message of a robust and supplementary resource to be used by stakeholders to develop project specific studies that are in alignment with an area’s known ecological characteristic.

STEP-BY-STEP APPROACH

Line 335-338 imply that the CEQA process is inadequate for determining impact significance. This statement implies that the *Guidelines* is intended to act as a quasi-surrogate for such inadequacies. Again, the *Guidelines* are supplemental to the CEQA process and facilitate understanding of resources available to seek out impact determinations relative to wind energy and avian and bat species. To imply that the *Guidelines* are something other than a resource or tool is to give regulatory weight to suggestions and recommendations made by a document that has no such regulatory standing, given the process by which it was conceived and crafted.

Line 368 should not imply that the only means of assessing bat activity in an area is by acoustic surveys as this will frustrate the protocol development process that may find alternatives (rather than compliments) to such means of measure available in the future. Secondly, this is yet another example of prescriptive language that does not fit with the intent of the *Guidelines*.

Line 418 Sampling durations of 52 weeks per year is not a standard duration of wildlife surveys. The cost implication of such an effort precludes it from only those instances when significant certainty cannot be gleaned from the standard approach of abridged seasonal (up to four seasons) surveys that capture statistical inferences of wildlife activity. To imply weekly surveys on an annual basis are somehow *standard* is incorrect and overlooks the reality of what is normally accomplished.

Line 470 exemplifies the level of detail that should be expunged from the final *Guidelines*. A statewide-applicable resource tool should not provide specific direction to

structuring survey protocols. Rather, reference to pertinent peer-reviewed research and protocols is more appropriate for this advisory document.

CHAPTER 1

Line 910 should be rewritten asthe pertinent stakeholders, in developing survey protocols for a proposed project might consider studies that may be appropriate to address question of possible impacts, keeping in mind that such evaluations consider the timeliness and accuracy of the studies, given that...are always changing."

CHAPTER 2

Line 1027 "Compliance with the *Guidelines* during the permitting process..." again implies considerable regulatory weight to a reference tool that has no such standing. The intention and content of the draft *Guidelines* are not calibrated to each other.

Line 1085 "...consider other state...protection laws...and integrate them..." should be eliminated. Other states' environmental laws were crafted to address specific concerns for those respective states. CA and federal law should only be considered. This is not to say that other states' siting guidelines could not be used to develop a projects survey protocols – in fact, the absolute lack of regulatory weight of other states' laws and guidance on CA's regulatory structure is a useful simile to consider for finalizing the *Guidelines*.

CHAPTER 3

Line 1357-1369 It is the role of the lead agency to confer with resources they deem necessary in order to make appropriate permitting decisions. The paragraph correctly identifies the USFWS and CDFG as available resources. However, the mention of an unrealized entity such as a Scientific Advisory Committee (SAC) is inappropriate as no discussion of what this possible entity would consist of, be funded by, or what standing it would have in a regulatory framework has taken place. All reference to a SAC should be removed from the *Guidelines*.

Line 1453 is another example of too much detail for a resource meant to be useable throughout the state. The amount of variability in ecological landscapes and wildlife characteristics preclude any one document from correctly identifying the content of any given survey protocol.

Line 1531-1532, 1573-1577 are good examples of the extent of what the *Guidelines* should be working towards. Providing the appropriate questions and goals will facilitate a better resource for survey development than prescriptive direction that may or may not apply to a given project's development and permitting.

CHAPTER 4

Line 2117 exemplifies, again, that the intent and content of *Guidelines* are not calibrated. Discussion of cumulative impacts should be within a CEQA context of significant impact assessment. Therefore, strike "For the purposes of this document,".

CHAPTER 5

Line 2555 states that crippling bias is another statistical source of error. However, it is then qualified that no means to accurately determine this error is available. It is therefore logical to strike this discussion all together, especially when the degree of error is likely to be minimal and only statistically significant under highly developed and intensive research efforts.

Line 2564 should not be recommending any “standard” method of conducting the search analysis. There should be references to pertinent discussions but to make specific recommendations to such a broadly applied document as the *Guidelines* is inappropriate.

Line 2568 It is unclear how the authors can make generalities such as “...one large turbine can take from one hour to several hours...”. What degree of uncertainty is introduced when a survey only takes 30 minutes per turbine, which is as probable as an hour and more likely than “several hours”?

Line 2609-10 is out of scope of the *Guidelines* and should therefore be removed.

Line 2643-46 is a good example of standard survey protocols. Similar discussion should replace that which describes absolute language such as comments regarding **Line 418**

Line 2672 suggests mowing vegetation to facilitate increased searcher efficiency. It is recommended that this suggestion be reconsidered, given that the area mowed may or may not represent habitat or flora species that are protected or otherwise sensitive.

Section beginning on Line 2694 The number of carcasses implied with the detailed discussion begs the question how high probable demand, given wind energy development, will be met by sufficient supply. The recommendation of not using domestic species nor long-frozen specimens compounds this question. Lead agencies and stakeholders will need to be directed to how this is to be accomplished.

Comments Regarding Bird and Bat Data

Clipper supports the notion of publicly available raw data that is derived from project and regional studies and assessments. However, it is important that the CA CEC appreciate the highly competitive nature of the utility industry and therefore should work towards defining and creating a central repository for such data that provides regionally significant, biological information but not so specific as to compromise facility and/or land owners. Redacted raw data is useful to biologists under both a research and peer review function. Site specific data such as latitude/longitude of surveys (**Line 2822**) is not necessary and should not be sought after.