

**Additional Comments From FPL Energy on April 2007 Draft of
CEC/CDFG “Statewide Guidelines for Reducing Impacts to Birds and
Bats from Wind Energy Development”**

(May, 2007)

These comments from FPL Energy are intended to complement/supplement other comments submitted by CEERT, and the organizations it represents, on the April 2007 draft of the guidelines.

- **Lines 762-764:** states, with regard to operations monitoring, that less monitoring may be appropriate “if the site is near a comparable site with similar turbine design and layout that was recently well-studied and that has scientifically defensible and relevant data showing low fatalities.” Delete “showing low fatalities” and replace with “defining the level of fatalities.” The level of impact associated with an existing, nearby project should not have to be “low” in order for the mortality data to be effectively extrapolated to a new project to support less mortality monitoring. What’s important is that the impacts of the existing, nearby site be sufficiently *defined* (whether they are low, moderate or high) such that defining them again at the new nearby site is not an efficient use of resources, especially if the project proponent is willing to assume a conservative level of mortality (based on the mortality results from the nearby site) and accepted correspondingly conservative mitigation measures.
- **Lines 921, 923, 2172, 2240, 2241:** In these lines and anywhere else in the guidelines, replace the word “substantial” with the word “significant.” The word “substantial” is not defined in the guidelines (or anywhere else we are aware of), and without a definition, will be subject to wide interpretation. The word “significant” is defined in CEQA.
- **Line 1081** states: “following the CEQA Guidelines alone may not highlight all of the species and issues that need evaluation.” Since CEQA requires the evaluation of all environmental impacts, whether they are “significant” or not, we are not aware of any case where an evaluation of a wind projects potential impacts to birds and bats in the CEQA context would not be sufficient. This phrase should be deleted.
- **Line 1092:** Delete the sentence “The permit conditions may need to include additional mitigation above and beyond that required by CEQA to avoid, minimize, and fully mitigate impacts to birds and bats.” This sentence, of any in the guidelines, rises to the level of rulemaking in that it recommends mitigation in cases where the law currently does not require it. For example, while certain strict liability wildlife laws prohibit “take,” they do not necessarily require any and all takes to be mitigated as this sentence of the guidelines implies. CEQA was intended to define those impacts for which the state requires mitigation. It is not appropriate for these guidelines to recommend a mitigation threshold different from what current law prescribes.

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- **Line 1332:** states that “Proposed project that involve developing multiple groups of turbines over large geographical areas ...may need additional specialized, multi-year studies.” Because most future wind projects in CA could arguably meet this criteria, this is inconsistent with the language at line 1315 that states that “most pre-permitting surveys should last a minimum of one year . . .” Suggest deleting the size of a project as a single criteria that, alone, could justify more than a year of pre-construction monitoring.
- **Line 1343:** states that “less pre-permitting study might be sufficient for a small project near an existing, well-studied site for which there is a high level of knowledge about potential impacts to birds and bats and for which operations monitoring studies have confirmed a *low* level of impacts.” Change the end of the sentence to read “. . . have confirmed *the* level of impacts” to make it consistent with line 505. The level of impact associated with the existing project should not be a factor in determining if existing data at a nearby site should be used to justify less than a year of pre-construction studies. What’s important is that the impacts of the existing site be sufficiently *defined* (whether they are low, moderate or high) such that defining them again at the new nearby site is an inefficient use of resources, especially if the project proponent is willing to assume a conservative level of risk and accept corresponding conservative mitigation measures.
- **Line 1361:** states that “The lead agency needs to know that the pre-permitting study design has incorporated input from appropriate scientists *and from all interested parties.*” Delete “and from all interested parties.” While developers should be encouraged to solicit input from interested parties on pre-permitting study design early on (and the guidelines suggest this elsewhere), it may not always be possible to get input from ALL interested parties.
- **Line 2357:** Change sentence to read “The purchased land or easements should have a *biological value equal to or higher* for the targeted species”