

Modifications to the Proposed Settlement Agreement and Resulting Modifications in Applicable Permit Conditions

The proposed minor modifications provide clarification to concerns raised regarding the County Scientific Review Committee's role in the Settlement terms and conditions. In addition, there are minor corrections identified by an SRC member and Audubon. (underline represents added text; ~~strikeout~~ represents deleted text)

Settlement Terms and Conditions

- 3(a)(i) In the event the above-referenced scaling factors exceed 2.5, the Wind Power Companies, Audubon, and the County, in consultation with the SRC, along with any other individuals or entities that both the Wind Power Companies, Audubon and the County agree to, shall meet and confer to re-determine a mutually acceptable baseline for determining raptor mortality and/or reduction percentage in raptor mortality that triggers adaptive management measures as specified in section 3(c) of this Agreement.
- 3(b) The Wind Power Companies, Audubon, and the County, in consultation with the SRC, shall meet and confer at least annually to determine if mutually acceptable mid-course corrections in measures to reduce raptor mortality are appropriate after the SRC evaluates the prior year's monitoring data. Agreed upon mid-course corrections for the Applicable Turbines shall be forwarded to the County for consideration pursuant to Condition 5 of the CUPs if the measures require permit modifications.
11. **Amendments.** Unless expressly permitted by this Agreement, no supplement, modification or amendment of any term, provision or condition of this Agreement (including this paragraph) shall be binding or enforceable unless evidenced in a writing executed by all of the Parties to this Agreement. Notwithstanding the foregoing, this provision does not restrict the role of the SRC pursuant to the terms of Condition 5 of the Conditional Use Permits.

Modification to Exhibit G-1 – Conforming changes to the previously stated proposed modifications

2. a.3. In the event the above-referenced scaling factors exceed 2.5, the Wind Power Companies, Audubon, and the County, in consultation with the SRC, along with any other individuals or entities that both the Wind Power Companies, Audubon and the County agree to, shall meet and confer to re-determine a mutually acceptable baseline for determining raptor mortality and/or reduction percentage in raptor mortality that triggers adaptive management measures as specified in section 2(c) below.
2. b. The Wind Power Companies, Audubon, and the County, in consultation with the SRC, shall meet and confer at least annually to determine if mutually acceptable mid-course corrections in measures to reduce raptor mortality are appropriate after the SRC evaluates the prior year's monitoring data. Agreed upon mid-course corrections shall be forwarded to the County for consideration pursuant to Condition 5 of the Permit if the measures require permit modifications.

**Modification to Exhibit G-1 – Correction to text to be consistent with Settlement Agreement
Provision 4. Seasonal Shutdown**

6. d.1. From November 1, 2008 to February 1, 2009 (an increase of ~~half~~ a month over the prior winter), or for a different 3-month minimum period if agreed to by the SRC based on the monitoring results from the prior three winters, the Wind Power Companies shall cease operations of approximately ½ of the existing (non-repowered) Applicable Turbines. From December 1, 2008, until February 28, 2009, or for a different 3-month minimum period also based on monitoring results as above, the Wind Power Companies shall cease operations of the other half of the Applicable Turbines (also increasing their total shutdown by half a month over the prior winter, and overlapping with the shutdown of the first half of the turbines).

Modification to Exhibit G-2 – Correction to referenced calculation

YEAR ONE – September 2005 to August 2006

1. By October 31, 2005, and subject to confirmed determination by the SRC, the Permittee shall shutdown or relocate the individual turbines specifically identified by BioResource Consultants, Inc. in their research for the California Energy Commission, as ‘Tier 1’ hazardous turbines (approximately ~~2~~1 percent of all turbines).

Modification to Draft Resolution Number R-2007-_____ - identified by Settling Parties and Staff

Page 1, Permit List – Correction to omission of permit
C-8161, SEAWEST POWER RESOURCES LLC/POMBO (2.89 megawatt windfarm of 38 turbines, APN: 099B-7750-006-00); C-8191, WINDWORKS INC./MULQUEENEY (4.0-megawatt windfarm of 16 turbines, APN: 099B-7910-001-01)

Page 4, Insert Recitals between recitals two and three - The recitals explain the process in which two permits differed from the 29 permits adopted by the Board on September 2005 and are concurrently dealt with here.

WHEREAS, on January 12, 2006, the East County Board of Zoning Adjustments (“BZA”) approved CUP renewal applications C-8216 (by Windworks, Inc.) and C-8243 (by Altamont Infrastructure Company) with the exact same conditions as the 29 CUPs previously approved by the Board of Supervisors; and

WHEREAS, Audubon, CARE, the County, Windworks, Inc. and Altamont Infrastructure Company subsequently agreed that the final outcome of the Action shall govern the validity of the County’s approval of CUP numbers C-8216 and C-8243 as if they had also been subject of the Action; and

Page 4, Recital four - Correction to exhibit reference

WHEREAS, after extensive discussion among and between the various parties, on or about November 6, 2006, Audubon/CARE and the Wind Power Companies agreed to a framework for settling the entire Action, embodied in the November 6, 2006 Settlement Framework (the “Settlement Framework”), as set forth as an exhibit to attached hereto as Exhibit 1; and

Page 4, Recital six – Correction to exhibit reference

WHEREAS, the Parties desire to enter into this Agreement in order to execute a final settlement of the Action. The terms and conditions of this Agreement are set forth in **Exhibit 21**; and

Page 5 – Correction to typographical error, updated reference, and inserted reference to two permits that were not originally dealt with in the action with the 29 permits (consistent with added recitals above).

NOW THEREFORE BE IT RESOLVED, that this Board of Supervisors ~~does hereby~~ does hereby enter into the Settlement Agreement (**Exhibit 1**) ~~providing for amended conditions on 28 of the 29 concerning the~~ conditional use permits approved under Resolution Number R-2005-453, and CUP numbers C-8216 and C-8243 specifically defined by **Exhibit “A”** (including “Exhibit A.1, Use Permits, APNs and Permit History”, “Exhibit A.1, Map Key”, “Exhibit A.1, Map” and “Exhibit A.2” Site Plans in separate Permit files held in the offices of the Community Development Agency, Planning Department, 224 West Winton, Rm. 111, Hayward, CA, 94544), and subject to the following conditions, including the specifications of **Exhibit “C”** (Altamont Pass

Windfarm Fire Requirements), **Exhibit “D”** (APWRA Scientific Review Committee), **Exhibit “E”** (Wind Power Working Group), **Exhibit “F”** (Wind Resource Area Permits, Permittees, Owners And Rated Output) and **Exhibit “G”** (including Exhibit “G-1, Settling Companies Avian Wildlife Protection Program and Schedule” and “G-2, Avian Wildlife Protection Program and Schedule”):