

Planning Agreement

by and among

**The County of Alameda,
the California Department of Fish and Game,
the United States Fish and Wildlife Service, and
Altamont Infrastructure, Co., LLC, Altamont Power, Co.,
enXco, Inc., SeaWest Power Resources, LLC, Golden
Gate Audubon Society, and National Audubon Society
d.b.a. Audubon California**

regarding the

**Altamont Pass Wind Resource Area
Natural Community Conservation Plan and
Habitat Conservation Plan**

January __, 2007

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Altamont Pass Wind Resource Area Planning Agreement

This agreement regarding the planning and preparation of the Altamont Pass Wind Resource Area Natural Community Conservation Plan and Habitat Conservation Plan (“Planning Agreement”) is entered into as of the Effective Date by and among the County of Alameda, the California Department of Fish and Game (“DFG”), the United States Fish and Wildlife Service (“USFWS”), and Altamont Infrastructure, Co., LLC, Altamont Power, Co., enXco, Inc., SeaWest Power Resources, LLC., Golden Gate Audubon Society, and National Audubon Society d.b.a. Audubon California. These entities are referred to collectively as “Parties” and each individually as a “Party.” The DFG and USFWS are referred to collectively as “Wildlife Agencies.”

1. Definitions

Terms used in this Planning Agreement that are defined in the Natural Community Conservation Planning Act have the meanings set forth in Fish and Game Code Section 2805. The following terms as used in this Planning Agreement will have the meanings set forth below.

- 1.1. “CEQA” means the California Environmental Quality Act, Public Resources Code, Section 21000, *et seq.*
- 1.2. “CESA” means the California Endangered Species Act, California Fish and Game Code, Section 2050, *et seq.*
- 1.3. “County” means the government of the County of Alameda.
- 1.4. “Covered Activities” means the activities that will be addressed in the Plan and for which the Wind Companies and the County will seek an NCCP permit pursuant to Fish and Game Code, Section 2835 and an incidental take permit pursuant to Section 10 of FESA.
- 1.5. “Covered Species” means those species, both listed and non-listed, conserved and managed under an approved Plan that may be authorized for take under state and/or federal law.
- 1.6. “FESA” means the federal Endangered Species Act, 16 United States Code Section 1530, *et seq.*
- 1.7. “Habitat Conservation Plan” or “HCP” means a conservation plan prepared pursuant to Section 10(a)(1)(B) of FESA.
- 1.8. “Implementing Agreement” or “IA” means the agreement required pursuant to Fish and Game Code Section 2820, subdivision (b) and

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authorized under 14 U.S.C. Section 1539 (a)(2)(B) which defines the terms for implementing the Plan.

1.9. “Listed Species” means those species designated as candidate, threatened or endangered pursuant to CESA and/or listed as threatened or endangered under FESA.

1.10. “Natural Community Conservation Plan” or “NCCP” means a conservation plan created pursuant to Fish and Game Code, Section 2801, *et seq.*

1.11. “Natural Community Conservation Planning Act” or “NCCPA” means Fish and Game Code, Section 2801, *et seq.*

1.12. “NEPA” means the National Environmental Policy Act, United States Code Section 4321, *et seq.*

1.13. “Plan” means the joint natural community conservation plan and habitat conservation plan.

1.14. “Planning Area” means the geographic area proposed to be addressed in the Plan as described in Exhibit ____.

1.15. “Planning Subareas” means those geographic areas that are smaller units of the planning area that will each have a specific function or jurisdictional boundary within the permitted plan.

1.18. “Wind Companies” means Altamont Infrastructure, Co., LLC, Altamont Power, Co., enXco, Inc., and SeaWest Power Resources, LLC.

1.19. “Environmental Groups” means Golden Gate Audubon Society and National Audubon Society d.b.a. Audubon California (collectively “Audubon”).

1.20. “APWRA” means Altamont Pass Wind Resource Area.

2. Background

2.1. Natural Community Conservation Planning Act

The NCCPA was enacted to encourage broad-based planning to provide for effective protection and conservation of the state’s wildlife resources while continuing to allow appropriate development and growth. The purpose of natural community conservation planning is to provide for the conservation of biological diversity by protecting biological communities at the ecosystem and landscape scale. Conservation of biological diversity includes protecting sensitive and more common species, natural communities, and the ecological processes necessary to sustain the ecosystem over time. An

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NCCP identifies and provides for the measures necessary to conserve and manage natural biological diversity within the Planning Area, while allowing compatible and appropriate economic development, growth, and other human uses.

2.2. Purposes of NCCP Planning Agreements

The purposes of NCCP Planning Agreements are to:

- Define the Parties' goals and commitments with regard to development of a Plan;
- Define the geographic scope of the conservation Planning Area;
- Identify a preliminary list of natural communities and species known or reasonably expected to be found in those communities, that are intended to be the initial focus of the Plan;
- Identify preliminary conservation objectives for the Planning Area;
- Establish a process for the inclusion of independent scientific input into the planning process;
- Ensure coordination among the Wildlife Agencies, particularly with respect to FESA, 16 U.S.C. Section 1531 et seq.;
- Establish a process to review interim development within the Planning Area that will help achieve the preliminary conservation objectives and preserve options for establishing a viable reserve system or equivalent long term conservation measures; and
- Ensure public participation and outreach throughout the planning process.

2.3. Compliance with CESA and FESA

The Planning Area contains valuable biological resources, including native species of wildlife and their habitat. Among the species within the Planning Area are certain species that are protected, or may be protected in the future, under CESA and/or FESA. The Parties intend for the Plan to satisfy the requirements for an HCP under Section 10(a)(1)(B) of FESA, and an NCCP under the NCCPA, to serve as the basis for take authorizations under both Acts.

The NCCPA provides that after the approval of an NCCP, DFG may permit the taking of any identified species, listed or non-listed, whose conservation and management is provided for in the NCCP. Take of state-listed species may be authorized pursuant to CESA during development of the Plan. After approval of the Plan, state authorized take may be provided pursuant to the NCCPA.

FESA provides that after the approval of an HCP, USFWS may permit the taking of wildlife species covered in the HCP if the HCP and permit application meet the requirements of section 10(a)(2)(A) and (B) of FESA. Take authorization for federally listed wildlife species covered in the HCP

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shall in general be effective upon approval of the HCP and issuance of an incidental take permit. Take authorization for non-listed wildlife species covered in the HCP becomes effective if and when the species is listed pursuant to FESA. Take authorization during plan preparation for wildlife species listed pursuant to FESA may be provided pursuant to individual permits issued pursuant to section 10(a)(1)(B), or consultations under section 7 of FESA.

2.3.1. Integration with Existing County Program

The County has established as a condition of approving conditional use permits (“CUPs”) for the Wind Companies’ continued operation of wind electric generators at the APWRA a program to reduce avian mortality. The County program includes the formation of a Scientific Review Committee, monitoring of bird injuries and mortality, a repowering program, shut down of “Tiers 1 and 2” turbines, seasonal shutdown of remaining turbines, and the establishment of an off-site mitigation program. The Parties anticipate integrating the County program, as amended by the attached settlement agreement among the County, Wind Companies and Audubon (“Settlement Agreement”), with the Plan to the greatest extent practicable to avoid unnecessary duplication of effort and modifying the CUPs and County program to conform to the Plan as appropriate.

2.4. Section 7 of FESA

To the extent allowed under law, the Parties intend that the mitigation and minimization measures included in the Plan, once approved by the USFWS and included as a condition of federal incidental take permits to the Wind Companies and County, will be incorporated into future Section 7 consultations between the USFWS and the United States Army Corps of Engineers, the United States Bureau of Reclamation, or other applicable federal agencies regarding Covered Activities that may adversely affect Covered Species or their habitat.

2.5. Assurances

2.5.1. FESA

The Parties anticipate that the USFWS will provide assurances pursuant to applicable federal law and regulations then in effect upon issuance of federal incidental take permits for the Covered Activities.

2.5.2. NCCPA

The Parties anticipate that if the Plan meets the criteria for an NCCP permit under Section 2835 of the Fish and Game Code, DFG will provide assurances consistent with its statutory authority upon approval of the Plan and issuance of NCCP permits to the Wind Companies and County for Covered Activities. Under Section 2820(f) of the Fish and Game Code, DFG

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may provide assurances for plan participants commensurate with the level of long-term conservation and associated implementation measures provided in the Plan. In order to ensure that state regulatory assurances are legally binding, such provisions will be included in an Implementing Agreement.

3. Planning Goals

The planning goals include the following:

- Provide for the conservation and management of Covered Species;
- Reduce avian mortality caused by Covered Activities and establish adaptive management processes to achieve Planning Goals;
- Allow for appropriate and compatible operation and repowering of wind electric generators that is consistent with applicable laws;
- Provide a basis for permits necessary to lawfully take Covered Species;
- Provide a comprehensive means to coordinate and standardize mitigation and compensation requirements of FESA, CEQA, NEPA, and NCCPA within the Planning Area;
- Provide a less costly, more efficient project review process which results in greater conservation values than project-by-project, species-by-species review; and
- Provide clear expectations and regulatory predictability for persons carrying out Covered Activities within the Planning Area.

4. Planning Area and Plan Participants

4.1. Geographic Scope

The geographic area to be addressed in the Plan covers approximately [40,000] acres in the [Alameda] County portion of the APWRA as depicted in Exhibit __. The Planning Area is designated by the Alameda County Zoning Ordinance as "A" Agriculture, where privately owned wind-electric generators are permitted as conditional uses.] The Parties recognize the possibility of extending the Planning Area to include the portion of the APWRA located within Contra Costa County.

4.2. County

The County is the local sponsor of the plan. As part of this planning process, the County has committed to undertake a collaborative, systematic approach to protecting the Planning Area's ecologically significant resources, including candidate, threatened and endangered species and their habitats, open space and working landscapes, and to ensure that the Covered Activities comply with applicable federal and state laws. The Wind Companies shall be responsible for funding the County's expenses in

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serving as the local sponsor, including, but not limited to, funding consultants and/or employees necessary to fill this role.

4.3. California Department of Fish and Game

DFG is the agency of the State of California authorized to act as trustee for the state's wildlife. DFG is authorized to approve NCCPs pursuant to the NCCPA, administer and enforce CESA and other provisions of the Fish and Game Code, and enter into agreements with federal and local governments and other entities for the conservation of species and habitats pursuant to CESA and the NCCPA.

4.4. United States Fish and Wildlife Service

The USFWS is an agency of the United States Department of the Interior authorized by Congress to administer and enforce FESA with respect to terrestrial wildlife, certain fish species, insects and plants, and to enter into agreements with states, local governments, and other entities to conserve threatened, endangered, and other species of concern. The NCCPA and this Planning Agreement require coordination with USFWS with respect to FESA.

5. Preliminary Conservation Objectives

The preliminary conservation objectives intended to be achieved through the Plan are to:

- Provide for the protection of species, natural communities, and ecosystems on a landscape level;
- Reduce avian mortality caused by Covered Activities;
- Preserve the diversity of plant and animal communities throughout the Planning Area;
- Protect threatened, endangered or other special status plant and animal species, and minimize and mitigate the take or loss of proposed Covered Species;
- Identify and designate biologically sensitive habitat areas;
- Preserve habitat and contribute to the recovery of Covered Species;
- Reduce the need to list additional species;
- Set forth species specific goals and objectives; and
- Set forth specific habitat-based goals and objectives expressed in terms of amount, quality, and connectivity of habitat.

5.1 Conservation Elements

5.1.2 Ecosystems, Natural Communities, and Species List

The Plan will employ a strategy that focuses on the conservation of ecosystems, natural communities, and ecological processes in the Planning

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Area. In addition, the Plan will employ species-specific minimization, mitigation, conservation and management measures where appropriate.

5.1.3 Conservation Areas

The Plan will recommend conservation areas throughout the Planning Area, as appropriate. It will also identify important habitat areas outside the Planning Area. Such conservation areas will include a range of environmental gradients and ecological functions, and will address edge effects and other reserve design principles. Conservation areas shall not include real property without the express consent of the applicable landowner(s).

5.1.4 Project Design

The Plan will ensure that projects will be appropriately designed to avoid and/or minimize and mitigate on-site and off-site impacts to resources.

6. Preparing the Plan

The Parties intend that this Planning Agreement will fulfill the NCCPA requirements pertaining to planning agreements and will establish a mutually agreeable process for preparing the Plan that fulfills the requirements of the NCCPA and FESA. The process used to develop the Plan will incorporate independent scientific input and analysis, and include extensive public participation with ample opportunity for comment from the general public as well as advice solicited by the County from key groups of stakeholders as described below.

6.1. Best Available Scientific Information

The Plan will be based on the best available scientific information, including, but not limited to:

- principles of conservation biology, community ecology, landscape ecology, individual species' ecology, animal behavior, and other scientific knowledge and thought;
- thorough information about all natural communities and proposed Covered Species on lands throughout the Planning Area; and
- advice from well-qualified, independent scientists.

6.2. Data Collection

A substantial amount of information has already been collected that will be valuable to the development of the Plan. The Parties agree that the existing information and additional information regarding the Covered Activities and Covered Species is important for the preparation of the Plan. The science advisory process and analysis of existing information may reveal data gaps that must be addressed for the full and accurate development of the Plan. The Parties therefore agree that data collection for preparation of the Plan should be prioritized to develop more complete information on these

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subjects. Preference should be given to collecting data essential to address conservation requirements of natural communities and proposed Covered Species. Data needed for preparation of the Plan may not be known at this time nor identified herein. Therefore, the Parties anticipate that data collection priorities may be adjusted from time to time during the planning process. All data collected for the preparation and implementation of the Plan will be made available to the Wildlife Agencies in hard and digital formats, as requested.

6.3. Independent Scientific Input

The County and DFG intend to include independent scientific input and analysis to assist in the preparation of the Plan. For that purpose, independent scientists representing a broad range of disciplines, including conservation biology, animal behavior, and locally-relevant ecological knowledge, will, at a minimum:

- recommend scientifically sound conservation strategies for species and natural communities proposed to be covered by the plan;
- recommend a set of reserve design principles that address the needs of species, landscapes, ecosystems, and ecological processes in the planning area proposed to be addressed by the plan;
- recommend management principles and conservation goals that can be used in developing a framework for the monitoring and adaptive management component of the plan; and
- identify data gaps and uncertainties so that risk factors can be evaluated.

The independent scientists may be asked to provide additional feedback on key issues during preparation of the Plan, and may prepare reports regarding specific scientific issues throughout the process, as deemed necessary by the Parties and DFG.

Design and implementation of the science advisory process must be done in a coordinated fashion and with the mutual agreement of the County and DFG. The County and DFG will establish funding and payment procedures. The independent science advisory process will include the development of a detailed scope of work, use of a professional facilitator, input from technical experts, and production of a report by the scientists. In addition, the County and DFG will make the report available for use by all participants and the public during the planning process.

6.4. Public Participation

The Plan will be prepared in an open and transparent process, with input from all those concerned. The planning process will: provide for thorough public review and comment, and include a working group that will review the Plan at every stage of development. To assist in the development of the

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Plan, the County will form a Steering Committee and additional working groups as deemed necessary.

6.4.1. Steering Committee

Preparation of the Plan will be guided by the Steering Committee. Steering Committee members will be approved by the County and will include representatives of the Wind Companies, Environmental Groups, landowners, special interest groups, and members of the public. Steering Committee members will include the parties to the settlement of the CEQA legal action and other participants in the existing CUP process and County program. Staff from the Wildlife Agencies will work with the Steering Committee to provide technical expertise and share information for the development and implementation of the Plan.

6.4.2. Outreach

The County, in concert with the Steering Committee, will provide access to information for persons interested in the Plan. The Parties expect and intend that public outreach regarding preparation of the Plan will be conducted largely by and through the Steering Committee meetings. In addition, the County will continue to hold public meetings to present key decisions regarding the preparation of the Plan to allow the public the opportunity to comment on and inquire about the decisions. Other outreach efforts may include development of a quarterly newsletter, a plan website, and other informational mass mailings.

6.4.3. Availability of Public Review Drafts

The County will designate and make available for public review in a reasonable and timely manner “public review drafts” of pertinent planning documents including, but not limited to, plans, memoranda of understanding, maps, conservation guidelines, and species coverage lists. Such documents will be made available by the County at least ten working days prior to any public hearing addressing these documents. In addition, the County will make available all reports and formal memoranda prepared by the [Steering] Committee. This obligation will not apply to all documents drafted during preparation of the Plan. However, the County will periodically designate various pertinent documents drafted during preparation of the Plan as “public review drafts”, and will make these documents available to the public. The Parties agree the internet [insert web address] will be one of the principal means of making documents available for public review, as well as more traditional means such as distribution and display of hard copies of such documents.

6.4.4. Public Hearings

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Public hearings regarding development of the Plan will be planned and conducted in a manner that satisfies the requirements of CEQA, NEPA, and any other applicable state or federal laws.

6.4.5. Public Review and Comment Period Prior to Adoption

The County will make the proposed draft Plan and Implementing Agreement available for public review and comment [60] days before adoption. The County expects to fulfill this obligation by distributing the draft Plan and Implementing Agreement with the draft environmental impact report prepared for the Plan pursuant to CEQA and/or the draft environmental impact statement prepared for the Plan pursuant to NEPA.

6.5. Covered Activities

Covered Activities under the Plan include those activities relating to the operation, construction, maintenance and repowering of wind electric generators that may result in authorized take or loss of Covered Species that will be identified and addressed in the Plan. Covered Activities may include adaptive habitat management and monitoring activities in the Planning Area. Covered Activities will not include land use development or farming, ranching, or other agricultural activities, unless such activities are undertaken in whole or in part to restore or enhance wildlife habitat and with the consent of applicable property owners. The Parties intend that the Plan will allow Covered Activities in the Planning Area to be carried out in compliance with NCCPA, CESA, and FESA.

6.6. Interim Project Processing

The Parties recognize that before the Wildlife Agencies approve the Plan, certain Covered Activities may be proposed within the Planning Area, although none are anticipated except in accordance with the CUPs as amended by the Settlement Agreement. The Parties agree to the following interim project process to address Covered Activities not contemplated by the CUPs as amended by the Settlement Agreement: (1) ensure that Covered Activities approved or initiated in the Planning Area before completion of the Plan are consistent with the preliminary conservation objectives (Section 5) and do not compromise successful completion and implementation of the Plan; (2) facilitate CEQA, CESA, and FESA compliance for interim Covered Activities that require it; and (3) ensure that processing of interim Covered Activities is not unduly delayed during preparation of the Plan.

6.6.1. Reportable Interim Projects

The County will notify the Wildlife Agencies pursuant to section 6.6.2 about proposed Covered Activities requiring discretionary approvals from the County that have the potential to adversely impact proposed Covered Species and natural communities (“Reportable Interim Project”) within the Planning Area. Notwithstanding the foregoing, the Parties recognize that

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activities taken pursuant to the existing CUPs as amended by the Settlement Agreement shall not be considered reportable interim projects.

6.6.2. Notification Process

The County, prior to undertaking or approving a Reportable Interim Project, will notify the Wildlife Agencies of the project prior to the time, or as soon as possible after, the project application is deemed complete. The County will notify the particular individuals designated by the Wildlife Agencies to be notified of Reportable Interim Projects, and will provide these designated individuals with (1) a depiction of the project location on a USGS 7.5 minute quadrangle map with the quadrangle name and section, township, and range identified; (2) a description of the project along with the land cover types present on the project site using the most current land cover data available to the County; and (3) any other biological information available to the County about the project area.

6.6.3. Wildlife Agency Review

The Wildlife Agencies will review Reportable Interim Projects in a timely manner, and will use reasonable efforts to provide any comments on the projects to the referring County within the legally prescribed comment periods. The Wildlife Agencies will recommend mitigation measures or project alternatives that would help achieve the preliminary conservation objectives and will not preclude important conservation planning options or connectivity between areas of high habitat values. Any take of listed or candidate species arising out of a Reportable Interim Project must be authorized pursuant to applicable federal and/or state law.

6.6.4. Coordinating Interim Process with Plan Preparation

Representatives of the Parties will meet as needed to discuss Reportable Interim Projects and to coordinate with development of the Plan. Independent scientific input will be considered by the Parties during interim project review.

6.7. Protection of Habitat Land During Planning Process

6.7.1. Conservation Lands Acquired/Protected

The Parties may elect, with the express consent of willing landowners, to preserve, enhance or restore, either by acquisition or other means (*e.g.*, conservation easements; designated setbacks), lands in or outside the Planning Area that contain native species of wildlife or natural communities prior to approval of the Plan. The County will consult with the Wildlife Agencies regarding potential lands to be protected. The Wildlife Agencies agree to credit such lands toward the land acquisition or habitat protection requirements of the Plan as appropriate, provided the lands are permanently conserved and managed and contribute to the Plan's conservation strategy.

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6.7.2. Mitigation Lands

Lands, or portions of lands, acquired or otherwise protected solely to mitigate the impacts of specific projects, actions, or activities approved prior to Plan approval will only be considered as mitigation for those projects, actions or activities. Such lands will be considered during the Plan analysis, but will not count toward future mitigation obligations of the Plan.

6.8. Implementing Agreement

The NCCPA requires that any NCCP approved by DFG include an Implementing Agreement that contains provisions for:

- conditions of species coverage;
- the long-term protection of habitat reserves and/or other conservation measures;
- implementation of mitigation and conservation measures;
- terms for suspension or revocation of the take permit;
- procedures for amendment of the Plan and IA;
- implementation of monitoring and adaptive management;
- oversight of plan effectiveness and funding; and
- periodic reporting.

While the Plan is being developed, the Parties will negotiate a draft Implementing Agreement that will satisfy the requirements of the NCCPA and FESA, and include specific provisions and procedures for the implementation, monitoring and funding of the Plan. A draft of the Implementing Agreement will be made available for public review and comment with the final public review draft of the Plan.

7. Commitment of Resources

7.1. Funding

The Parties agree that they will work together to bring available funding to the planning effort.

7.1.1. Local Funding

The Wind Companies and County recognize that, as prospective applicants for state and federal permits, they have the primary responsibility for developing a plan that meets applicable legal requirements and that as a result, the development and implementation of the Plan must be funded primarily from locally assured sources. The Wind Companies shall be responsible for funding the County's expenses in serving as the local sponsor of the NCCP, including, but not limited to, funding consultants and/or employees necessary to fill this role.

7.1.2. DFG Assistance with Funding and DFG Costs

DFG agrees to cooperate with the other Parties in identifying and securing, where appropriate and available, federal and state funds earmarked for

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natural community conservation planning. *The Parties agree that the County is not required to provide reimbursement to DFG for its participation in the planning phase of the Plan as provided in Fish and Game Code, Section 2810, except as provided in Section 8.7.1 of this Planning Agreement.* DFG's commitments and obligations under this Planning Agreement are subject to the availability of appropriated funds and the written commitment of funds by an authorized DFG representative.

7.1.3. USFWS Assistance with Funding

The USFWS agrees to assist and cooperate with the other Parties in identifying and securing, where appropriate, federal and state funds earmarked for habitat conservation planning purposes. Potential federal funding sources may include: the USFWS' Cooperative Endangered Species Conservation Fund, Land and Water Conservation Fund, and land acquisition grants or loans through other federal agencies such as the Environmental Protection Agency, the Army Corps of Engineers, or the Departments of Agriculture or Transportation. The commitments and obligations of the USFWS under this Planning Agreement are subject to the requirements of the federal Anti-Deficiency Act (31 U.S.C. section 1341) and the availability of appropriated funds. The Parties acknowledge that this Planning Agreement does not require any federal agency to expend its appropriated funds unless and until an authorized officer of that agency provides for such expenditures in writing.

7.2. Expertise of Wildlife Agencies

Subject to funding and staffing constraints, the Wildlife Agencies agree to provide technical and scientific information, analyses and advice to assist the County with the timely and efficient development of the Plan.

8. Miscellaneous Provisions

8.1. Public Officials Not to Benefit

No member of or delegate to Congress will be entitled to any share or part of this Planning Agreement, or to any benefit that may arise from it.

8.2. Statutory Authority

The Parties will not construe this Planning Agreement to require any Party to act beyond, or in a manner inconsistent with, its statutory authority.

8.3. Multiple Originals

This Planning Agreement may be executed by the Parties in multiple originals, each of which will be deemed to be an official original copy.

8.4. Effective Date

The Effective Date of this Planning Agreement will be the date on which it is fully executed by DFG and the County. This Planning Agreement is effective

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as to each of the other Parties at the time that Party signs the Planning Agreement.

8.5. Duration

This Planning Agreement will be in effect until the Plan is approved and permitted by the Wildlife Agencies, but shall not be in effect for more than five years following the Effective Date, unless extended by amendment. This Planning Agreement may be terminated pursuant to section 8.7 below.

8.6. Amendments

This Planning Agreement can be amended only by written agreement of all Parties.

8.7. Termination and Withdrawal

Subject to the requirement in Section 8.7.1 of the Planning Agreement, any party may withdraw from this Planning Agreement upon 30 days' written notice to the other Parties. The Planning Agreement will remain in effect as to all non-withdrawing Parties unless the remaining Parties determine that the withdrawal requires termination of the Planning Agreement. This Planning Agreement can be terminated only by written agreement of all Parties.

8.7.1. Funding

In the event that federal or State funds have been provided to assist with Plan preparation or implementation, any Party withdrawing from this Planning Agreement shall return to the granting agency unspent funds awarded to that Party prior to withdrawal. A withdrawing Party shall also provide the remaining Parties with a complete accounting of the use of any federal or State funds it received regardless of whether unspent funds remain at the time of withdrawal. In the event of termination of this Planning Agreement, all Parties who received funds shall return any unspent funds to the grantor prior to termination.

SIGNATURES:

Dated: _____, 20__

County of Alameda

By: _____

Title: _____

Dated: _____, 20__

Altamont Infrastructure, Co., LLC.

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Dated: _____, 20__

By: _____
Title: _____

Altamont Power, Co.

Dated: _____, 20__

By: _____
Title: _____

enXco, Inc.

Dated: _____, 20__

By: _____
Title: _____

SeaWest Power Resources, LLC.

Dated: _____, 20__

By: _____
Title: _____

Golden Gate Audubon Society

Dated: _____, 20__

By: _____
Title: _____

National Audubon Society d.b.a.
Audubon California

By: _____
Title: _____

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Dated: _____, 20__

CALIFORNIA DEPARTMENT OF FISH
AND GAME

By: _____
Banky Curtis, Deputy Director
Habitat Conservation Division

Dated: _____, 20__

US FISH AND WILDLIFE SERVICE

By: _____
[insert name and title]