

EXHIBIT G-1

For Settling Companies

AVIAN WILDLIFE PROTECTION PROGRAM & SCHEDULE

September 22, 2005

The Settling Parties Avian Wildlife Protection Program & Schedule (Condition 7, AWPPS) is to be implemented together with all of the conditions as set forth below. The term “Settling Parties” or “Settling Party” means individually or collectively Audubon (collectively, Golden Gate Audubon Society, Ohlone Audubon Society, Mount Diablo Audubon Society, Santa Clara Valley Audubon Society, and Marin Audubon Society), and Wind Power Companies (collectively, ESI Bay Area GP, Inc., ESI Altamont Acquisitions, Inc. on behalf of Green Ridge Power, LLC, and ESI Techachapi Acquisitions on behalf of Altamont Power, LLC. (“ESI”), enXco, Inc., and SeaWest Power Resources, LLC), and the County. Among the turbines subject to this Permit, some are owned beneficially only by Wind Power Companies and some are owned by a Wind Power Company and a non-settling party. Only the turbines owned beneficially solely by Wind Power Companies, with no non-settling party beneficial interest, are affected by the conditions set forth below (the “Applicable Turbines”). Throughout all years of the Program, the Scientific Review Committee (SRC) shall investigate, monitor and evaluate the effectiveness of the Program, using input from the Permittee(s), the County consultant and state-sponsored research, and subsequently recommend adjustments, and design and implementation of alternative strategies in accordance with the conditions set forth below. The County consultant, as a neutral third party, shall also continue to report on avian mortality and injury using methods approved by the SRC through the life of the Permit(s).

YEAR ONE through FOUR – September 2005 to January 2010

1. By November 30, 2005, Wind Power Companies shall provide a schedule for implementing the on-site strategies to reduce avian mortality as identified by the California Energy Commission-sponsored research, including the following (and in general accordance with the timetable below).

<u>Strategy or technique</u>	<u>Implementation Time</u>
a. Retrofitting electrical power poles and power lines to be compliant with the Edison Electric Institute’s Avian Power Line Interaction Committee (APLIC), in order to prevent electrocution of birds;	Within 180 days of the Permit approval
b. Removing derelict and non-operating turbines, allowing towers to remain at ends of rows if deemed beneficial as flight diverters by the SRC, and replacing turbines only with SRC approval;	50% removed within 180 days, 100% within one year

2. The Wind Power Companies shall achieve a 50% reduction in raptor mortality by November 1, 2009.

- a. The baseline for determining the percentage reduction in raptor mortality at the APWRA is thirteen hundred (1300).
 1. The raptor species that shall be evaluated to determine the percentage reduction in raptor mortality are Golden Eagle, Burrowing Owl, American Kestrel, and Red-Tailed Hawk.
 2. The percentage reduction in raptor mortality shall be determined using field monitoring data collected by the County Consultant in accordance with Condition 6 of the Permit and scaling factors for searcher efficiency and scavenging as approved by the SRC.
 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.
- 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.
- c. Adaptive management measures will be implemented if a 50% reduction in raptor mortality is not achieved by November 1, 2009.
 1. The SRC will prioritize management measures, including an evaluation of management measures that have not reduced raptor mortality at the expense of energy production, after analyzing field monitoring data. The SRC shall use its best efforts to achieve its prioritization of management efforts by June 1, 2009.
 2. By August 1, 2009, Wind Power Companies and Audubon will propose an adaptive management plan to the SRC/County for review pursuant to Condition 5 of the Permit if a 50% reduction in raptor mortality has not previously been achieved and is not projected to be achieved by November 1, 2009. The adaptive management plan will be designed to achieve a 50% reduction in raptor mortality with the least impact on energy production, and may include the elimination or reduction of seasonal shutdowns. The SRC shall act (pursuant to Condition 5 of the Permit, as necessary) on the adaptive management plan by November 1, 2009.

3. Nothing in this Program shall preclude the Wind Power Companies from implementing other measures, such as rodent trapping, reasonably designed to reduce raptor fatalities and help achieve the objective of a 50% reduction in raptor mortality, provided the measures are consistent with the objectives of this Agreement and not outside the terms of the Permit.

3. **Seasonal Shutdown.**

- a. From November 1, 2005 until December 31, 2005, the Permittee(s) shall cease operations for approximately ½ of the existing (non-repowered) turbines, after which operation of this ½ of the turbines may recommence. From January 1, 2006 to February 28, 2006, the Permittee(s) shall cease operations of the other half of the existing (non-repowered) turbines, after which operations may recommence.
- b. From November 1, 2006 to December 31, 2006, the Permittee(s) shall cease operations for approximately ½ of the existing (non-repowered) turbines, after which operation of this ½ of the turbines may recommence. From January 1, 2007 to February 28, 2007, the Permittee(s) shall cease operations of the other half of the existing (non-repowered) turbines, after which operation of this ½ of the turbines may recommence.
- c. From November 1, 2007 to December 31, 2007, Wind Power Companies shall cease operations for approximately ½ of existing (non-repowered) operating Applicable Turbines, after which operation of this ½ of the Applicable Turbines may recommence. From January 1, 2008 to February 28, 2008, Wind Power Companies shall cease operations of the other half of the existing (non-repowered) operating Applicable Turbines, after which operation of this ½ of the Applicable Turbines may recommence.

4. **Turbine removal or relocation.**

- a. Wind Power Companies shall shut down Tiers 1 and 2 Applicable Turbines within 30 days of the effective date of this Agreement or, in the event an alternative list of Applicable Turbines is presented to the SRC, as specified in section 4(a)(2), within 15 days of SRC approval of such list, whichever is later.
 1. Tiers 1 and 2 Applicable Turbines means those turbines identified as Tiers 1 or 2 per Smallwood-Spiegel June 2005 report Group C ranking, confirmed by WEST July 2005 (currently 131 turbines unless the remaining 24 turbines are specifically identified by the SRC prior to the implementation

date set forth in (a) above) and as therein allocated per each Wind Power Company and per each Wind Power Company's individual projects.

2. Any time after the execution of this Agreement, each Wind Power Company may submit to Audubon and the SRC a list and description of high risk Applicable Turbines already shut down and ask for credit against this Tier 1 and 2 shut down requirement. The SRC will grant credit for such Applicable Turbines reasonably determined on a scientific and technical basis to be high risk, provided such Applicable Turbines were shut down on or after May, 2002, and the fact that the turbines were not listed as Tier 1 or 2 will not prejudice this evaluation.
- b. Wind Power Companies shall shut down Tier 3 Applicable Turbines or Applicable Turbines identified pursuant to section 4(b)(2) by October 31, 2008.
1. Tier 3 Applicable Turbines consist of no more than 152 turbines in total, and no more for each Wind Power Company and each Wind Power Company's individual project than the number allocated to each Wind Power Company and each Wind Power Company's individual project for Tier 3 turbines in the Smallwood-Spiegel June 2005 report, confirmed by WEST in July 2005.
 2. By July 1, 2007, each Wind Power Company may present to the SRC an alternative list of Applicable Turbines for shutdown and ask for credit against this Tier 3 shutdown requirement. Applicable Turbines for consideration may include previously removed Applicable Turbines that were among those considered in the Smallwood-Spiegel June 2005 report provided such Applicable Turbines were non-derelict when removed. The SRC shall select for shutdown, on a scientific and technical basis, the highest risk Applicable Turbines of those presented to it by each Wind Power Company (Tier 3 list vs. proposed alternatives).
- c. Wind Power Companies shall remove each Applicable Turbine that is subject to a shutdown requirement as specified in this Agreement unless the SRC, on a scientific and technical basis, approves of its continued existence (e.g., end-row turbine that serves as a flight diverter) or renewed operation (e.g., middle of a string with low risk). Any Applicable Turbine may be relocated to a non-Tier 1, 2, or 3 existing turbine site, provided it is relocated in accordance with the criteria specified in Exhibit A attached (Exhibit 1).
5. **Blade painting study.** Wind Power Companies may participate in a SRC approved study to determine whether blade painting reduces raptor mortality. Up to 450 Applicable Turbines may be painted as part of this study, with a corresponding number of Applicable Turbines included as a control group. Turbines shall be painted by December 31, 2007, or as soon thereafter as reasonably possible, depending on the timing of SRC approval of the study design.

- a. Wind Power Companies shall present a proposed before/after control/impact (“BACI”) design study to the SRC for review and approval to evaluate the effectiveness of the blade painting program in reducing raptor mortality. The SRC must also approve the blade painting design.
- b. The SRC shall either approve the BACI design study within 30 days from submittal, or respond within 30 days from submittal with changes necessary for approval, so that the BACI design study can be incorporated into the ongoing monitoring program as soon as possible.
- c. Painted blade turbines and control group turbines included in the approved BACI design study shall be exempted from all permanent and/or seasonal shutdown requirements for the period of the study.
- d. Blade painting initial allocations subject to further provisions of section 5(e) below are as follows:
 1. ESI – up to 285 Applicable Turbines (plus 285 control group Applicable Turbines);
 2. enXco – up to 108 Applicable Turbines (plus 108 control group Applicable Turbines); and
 3. SeaWest – up to 57 Applicable Turbines (plus 57 control group Applicable Turbines).
- e. Nothing in subsection (d) shall prevent one Wind Power Company from assuming by mutual agreement all or part of another Wind Power Company’s initial allocation for blade-painting. The final allocations of Applicable Turbines beyond the allocations stated in subsection (d), and up to 450 painted Applicable Turbines, shall be by the agreement of the Wind Power Companies and subject to an SRC approved BACI design.

YEARS TWO through FOUR and beyond

6. Natural Communities Conservation Plan – Applicable to Activities of Wind Turbine Owners and Operators.

- a. It is the intent of the Parties to develop a Natural Communities Conservation Plan (“NCCP”) pursuant to section 2801 et seq. of the California Fish and Game Code or similar agreement approved by the California Department of Fish and Game (“CDFG”) to address the long-term operation of wind turbines at the APWRA and the conservation of impacted species of concern and their natural communities. The NCCP or similar agreement shall only apply to the operation, construction, maintenance and repowering of wind turbines and will not apply to land use

- development or farming, ranching, or other agricultural activities except with the express consent of the applicable property owners.
- b. The County will be the local sponsor of the NCCP or similar agreement. The Wind Power Companies shall be responsible for funding the County's expenses in serving as local sponsor for the NCCP or similar agreement, including, but not limited to, funding consultants and/or employees necessary to fill this role. This expense shall be divided among the Wind Power Companies as set forth in the Applicable CUPs.
 - c. The NCCP or similar agreement may lead to modifications to the terms of the Permits. The Parties acknowledge that future repowering of the Altamont will play an important role in the adoption of adaptive management measures as provided for in section 1(c) of this Program and/or in the development of the NCCP or similar agreement. Future repowering requirements will be governed by the adaptive management plan, the NCCP, or any similar agreement approved by both the County and CDFG. If no modifying documents are agreed to, the County may amend the Permit in light of then current conditions to address repowering obligations.
 - d. If the NCCP or similar agreement has not been approved and implemented, or the Parties to the Agreement have not agreed to modifications to the CUP relating to seasonal shutdown that have been approved by the County, the seasonal shutdown provisions shall continue as follows:
 1. From November 1, 2008 to February 1, 2009 (an increase of 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 $\frac{1}{2}$ 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).
 2. From November 1, 2009 to February 15, 2010 (an increase of half a month over the prior winter), or for a different 3- $\frac{1}{2}$ -month minimum period if agreed to by the SRC based on the monitoring results from the prior four winters, the Wind Power Companies shall cease operations of approximately $\frac{1}{2}$ of the existing (non-repowered) Applicable Turbines. From November 15, 2009 until February 28, 2010, or for a different 3- $\frac{1}{2}$ -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).

3. Beginning on November 1, 2010, the seasonal shut down shall continue as follows: From November 1 of each year to the following February 15 (the maximum period of the 3-½ month shutdown), or for a different 3-½-month minimum period if agreed to by the SRC based on the monitoring results from the prior five winters, the Wind Power Companies shall cease operations for approximately ½ of the existing (non-repowered) Applicable Turbines. From November 15 until February 28 of each year, or for a different 3-½-month minimum period also based on monitoring results, the Wind Power Companies shall cease operations of the other half of the Applicable Turbines (also consistent with the maximum period of the 3-½ month shutdown).