

Settlement Framework

11/6/2006

1. 50% reduction in raptor mortality within three years of agreement (estimated to be November 1, 2009)
 - a. Raptor species: Golden Eagle, Burrowing Owl, American Kestrel, Red-Tailed Hawk.
 - b. Baseline: 1300 (includes searcher efficiency and scavenging scaling factors). Scaling factors applied to field monitoring data shall be as approved by the SRC, but if the scaling factors exceed 2.5, the wind companies and Audubon will meet and confer to re-determine a mutually acceptable baseline and/or reduction percentage that triggers the adaptive management provisions of section 1.d.
 - c. Annual check-in: Wind companies and Audubon will meet and confer at least annually to determine if mutually acceptable mid-course corrections are appropriate after SRC reviews prior year's monitoring data.
 - d. Adaptive management if 50% mortality reduction not reached by November 1, 2009.
 - i. 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 monitoring data. Goal to achieve prioritization by June 1, 2009.
 - ii. By August 1, 2009 (during year 3 of settlement), wind companies and Audubon will propose adaptive management plan to SRC for approval and implementation if 50% reduction in mortality has not previously been achieved and is not projected to be achieved by November 1, 2009. SRC must act on plan by November 1, 2009. Adaptive management will be designed to achieve 50% mortality reduction with the least impact on wind energy production, and may include the elimination or reduction of seasonal shutdowns.
 - iii. Nothing in this agreement shall preclude the wind 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 settlement framework and not outside the terms of the County permit.
2. Seasonal Shutdown: (Change from Existing Permit)
 - a. November 1, 2007 - December 31, 2007, wind companies shall cease operations for approximately ½ of existing (non-repowered) turbines. January 1, 2008 - February 28, 2008, wind companies shall cease operations of the other half of existing (non-repowered) turbines.
3. Tier I and II removal
 - a. Tiers 1 and 2 turbines identified per Smallwood-Spiegel June 2005 report Group C ranking, confirmed by WEST July 2005 (total quantity of 131 turbines unless the additional 24 turbines are specifically identified) and as therein allocated per company and per each company's individual projects. Each company may submit to GGAS and SRC, any time after execution of this settlement framework, a list and description of high risk turbines already shut down and ask for credit against this Tier 1 and 2 requirement. SRC will grant credit for such turbines reasonably determined to be high risk and the fact that the turbines were not listed as Tier 1 or 2 will not prejudice this evaluation.

- b. Shutdown within 30 days from the effective date of the final settlement agreement adopted by the Alameda County Board of Supervisors, or within 15 days of SRC decision on any list provided by any of the settling wind companies (see 3.a.), whichever is later.
- c. Remove unless the SRC approves of its continued existence (e.g., end-row turbine that serves as a flight diverter) or renewed operation (i.e., middle of a string with low risk). Any turbine may be relocated to a non-Tier 1, 2, or 3 existing turbine site. To the extent a turbine is relocated otherwise, including to a non-existing turbine site, the turbine must be relocated in accordance with Exhibit A.

4. Tier III removal

- a. Tier III consists of no more than 152 turbines in total, and no more for each company and each company's individual project than the number allocated to each company and each company's individual project for Tier III in the Smallwood-Spiegel June 2005 report, confirmed by WEST in July 2005.
- b. Wind companies may shut down a turbine or turbines allocated to the company on the Tier III list or may present a proposed list of criteria and turbines to SRC for approval by July 1, 2007. Turbines for consideration can include previously removed turbines that were among those considered in the June 1, 2005 Smallwood/Spiegel report and were non-derelict turbines when removed. SRC shall determine which are the highest risk turbines of the number presented to it by each company (Tier III list vs. proposed alternatives).
- c. Shutdown by October 31, 2008.
- d. Remove unless the SRC approves of its continued existence (e.g., end-row turbine that serves as a flight diverter). Any turbine may be relocated to a non-Tier 1, 2, or 3 existing turbine site. To the extent a turbine is relocated otherwise, including to a non-existing turbine site, the turbine must be relocated in accordance with Exhibit A.

5. Painting of Turbine Blades

- a. Up to 450 turbines may be painted by December 31, 2007, or as soon thereafter, depending on timing of SRC approval of the study design.
- b. BACI design study, scientifically designed to produce sufficient data to evaluate the effectiveness of the painting program, to be approved by SRC. The wind companies shall present a proposed design study to the SRC/Alameda County for review and approval. The SRC shall either approve the wind companies' BACI design study within 30 days from submittal, or respond within 30 days from submittal with changes that the wind companies need to make to their BACI design study to obtain approval, so that the BACI design study can be incorporated into the ongoing monitoring program as soon as possible. Painted blade turbines and control group turbines included in approved BACI design study shall be exempted from permanent and/or seasonal shutdown for the period of the study. SRC must approve painting design.
- c. Blade painting commitments are as follows:
 - i. FPLE - up to 200 turbines (plus 200 control group turbines);
 - ii. enXco - up to 76 turbines (plus 76 control group turbines); and
 - iii. SeaWest - up to 40 turbines (plus 40 control group turbines);

Nothing in this subsection (c) shall prevent one company from agreeing to assume another company's responsibilities for blade-painting, with the other company's consent.

Allocation of turbines beyond the commitments stated in this section, and up to 450, shall be by agreement by the companies and subject to approved BACI design.

6. NCCP

- a. Settling parties work toward development of NCCP or similar agreement subject to DFG approval. Parties sign Planning Agreement contemporaneously with settlement.
- b. This settlement supersedes the County permit where noted above (e.g., shutdown/relocation of Tier 2 turbines) for settling parties. In addition, the repowering and shutdown provisions (beginning September 2009, and thereafter) in the County permit will be amended by this settlement to reflect that those provisions are no longer effective for settling parties and future repowering and shutdowns will be governed by this settlement, the adaptive management plan, and the NCCP. The approved NCCP may modify the settlement and may further modify the County permit.
- c. Parties pay their own fees during negotiation and development of the NCCP.

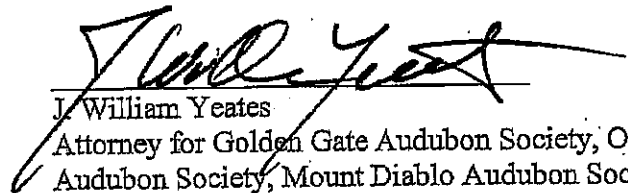
7. Settling Parties: Settling parties and signatories to this Settlement Framework are GGAS and other Audubon chapters, CARE, Alameda County, and the following wind companies: SeaWest Power Resources, LLC, enXco, and FPL Energy. The wind companies hold permits with the county through various legal entities. Each wind company that holds such interests has been represented individually by counsel, rather than through any other legal entity, in these settlement negotiations. Pursuant to this Framework, the companies will identify the turbines in which each company, or combination of these three companies, holds beneficial ownership interests, and in which no non-signatory wind company holds such an interest. The permits for those turbines alone shall be subject to the rights and obligations established by this Settlement Framework.

8. Audubon and CARE shall release the claims asserted in this litigation against settling parties, but shall retain the right to enforce the terms of the parties' settlement agreement. Upon execution of a final settlement agreement adopted by the Alameda County Board of Supervisors, Audubon and CARE shall dismiss their actions with prejudice.

9. This settlement framework reflects the parties' agreement in principle and contemplates that a final, formal agreement will be prepared and signed by the parties. The parties will use their best efforts to execute the final agreement within 60 days of the execution of the settlement framework. The final agreement will not become effective until approved by the County Board of Supervisors. The final agreement will supercede this settlement framework.

Dated: November 7, 2006

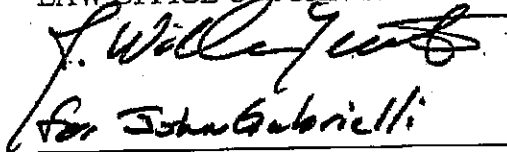
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Dated: November 7, 2006

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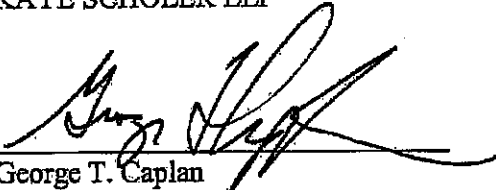
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EXHIBIT A

RELOCATION CRITERIA

1. Relocation of turbines removed from operation pursuant to this settlement shall be allowed if the following criteria are met:

- No turbines will be permitted on any slope where the slope gradient is $>25\%$.
- No turbines will be permitted within a dip or notch if the cross axis of the ridge is less than 300 feet-wide and the slope gradient along the cross axis is 25% or greater.
- No turbines will be permitted in a dip or notch if it converges with a draw or canyon.
- No turbines will be permitted in a dip or notch that is in line with another dip or notch on a parallel ridge in the direction of wind currents.
- At dips and notches, no turbine will be permitted within a space of at least 200 feet on either side of the lowest point of the dip or notch to maintain a space of at least 400 feet-wide between tower locations.

Definitions:

- Dip: a depression (or saddle) along the linear axis of a ridge whose lowest point is at least 25 feet below the highest adjacent point along the linear axis of the ridge within a distance of 150 feet. The side slopes of a dip have a gradient equal to or greater than 1:6 (17% slope), where the horizontal of the slope angle is six times greater than the vertical component.
- Notch: a depression (or saddle) along the linear axis of a ridge line with a side slope gradient of 1:4 (25% slope).
- Draw: a depression (or saddle) along the linear axis of a ridge line with a side slope gradient of 1:3 (33% slope).
- Canyon: a depression (or saddle) along the linear axis of a ridge line with a side slope gradient of 1:2 (50% slope).

2. Relocation of a turbine in a location that does not meet the above requirements may be allowed only if submitted to SRC and SRC approves prior to relocation.