RENEWABLES COMMITTEE HEARING

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

In the Matter of:	)	
	)	
Development of Statewide	)	Docket No.
Guidelines for Reducing	)	06-OII-1
Wildlife Impacts from	)	
Wild Energy Development	)	
_____	)	

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

MONDAY, AUGUST 13, 2007

9:00 A.M.

Reported by:
John Cota
Contract Number: 150-07-001

COMMISSIONERS PRESENT

John L. Geesman, Presiding Member

Jackalyne Pfannenstiel, Associate Member

ADVISORS PRESENT

Suzanne Korosec

Jan McFarland

Tim Tutt

STAFF PRESENT

Richard L. Anderson

Brian McCullough

Susan D. Sanders

N. Misa Ward

CALIFORNIA DEPARTMENT OF FISH AND GAME

Scott A. Flint

Bronwyn Hogan

ALSO PRESENT

Frederick W. Noble, Wintec Energy, Ltd. and Desert Wind Energy Association

Greg Blue, enXco Development

Julia Levin, National Audubon Society

Annie Mudge, California Wind Energy Association

Carl Zichella, Sierra Club

Peter Weiner, Center for Energy Efficiency and Renewable Technologies

Kim Delfino, Defenders of Wildlife

Michelle Conway, Oak Creek Energy Systems

Nicole Hughes, RES Americas Developments

Paul Vercruyssen, Center for Energy Efficiency and Renewable Technologies

Nancy Rader, California Wind Energy Association

Marcia Wolfe, Oak Creek Energy Systems

Stu S. Webster, Clipper Windpower Development Company

Kenneth Stein, FPL Energy Project Management (via telephone)

Andy Linehan, PPM Energy

Ted Weller, USDA Forest Service (via telephone)

Jim Lindsay, FPL Energy Project Management and Bat and Wind Energy Cooperative (via telephone)

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1 P R O C E E D I N G S

2 9:07 a.m.

3 PRESIDING MEMBER GEESMAN: I want to
4 welcome you all to a workshop of the California
5 Energy Commission's Renewables Committee. I am
6 John Geesman, the Presiding Member of the
7 Committee. To my left, Commissioner Jackalyne
8 Pfannenstiel, the Commission's Chair and the
9 Associate Member of this committee. And to my
10 right, Suzanne Korosec, my staff advisor.
11 This is a workshop on our proposed
12 guidelines for reducing the impacts to birds and
13 bats from wind energy development. I think that
14 most of you have probably participated in our
15 earlier workshop, several staff workshops on the
16 same topic. It is our hope that we can wrap this
17 up today.
18 As a consequence what I'd like to do go
19 into as much detail as any of the commentors feel
20 is necessary or appropriate for us to fully
21 understand the content of what you're saying and
22 attempt to work through areas.
23 I recognize the likelihood that there
24 will be particular topics in which people simply
25 don't agree. That's fine. What Commissioner

1 Pfannenstiel and I need to do is determine as best
2 we can where each of the parties stands on a
3 particular issue.
4 So if you will, this may be a little
5 more painstaking than some of our past workshops
6 but I think that the effort today will hopefully
7 bear some fruit.
8 With that, our agenda, we have a welcome
9 and schedule update from Misa Ward of our staff.
10 Misa.
11 MS. WARD: Thank you, Commissioner
12 Geesman. As stated my name is Misa Ward, I work
13 in the biology unit of the California Energy
14 Commission. I am here just to go through a couple
15 of things with you.
16 First of all I want to thank everybody
17 for coming out. We hear that some members may be
18 delayed due to an accident so we're hoping that
19 they will be able to join shortly here before we
20 get too deep into the discussion.
21 Just a few housekeeping items before we
22 begin. For those of you not familiar with the
23 building, and I see that a lot of you probably
24 are, the closest restrooms are located either to
25 your left or to your right as you exit the hearing

1 room here. There is a snack bar on the second
2 floor underneath the white awning if you need any
3 refreshments. And lastly, should there be an
4 emergency, we ask you to follow the employees to
5 the appropriate exits and we'll reconvene at
6 Roosevelt Park, which is just diagonally across
7 the street from this building.
8 With those items covered I just want to
9 go through some other things here. And that would
10 be that there are a number of handouts at the
11 front on the tables. We actually have some copies
12 of the guidelines document for those of you that
13 may not have a copy with you today.
14 We have the Notice of Availability for
15 the documents and we have a workshop notice which
16 contains instructions for commenting and how to
17 docket items that you might want to submit on the
18 guidelines document.
19 The agenda is also there and I'll go
20 through that with you. There is also a sign-in
21 sheet. In case you didn't see that, we'd like to
22 record your names, make sure we get them accurate
23 for the transcript here.
24 There are also some blue cards out front
25 and those are if you would like to make a

1 statement. You can give those blue cards to Brian
2 McCullough who is sitting up front. We also have
3 some -- We may have some people on the phone that
4 may want to give some comments and Brian will also
5 be filling out blue cards for those folks.
6 There is also a lunch map out front
7 should this go into the lunch time and you need a
8 place to go near the building.
9 So as far as the agenda review. It's
10 going to follow a similar format to the last
11 meeting, which is we are going to have a brief
12 staff presentation on the committee draft
13 guidelines and then we'll open it up to public
14 comments. Then after that the Renewables
15 Committee may have some concluding remarks and
16 next steps for us.
17 So with that I'll jump right into the
18 schedule update. Since the last workshop the
19 document has since become a committee draft. And
20 that means the Renewables Committee has been and
21 will continue to direct CEC and Fish and Game
22 staff to make final adjustments for the Committee
23 final draft.
24 We expect some changes to the document
25 from this hearing to be reflected in the final

1 document to be considered for adoption. The
2 Business Meeting to consider adoption will be
3 September 26. The Committee final draft plus a
4 decision document, which states reasons for
5 changes not made, will be posted on-line just
6 before that Business Meeting.
7 As a reminder, the comments for this
8 draft are due on August 22. And just to close out
9 the guidelines website, we plan to leave that
10 operational posted option for ongoing feedback.
11 And that's all I have, thank you.
12 PRESIDING MEMBER GEESMAN: Susan, are
13 you going to give the staff overview?
14 MS. SANDERS: Um-hmm. My name is Susan
15 Sanders, I'm one of the four authors of the draft
16 guidelines. And I'd like to thank you all for the
17 many detailed, specific comments that you have
18 once again provided and for the many useful
19 suggestions for improvements to the guidelines.
20 As with past drafts we've incorporated
21 many but not all of the comments and suggested
22 revisions. A decision document, as Misa
23 mentioned, will be released with the next version
24 of the guidelines to discuss all the comments that
25 were not incorporated, along with the reasons they

1 were not accepted.

2 Many of the changes that were made were

3 minor rewordings and there were quite a few

4 specific suggestions on some of the technical

5 elements of study protocols, especially in

6 Chapters 3 and 5. Many of these were accepted and

7 we are grateful to those experts who read the

8 draft so carefully and made so many thoughtful

9 recommendations for improvements.

10 I won't go over those minor rewordings

11 or technical revisions today but will summarize

12 the major topics for which we received suggestions

13 and how they were addressed. These include, one,

14 tiering and categories of projects; two,

15 recommended methods for bats; three, research

16 fund; four, science advisory committee; five,

17 operations monitoring; and six, the voluntary

18 nature of the guidelines.

19 Scott will then go over some of the

20 comments received on Chapters 2 and 4 and will

21 discuss the Department of Fish and Games decisions

22 on some of the recommended revisions.

23 One, tiering and categories of projects.

24 CalWEA and CEERT provided some detailed

25 suggestions for categorizing projects in classes

that would have different tracts of study effort and permitting. The revised draft has incorporated the suggested framework with some modifications.

The categories of project sites are as follows: One, project sites with existing wind wildlife data such as in-fill development and those near existing low-impact wind facilities; two, project sites with little existing information and no indicators of high wildlife impacts from preliminary site screening; three, project sites with high or uncertain potential for wildlife impacts; and four, project sites inappropriate for wind development.

The basic recommendations for pre-permitting and operations monitoring study methods have not changed substantially with one exception that I will describe soon. This categorization clarifies that some projects, such as Category 1 sites, are likely to need less study than others while some, such as category three projects, might need more. We feel this categorization provides guidance to lead agencies as to the appropriate level of review but still retains the flexibility needed to address the unique features of each

1 site.

2 Category 1 does not include any kind of

3 categorically exempt status for a project that

4 would sidestep the careful site assessment and

5 evaluation of existing data. And Scott will talk

6 more about this.

7 Category 1 does not explicitly mention

8 repowering projects because we don't yet have the

9 data to support the conclusion that newer, taller

10 turbines reduce bird and bat impacts. Repowering

11 data are still developing but a comparison of

12 fatality data for repowered turbines versus old

13 turbines in Solano County suggest wildlife impacts

14 may not be reduced with repowering, or may be

15 reduced for some species but not for others. A

16 recent analysis of bat fatality data throughout

17 North America suggest that bat collisions increase

18 as turbine heights exceed 65 meters.

19 The categories and the guidelines are

20 sufficiently flexible so that some repowering

21 projects may fit into Category 1 and need less

22 study but that decision cannot be made without a

23 project by project assessment.

24 Two, bats. Some commentors pointed out

25 the current uncertainty in using acoustic

monitoring for bats to predict impacts, questioned the value of acoustic monitoring during operations and suggested as an alternative contributions to an experimental mitigation fund to do bat research on a regional basis.

The revised report has eliminated the recommendation for two years of bat acoustic monitoring during operations and suggested instead an evaluation of pre-permitting data and consultation with agencies and other knowledgeable scientists to determine if acoustic monitoring for bats is warranted during operation study.

The recommendation for one year of pre-permitting acoustic monitoring for bats still stands because these studies provide project-specific information needed to assess impacts, develop operations monitoring study plans and develop mitigation measures. If there's questions about the recommendations for bats we have one of the bat experts from the science advisory committee, Bronwyn Hogan, here today to answer your questions.

In response to the comments received the revised report does do a better job acknowledging the uncertainty in correlating acoustic monitoring

1 data with fatalities, indicates that
2 recommendations may change with new research, and
3 that this is an issue that will receive research
4 attention.
5 With respect to contributions to an
6 experimental mitigation fund as an alternative to
7 project-specific studies for bats. Currently
8 there is no such fund and no mechanism for an
9 applicant to contribute money on a project-by-
10 project basis so it can not yet be included as a
11 recommendation and guidelines.
12 And that brings us to the third topic,
13 the research fund. Everybody here strongly
14 supports establishment of a mitigation research
15 fund with contributions from private and public
16 sources to do collaborative, focused research on
17 the impacts of wind development on bats, and other
18 issues about which research is needed.
19 The Energy Commission and Fish and Game
20 agree that a research fund would have great
21 benefits. The Energy Commission has already
22 committed $1 million for PIER to study wind
23 wildlife issues and would like to see additional
24 research above and beyond this program. PIER's
25 research plan will identify opportunities to

1 leverage research funds and certainly supports
2 collaborative efforts for stakeholders.
3 Some of the unresolved issues on the
4 suggestion is determining which entity has the
5 authority and the resources to collect the funds
6 and administer the program. Also contributions by
7 a research fund by itself is not a legally
8 acceptable, project-specific impact assessment or
9 mitigation measure.
10 Discussion of how to create and manage a
11 mitigation research fund is a large and complex
12 topic and it is beyond the scope of these
13 guidelines. However, the revised draft includes
14 language that serves as a placeholder until a
15 research fund and program can be developed for a
16 science advisory committee. Some comment letters
17 noted that an open, public process would be needed
18 for creation of a statewide standing science
19 advisory committee.
20 Some commentors wanted the guidelines to
21 describe a more expansive wrong for the standing
22 SAC and wanted them to clarify that no SAC members
23 would have a conflict of interest. The SAC
24 discussion in the revised draft now consists of
25 two paragraphs on page 40 describing the purpose

of the standing SAC, clarifying that the SAC would function solely as an advisory body to be consulted at the discretion of the lead agency and that SAC members should have no conflict of interest.

The revised guidelines note that there will be opportunities for all interested parties to have input in establishment of the science advisory committee but did not provide any more details on how that would happen. As with the research fund, this is a topic that is beyond the scope of the guidelines and needs to be addressed in another forum.

Five, operations monitoring. The most significant comments we received on the operations monitoring chapter were that bird use counts and acoustic monitoring for bats was not useful for assessing collision risk after construction and should be eliminated. As I described earlier, the recommendation for two years of operations acoustic monitoring for bats has been eliminated in the revised guidelines.

The recommendation for bird use surveys during operations still stands. Data on bird species, composition and abundance during

1 operations is essential in order to interpret the
2 fatality data and to determine if pre-permitting
3 assumptions and estimates were accurate. If
4 fatalities turn out to be higher than forecast we
5 need to know whether or not this difference
6 resulted from unusually high numbers of birds in
7 the area or if some other unanticipated factor is
8 at work.
9 In other parts of the operations
10 monitoring chapter we have added the language
11 suggested by commentors to increase the
12 flexibility of how operations monitoring might be
13 conducted, particularly in the second year. For
14 example, we have added the suggestion that the
15 second year of operations monitoring could be
16 conducted a few years after the first, which would
17 provide time for habitat to recover in temporarily
18 disturbed areas and for birds to possibly
19 habituate to the turbines.
20 We've noted that the second year of
21 monitoring may need to focus more effort on
22 turbines on habitat types where impacts were
23 higher than expected by shifting searches away
24 from areas that showed little or no fatalities.
25 Similarly we suggest that first year monitoring

1 results might warrant a reallocation of study
2 efforts to those seasons where more impacts were
3 recorded.
4 And finally the voluntary nature of the
5 guidelines. Some commentors said the guidelines
6 were too prescriptive and inflexible in the
7 recommended pre-permitting and operations
8 monitoring study protocol. They suggest that
9 instead of providing specifics such as conduct 30
10 minute surveys once per week that we outline goals
11 and the kind of information needed to answer
12 questions about bird and bat impacts, and leave
13 the specifics of methodology to be determined on a
14 project-by-project basis.
15 Some commentors were also concerned that
16 permitting agencies might interpret and treat the
17 guidelines as mandatory, and language throughout
18 that document such as will, should require,
19 reinforce that interpretation. The revised draft
20 has replaced those terms where possible and
21 included some phrasing suggested by commentors
22 that better emphasizes the voluntary nature of the
23 guidelines.
24 However, the specific recommendations
25 that spell out details of study methodology have

not changed much. We feel that being specific on these recommended protocols will reduce delays and conflict during the permitting process because all parties will have a common understanding of what's a reasonable level of study effort needed to assess the impacts of wind development on birds and bats. And that's all I have. And Scott, it's your turn.

MR. FLINT: Good morning everyone. On behalf of the Department I would just like to say it has been a great opportunity working on this collaborative effort to put together these guidelines. The series of workshops we have had over the past year or so have been interactive, a lot of ideas have come through the discussions we've had there and many of those have been incorporated directly into the document. I think that helps make it a much better document.

On specific comments that we received for Chapter 2 in general. First I'll say that there were quite a few minor comments that we took note of and made some minor wording and editorial changes to the document throughout Chapter 2 to help it be more readable and clarify the purpose of some of those sections of the chapter. So in

1 general many minor changes were made in wording.
2 More specifically some commentors had
3 asserted that the guidelines have regulatory
4 weight and that the guidelines recommend
5 mitigation beyond that required by CEQA and that
6 this recommendation rises to, therefore rises to a
7 level of rulemaking. They also note that it is
8 impossible to comply with state and federal
9 wildlife laws and therefore studies should be
10 aimed at securing the information needed to inform
11 citing decisions under CEQA.
12 Again, as I said, we made some minor
13 revisions and clarifications in response to the
14 specific comments. There was an area in the
15 document where we added some incomplete wording
16 out of CEQA, that has been corrected.
17 However, in general we think the
18 approach in Chapter 2 is sound, related to the
19 other wildlife laws. It's not a matter of -- The
20 guidelines aren't out there as a way to describe
21 how we would comply with the wildlife laws. The
22 guidelines are out there to guide project siting,
23 make better project decisions when citing to
24 minimize impacts to birds and bats, that's the
25 purpose of the guidelines.

1 The studies are, the study protocols are
2 laid out and designed, and study timings and study
3 recommendations are laid out and designed to
4 collect that information. The same information
5 that would be required to make decisions on how to
6 minimize impact to birds and bats from the other
7 wildlife laws is the same set of information that
8 is required to make analysis of CEQA significance
9 by a lead agency under CEQA. So regardless of the
10 purpose of collecting the data this is the same
11 sort of data that would be required to make all
12 decisions about project impacts.
13 In the impacts and mitigation chapter
14 both the industry and environmental groups
15 commented that compensation should be a last
16 resort mitigation option if avoidance and
17 minimization fail. Industry commented that
18 compensation should occur only for CEQA-
19 significant impacts and that seasonal shutdowns
20 should be off the table as a mitigation option.
21 We made revisions to emphasize that
22 compensation is the last resort to mitigation.
23 That's always been the process we walk through as
24 we make decisions on project siting and is the
25 process that this document walks through.

1 Avoidance and minimization are the first steps to
2 reducing impacts.
3 And in the case of citing wind energy
4 facilities the citing is the primary avoidance
5 measure once a project is built there are not many
6 ways to -- built and in place and operating.
7 There are not many opportunities to change citing,
8 if any, and not a lot of other ways to minimize
9 impacts so those remaining impacts need to be
10 compensated for.
11 And in the case of a wind facility that
12 goes ahead and constructs in an area with high
13 bird mortality, if there's not any other way to
14 compensate or minimize that, seasonal shutdowns
15 still remain a possibility that we may need to use
16 from time to time.
17 As far as the flexibility of the
18 document, we think the document is highly
19 flexible. The categories that we have added lay
20 out some ways to break projects into groups or
21 look at how they may need to be addressed under
22 the guidelines. We did not add a category on
23 categorical exempt sites.
24 We felt that was beyond the scope of
25 this document, this being a technical document to

1 advise lead agencies on how to study sites for the
2 CEQA process. So we did not specifically put that
3 there. We also thought that would be clearly
4 usurping local authority for making that decision
5 under the CEQA process. The lead agency can still
6 decide what sites may receive a categorical
7 exemption for construction.
8 While we've had some comments throughout
9 the process on streamlining, how to streamline and
10 move the process faster, we feel this document
11 goes a long way towards that by setting a
12 framework, a common framework of study that can be
13 applied to most sites across the state.
14 Lead agencies will have this information
15 going into discussions on siting a new project so
16 there won't be timely discussions on the type of
17 studies that need to be done. Those lead agencies
18 that haven't encountered such projects will be
19 quickly informed as to the potential impacts they
20 need to be looking for and how to study those for
21 the CEQA process.
22 That's what I have for this morning,
23 thank you.
24 PRESIDING MEMBER GEESMAN: Thanks Scott.
25 Okay, what I'd like to do is, at the

1 risk of having many of you get out of your chairs
2 more frequently than perhaps you're accustomed to
3 at these workshops, I'd like to break this into
4 several different segments. It is my intention to
5 go chapter by chapter and ask for comments on each
6 chapter. As I think the notice indicates, it is
7 more helpful if you can focus on a word, rather a
8 page and line number. But if your comment is
9 thematic in nature that's fine as well but I am
10 going to ask you to determine which chapter they
11 relate to.
12 The first group that I am going to take
13 is the Step-by-Step Approach to Implementing the
14 Guidelines combined with Chapter 1, the
15 Preliminary Site Screening chapter. So if there
16 are members of the audience that would care to
17 address us on either the Step-by-Step Approach or
18 the Preliminary Site Screening it's open mic.
19 Yes sir. You need to make certain the
20 green light is on on the microphone. There's a
21 button there on the base of the mic.
22 MR. NOBLE: I don't see the button. Now
23 it's on, I see it.
24 Mr. Chairman of the Subcommittee and
25 members of the Energy Commission staff, I am

1 Frederick Noble, President of Wintec Energy,
2 Limited. I am here today on behalf of the Desert
3 Wind Energy Association composed of wind park
4 operators in the San Gorgonio Pass near Palm
5 Springs and on behalf of my own company. I think
6 I am going to give you some things that I find
7 difficult to say and you may not want to hear but
8 they should be said.
9 The Energy Commission sponsored my first
10 windmill project in 1980. There would be no wind
11 energy industry in California if it hadn't been
12 for your predecessors, Bob Thomas and some of the
13 early staff members who set up the legislation.
14 And I was there when that happened.
15 As it relates to Riverside County, and
16 perhaps statewide, you are about to impose
17 unnecessary expense and give opponents a free hand
18 to attack and slow down and stop wind energy
19 projects throughout the state. The guidelines are
20 based upon a foundation of quicksand. The driver
21 here has always been the Thelander and Smallwood
22 study in Altamont Pass.
23 I have for you, if you care to look at
24 it, some examples of the altered and forged
25 documents which are the underpinning of the study

1 and which were produced by your staff as a result
2 of a freedom of information request. It is my sad
3 duty to call your attention to the fact that over
4 and over again the studies done or the reports
5 done by the field investigators have been altered
6 when they went into your database.
7 For example, the field data shows cause
8 of death of a bird as unknown. When it shows up
9 in your database it's shown as a turbine
10 collision, per protocol. Perhaps you'd like to
11 see this.
12 What you are going to see is just the
13 tip of the iceberg. It was difficult to get this
14 information from staff but it is damning in terms
15 of the fundamental study that was accomplished,
16 which underpins your rulemaking activity.
17 As it relates to the San Gorgonio Pass
18 there is one study that has some weight. It was
19 done by NREL by Mr. Anderson. And he concluded in
20 a recent letter in connection with an EIR that
21 bird/windmill interaction in the desert is
22 biologically insignificant. Yet you have
23 statewide guidelines which essentially shut us
24 down for two or three or four years.
25 In my case I would like to repower some

1 old projects, about 50 megawatts. But I've got to
2 tell you, if these rules or anything like them get
3 adopted I'm just not going to do it, I'll take it
4 down and put in trailer parks, which the city
5 would like to have me do. And the cats owned by
6 the trailer owners will kill far many birds, more
7 birds than we ever have.
8 I visit my projects, 1100 acres, every
9 day. My office is in the wind farms. In my 30
10 years in this business in the desert I have found
11 one dead bird in a wind farm, and it was a crow
12 killed by a transformer that was open being
13 maintained. He was electrocuted.
14 In the desert we do not have rodents for
15 the birds to hunt. They don't come down. So you
16 are going to impose upon us a solution for a
17 problem that doesn't exist.
18 Inevitably as the underpinning and the
19 errors found in the underpinning, which is the
20 study, bubble to the surface, it will get
21 legislative and judicial scrutiny to the great
22 discredit of the Commission if you don't look into
23 it yourself. It's a serious, serious matter.
24 Another great flaw in the study is the
25 assumption that any bird found in a wind farm that

is dead was killed by a windmill. In many cases birds that have been dismembered are attributed to windmill collision.

The blade of a windmill isn't sharp. It's blunt, two or three feet across. If it hits a bird it will crush it. It doesn't cut the wings off, it doesn't cut the head off. What cuts the wings off and the head off are power lines or other raptors. Yet every single bird that is dismembered shows up as killed by a windmill. I won't bore you with other examples but they are legion and the study is to be discredited.

A word on bats. There is no evidence of any windmill/bat interaction in Riverside County. Yet you wish to impose upon us elaborate studies before we can repower projects that have been there for years which have never killed a bird or a bat. It's like me telling you --

You have to try to prove a negative here and that's a big mistake in the assumptions. It's like you having to prove you don't cheat on your income tax. How do you prove that? How do I prove I don't kill bats? I can tell you I don't. Perhaps you'll give my testimony as much credence as people who alter and forge data. That would be

1 good if you did.
2 As I said, this will bubble to the top
3 if it isn't fixed here, to your great discredit.
4 To the biologists I will simply say that you know
5 the ends do not justify the means. Legitimate
6 study to solve legitimate problems would have my
7 wholehearted support. I would contribute to those
8 funds. However, we will not be held hostage to
9 false data or to rules that have no application to
10 our part of the state. Thank you.
11 PRESIDING MEMBER GEESMAN: Thank you,
12 Mr. Noble. Anyone else care to address the Step-
13 By-Step approach or Chapter 1, the Preliminary
14 Site Screening? Come on up, Greg.
15 MR. BLUE: Good morning. I have a
16 presentation, and I can give it later, but since
17 you're going to go this way I'll just give a few
18 comments on this. I'm Greg Blue, I'm with enXco
19 Development. EnXco is a California-based
20 renewable energy developer specializing in wind
21 and recently announced now going into solar energy
22 development, both here in California and in the
23 west.
24 As far as the step-by-step approach to
25 implementing the guidelines. We think these are

1 good recommendations if in fact this document is a
2 set of recommendations. It goes back to the
3 voluntary nature, I guess. Actually I do have one
4 comment before this, it's actually on the cover
5 page. It should read, Voluntary California
6 Guidelines, just to make the point there.
7 As far as Chapter 2. These are all the
8 things that any developer is going to do anyway,
9 whether we have these guidelines or not. A lot of
10 us are already being proactive on avian issues,
11 whether we have guidelines or not.
12 ASSOCIATE MEMBER PFANNENSTIEL: Greg,
13 when you say Chapter 2 do you mean the chapter
14 that's labeled --
15 MR. BLUE: Excuse me.
16 ASSOCIATE MEMBER PFANNENSTIEL: --
17 Chapter 1?
18 MR. BLUE: Chapter 1.
19 ASSOCIATE MEMBER PFANNENSTIEL:
20 Preliminary Site Screening.
21 MR. BLUE: That's correct, sorry. Those
22 types of activities are already going on, whether
23 we had guidelines or not. I do have some other
24 comments a little bit later if we're going to go
25 by section. I guess in general I think the staff

1 has done -- has moved. We'd give it an incomplete
2 if we were going to give a report card and I'll
3 give you some more comments. And of course we're
4 going to file written comments with more details.
5 Thank you.
6 PRESIDING MEMBER GEESMAN: Okay, thank
7 you. Anyone else on the Step-By-Step Approach or
8 Chapter 1, Preliminary Site Screening?
9 MS. LEVIN: I'm sorry, it's going to be
10 a little more disorganized, I wasn't expecting to
11 go through this chapter by chapter by my own fault
12 for not reading the notice carefully enough. I
13 wasn't planning to start this way but I do feel --
14 PRESIDING MEMBER GEESMAN: You need to
15 introduce yourself, Julia.
16 MS. LEVIN: I'm sorry. Julia Levin,
17 formerly the California policy director for
18 Audubon California, I am now the national global
19 warming director for the National Audubon Society.
20 I do want to respond to a couple of comments of
21 Mr. Noble and above all point out that while the
22 guidelines are themselves voluntary, and I think
23 the word guideline implies that, if they were not
24 they would be regulations. They are supposed to
25 help explain what is likely to be required by

1 existing state law.
2 And I'm troubled that in front of this
3 Committee of the Commission that someone would
4 essentially say that that's not very important to
5 this process and that it's okay to ignore what are
6 very important state and federal laws. And if
7 there are people present, wind companies or others
8 that don't like those laws, I think they should
9 take up those issues in the Legislature.
10 But I think it is very important that
11 this body and the stakeholders in this process
12 remain focused on the fact that these laws exist
13 already and the purpose of these guidelines is to
14 make clear what compliance with those laws, with
15 good faith efforts I think that the guidelines are
16 very clear now, what good faith efforts to comply
17 with those laws would look like.
18 And I think that they provide enough
19 flexibility and they are very helpful in that
20 regard. So I am very troubled that this late in
21 the process there would still be members of the
22 wind industry claiming that they are regulatory in
23 nature when they are so clearly not and that the
24 underlying laws are themselves not important to
25 comply with. So I wanted to start out with a much

more positive statement rather than a negative statement but I could not refrain from commenting on that, I find it very troubling.

My more positive overall comments, and I do have a couple of specific comments on the first few chapters, I think that the guidelines are much clearer. I think that the staff and consultants of both Fish and Game and the Energy Commission have done an absolutely outstanding job. I have never in 17 years working on environmental policy worked in a process where there was so much public input. And I think you, Commissioners, have set the standard very high here and that it's worked.

That the guidelines are much more user-friendly. I think that where there is flexibility they have demonstrated that. I think that they have made the purposes and the streamlining goals in the guidelines much more clear where there are overlapping permitting requirements. They've clarified what may help to comply with one versus another and where they still need to remain separate. So I think that they really have done an outstanding job and have my very sincere thanks. I know this has not been easy.

I do also think that the purpose of the

1 guidelines is much clearer. And again I encourage
2 Mr. Noble and others who still have concerns about
3 the purpose to reread that and reread some of the
4 underlying wildlife and environmental laws.
5 Then my two comments on the first two
6 chapters in particular are, while I agree with
7 CEERT and CalWEA that I think that creating the
8 categories so long as they aren't absolute and
9 there remains some flexibility for local
10 permitting agencies, I think the creation of the
11 categories is very, very helpful and I appreciate
12 the effort that CEERT, CalWEA and staff and the
13 consultants took to define them in the way that
14 they did and continue to allow some flexibility.
15 I am as a wildlife advocate a little bit
16 troubled or nervous about Category 1, particularly
17 the fact that it doesn't specify any length of
18 study and you could read it to mean that no amount
19 of study is suggested or required. And I think --
20 I can't quite imagine the case where absolutely no
21 study would need to be conducted. At least I
22 don't think we're there yet. I don't think we
23 know enough even about in-fill or repowering or
24 neighboring sites to say that those can go without
25 any study at all. A site right next door may have

very different migratory bird patterns or seasonal patterns.

My other specific comment is, while in most places I think the guidelines are extremely helpful at pointing out particular databases or lists of species, when it lists the federally endangered bird species in California, it mentions that there are 18, I would just ask you actually to name them. I think as much as possible as these guidelines can help local permitting agencies avoid having to go themselves and do research it is to everyone's benefit.

So I will have some additional comments on later chapters. But again, my overall comment is just very, very sincere gratitude and appreciation.

PRESIDING MEMBER GEESMAN: Anyone else?

MS. MUDGE: Good morning, Commissioners.

PRESIDING MEMBER GEESMAN: Good morning, Annie.

MS. MUDGE: Annie Mudge for CalWEA. Nancy Rader called me to say that she's stuck in ugly, ugly traffic coming from the Bay Area so she expects to be late but she will be here.

Like Julia I didn't tailor my comments

1 to the chapter by chapter approach but the first
2 chapter does bring forward a lot of the main
3 ideas. So while I may have some additional
4 comments I do have sort of some thematic comments
5 that are raised by this chapter.
6 And the first is just that in reviewing
7 this in terms of the balance of approach of what
8 we are trying to achieve by the guidelines I do
9 think that the guidelines are going to add a
10 significant burden to wind development in
11 California. I am involved on a day to day basis
12 in trying to get permits for wind projects and
13 this is a raising of the bar in terms of the kind
14 of data that is going to be sought now by the
15 local agencies. So a lot of information is going
16 to be collected.
17 What I am somewhat skeptical about is
18 whether or not this is going to have a real impact
19 in reducing avian mortality. I am really not
20 certain it is. So I think what we're going to see
21 is a very large increase in burden without a
22 concomitant benefit.
23 I also think that what the effect of
24 these are going to be is it is going to push most
25 projects towards full blown EIRs and I think that

1 is unfortunate. Even though I think the
2 guidelines don't say that they are going to be
3 interpreted in that way.
4 And so I think we're missing an
5 opportunity here if the goal of this Committee,
6 and I think it is, is to provide a benefit and to
7 encourage wind development at the same time as
8 minimizing bird impacts. That you provide
9 expressed suggestions, and merely suggestions if
10 indeed these guidelines are voluntary, they cannot
11 usurp the role of the local agency. So I think it
12 is a little disingenuous to say it would usurp the
13 role of the local agency to make suggestions about
14 what kind of CEQA approach to take.
15 To suggest that there may projects for
16 which categorical exemptions and mitigated
17 negative declarations would be appropriate.
18 Because right now I think a local agency decision-
19 maker reading these guidelines is going to think
20 to themselves, EIR, on just about every project
21 that comes before them. And I just don't think
22 that that's necessary. I think that adds an
23 enormous amount of time. And frankly, in many
24 cases, wasted energy and paper to projects when
25 there are certain projects that really this

1 Commission, this Committee, should be encouraging.
2 So in terms of the Category 1 I do
3 think, like the CEQA guidelines that OPR puts out,
4 these guidelines should suggest that there are
5 certain categories of projects that may be
6 appropriate for streamlined CEQA review. Not that
7 they are or -- they can't, obviously, these are
8 voluntary guidelines. And it is up to the local
9 agency to make that ultimate decision.
10 But without some encouragement from
11 these guidelines the local agencies I think are
12 going to err on the side of going to full blown
13 EIRs. I think it's a misunderstanding to say that
14 a categorical exemption does not require a
15 baseline of data, it does. In order to use a
16 categorical exemption under CEQA you have to prove
17 that your project will have no significant
18 environmental impact. And if there is evidence
19 that it will have a significant environmental
20 impact you're going to flip into a higher category
21 of environmental review.
22 So the idea that a cat ex does not
23 require a baseline of data is simply wrong. Like
24 the OPR CEQA guidelines I would urge you to
25 suggest that there may categories of projects that

are suitable for categorical exemptions and mitigated negative declarations. And I think it's a lost opportunity to not have that in here.

I think I'm going to reserve the remainder of my comments for other chapters, thank you.

PRESIDING MEMBER GEESMAN: Thank you, Annie. Peter. Go ahead, Carl.

MR. ZICHELLA: Thanks. I had to sneak up to get my shot here, got the juices going now. Good morning. I'm Carl Zichella, I'm the regional director for the Sierra Club for California, Nevada and Hawaii. I also have some thematic question -- comments rather and a couple of quick comments on the step-by-step and Chapter 1.

First of all like everyone else I want to thank the staff for the work that they did on this and thank you, Commissioners, for the work that you've put into this. It has been a long road to this point and I think we've got something that really makes a lot of sense right now.

I also want to thank my colleagues in the wind energy industry that we have worked with over the more than a year now to come up with these guidelines. I think they have really helped

1 those of us in the environmental community
2 understand a lot of the constraints on them and I
3 think we have helped them understand that it is
4 critically important to us that these wind energy
5 facilities be sited and as quickly as we can site
6 as many of them as we need to do.
7 There is a balance between protecting
8 the wildlife and getting these wind energy
9 resources online and I think these guidelines
10 really sort of nail it at this point.
11 I really appreciated the presentations
12 this morning from the staff explaining some of the
13 additions that were made and changes that were
14 made to the document. I really appreciate the
15 direction that this has taken.
16 I do think that the step-by-step process
17 and the categorizations that were mentioned
18 earlier and that are in the document are very
19 flexible. They do provide the sort of range of
20 review options that people were looking for in the
21 previous workshops. I think they really get us
22 there. I think they also reflect a lot of the
23 compromises I was just talking about from
24 environmental groups trying to understand the
25 constraints on the wind energy industry and not to

1 impose undue financial burdens on them.
2 I don't think anyone can predict whether
3 or not counties are going to require EIRs for
4 every project. I disagree with that notion. But
5 I do think that people who are in good faith
6 complying with these guidelines and taking a step
7 by step approach that is described here are going
8 to have a much easier path I think in getting
9 their programs up and running and also avoiding
10 the kind of obstructionism that was described by
11 our first speaker today.
12 And I'm sorry that he didn't attend any
13 of the workshops and was not involved in any of
14 the discussions on this because I think his mind
15 would be substantially more at ease had he done
16 so. Denouncing one study was not a constructive
17 thing because that isn't the basis of these
18 guidelines, wasn't the basis of these guidelines,
19 and the guidelines were established to help people
20 on both sides of this question come together to
21 get wind farms sited. So like Julia I wanted to
22 make a quick comment on that. Sorry to be so
23 scattered, I wasn't expecting to go chapter by
24 chapter either.
25 I don't think this process is going to

1 replace CEQA so the categorical exemption process
2 still stands. I think this does lay out a process
3 by which people who care about wildlife can be
4 assured that they will be properly considered in
5 the siting of these projects. And that is a very,
6 very important and useful thing.
7 One final comment I wanted to have is
8 that something I had mentioned at our last
9 workshop that I attended about certification of
10 compliance. There is no way at the end of the day
11 that people can just understand who actually made
12 an effort to comply with the guidelines and who
13 haven't. And I think for organizations like ours
14 it would be very useful for us to know that.
15 One of the things that I have repeatedly
16 said, and the Sierra Club would like to reinforce
17 is that we don't want good players in the wind
18 energy industry to be penalized by people who have
19 no intention of complying with the guidelines. If
20 people are going to spend money and spend precious
21 project time in doing the kinds of things that are
22 outlined in these guidelines we want to see those
23 people treated fairly.
24 So I think there is additional scrutiny
25 that we as public interest organizations would

1 apply to organizations that do not, wind energy
2 companies that do not intend to comply with the
3 guidelines or don't make a good faith effort to do
4 so. Now I would personally like to see the
5 document amended in some way to reflect some sort
6 of certification process that at the end of the
7 day you can say that this company made every
8 effort reasonably to comply with the wildlife
9 guidelines for the state of California.
10 And finally, the Sierra Club led the
11 effort in Congress recently to prevent the more
12 prescriptive regulatory regime from being applied
13 to wind energy companies nationwide. We have
14 worked in good faith in this process to help find
15 a voluntary way forward that people would comply
16 with and use to help address our concerns about
17 wildlife.
18 Now I have to say that the comment that
19 this is really ground-breaking or this is going to
20 be setting a high bar isn't necessarily all that
21 true. I think we are going to be the first out of
22 the gate with state voluntary guidelines, yes.
23 But I think it's inevitable that there is likely
24 to be some national guidelines to follow.
25 The National Academy of Sciences, as you

1 know, have been involved in this effort. So it's
2 been incumbent upon us, those of us who have
3 worked together to make this document work, to
4 come up with something that actually physically
5 works.
6 It's critically important for this
7 country that we get wind energy, wind farms built,
8 wind energy facilities built across our country.
9 And we will not be able to do that. We'll be
10 fighting litigation right and left if we don't
11 have meaningful guidelines. And we think that
12 this is a very well-measured, balanced way to go
13 forward on this. I want to thank you again. I'll
14 have other comments in other sections.
15 PRESIDING MEMBER GEESMAN: Thank you,
16 Carl. Peter.
17 MR. WEINER: Thank you, Mr. Chairman,
18 members of the committee. I'm Peter Weiner on
19 behalf of CEERT. Like everyone else I didn't
20 exactly organize my remarks appropriately but I am
21 going to try very hard to comply. I have a lot of
22 comments on Chapter 2 and the voluntariness of the
23 guidelines in relationship to CEQA and other
24 environmental laws. I will withhold them for now.
25 In Chapter 1 the tiering system is first

1 set out. And I think what is troubling to me
2 about the tiering system at the moment is that
3 staff has said that there is not enough
4 information on repowering to justify a more
5 streamlined tier for repowering.
6 At least from our experience at the
7 Altamont with Diablo Winds we have one year of
8 data, we don't have a lot of years yet. It
9 certainly seems to be that repowering is one
10 answer. Not the answer but one answer, and a very
11 important answer to reducing avian mortality. It
12 cannot replace good siting decisions, it cannot
13 replace other things, but it is very important.
14 In part because you have so many fewer turbines
15 and we know al the rest of the reasons.
16 For these guidelines to even think of
17 becoming final without streamlining any kind of
18 tiering for repowering I think will be a great
19 disservice to the advancement of wind energy and
20 reduction of avian mortality in the state of
21 California. If what we do is insist that people
22 live out the entire economic lives of the turbines
23 they have because repowering is so difficult under
24 these guidelines and therefore under CEQA, which
25 we'll get to in Chapter 2, then I think we've done

1 a great disservice rather than a great service.
2 That is the one thing that we should be
3 able to count on going forward in addition to new
4 wind energy is repowering. So I would urge that
5 we take another look at the information we have.
6 We have one study from Solano but we also have the
7 study from Alameda, there may be others. I would
8 appreciate a re-look at this. Because otherwise I
9 fear that we are going to put in concrete that
10 repowering is not entitled to streamlining and
11 that would be a great disservice. Thank you.
12 MS. DELFINO: Good morning,
13 Commissioners. My name is Kim Delfino and I am
14 the California director for Defenders of Wildlife.
15 I just wanted to give a couple of quick comments
16 and we'll follow up with other comments as we move
17 through the chapters.
18 First of all just to get it out in the
19 open. We strongly support these guidelines. We
20 thank you for taking leadership and moving forward
21 and doing such a good job. I think Carl and Julia
22 have already stated fairly eloquently the points I
23 would have been making anyway so I'll just echo
24 what they said.
25 My comments today are going to be

1 focused more on bats than birds. I think Julia
2 will probably, and Carl, will cover the bird area
3 and we would strongly support the points that they
4 make. But I did want to come and give a plug for
5 the issue of bats because I know it has been one
6 of the more controversial issues. So I'll be
7 prefacing this for the rest of my comments.
8 We strongly believe bats should be
9 included in the guidelines. Again, these are
10 guidelines. And bats, while it is true there has
11 not been an enormous amount of research done in
12 California, there is research. And the bat
13 experts are telling us that we need, there are
14 impacts to bats. And there are certain things
15 that we need to be doing in both pre-permitting
16 and post-construction projects to get a better
17 handle on what the impacts are to bats.
18 And I think it would be better for us to
19 get a handle on this issue sooner rather than
20 later. Taking an approach of sort of sticking
21 your head in the sand and hoping that the impacts
22 are not that great is, I think, a shortsighted way
23 of going. So we would strongly encourage that
24 bats stay within the guidelines.
25 Also I wanted to address the issue -- we

1 also support the categorization that you have laid
2 out here in the first chapter. I would though
3 echo Julia's comment regarding Category 1. It is
4 a little vague in how this set of projects are
5 described. It simply says that some proposed
6 projects have the advantage of an existing
7 foundation of data on bird and bat use and
8 potential impacts from nearby, similar projects.
9 That's very vague. I have no idea what level of
10 data, what quality of data. In order to be able
11 to give a category of projects lesser scrutiny I
12 think there needs to be maybe a little more
13 specificity in what you're looking for.
14 And then the point about how these
15 guidelines are now going to trigger a deluge of
16 EIRs. The only point I would make here is I think
17 one of the strengths of these guidelines is that
18 it is going to provide a good foundation of
19 existing data from which you can make the decision
20 of whether or not you should have a categorical
21 exclusion or a mitigated neg dec or an EIR. And I
22 don't think that having pre-permitting or
23 surveying requirements necessarily means that you
24 are going to trigger a much weightier CEQA review.
25 On the contrary, you could find that you don't

have the impact.

The other point is that these are just guidelines for birds and bats. There's lots of other impacts related to wind powering. So, you know, I don't think that's necessarily birds and bats will be the thing that are going to suddenly put you over the top to requiring an EIR. There's other wildlife impacts. There's noise impacts, there's transmission lines. So I wouldn't take so much of a view that suddenly this is suddenly going to mean that every project is going to necessarily need an EIR.

But I do think it will certainly inform the decision much better than maybe previous projects have. I'll just reserve the rest of my comments as we move through the chapters and appreciate, again, the amount of detail and thought that has gone into this with the staff in both Fish and Game and the Energy Commission. Thank you very much.

PRESIDING MEMBER GEESMAN: Thank you, Kim.

MS. CONWAY: Michelle Conway, Oak Creek Energy Systems. We're a wind farm developer and operator in California. With respect to the step-

1 by-step approach section I just wanted to come up
2 and state that we don't agree that the categories
3 as they have been included go far enough. We'd
4 like to see more delineation amongst the
5 categories. We appreciate staff for taking
6 industry's suggestion that they be included but
7 it's still fuzzy and the categories still seem to
8 require the same bird use counts and bat studies
9 across the board. So we'd like to see more
10 delineation.
11 And to emphasize the comment by CEERT
12 about repower. We do understand that repowers may
13 not be appropriate in every instance and we are
14 not suggesting that they are but we don't agree
15 that it shouldn't be included in Category 1. I
16 think staff could easily draft language to explain
17 where it would and wouldn't be appropriate. Thank
18 you.
19 PRESIDING MEMBER GEESMAN: I will say,
20 this repowering question is a fairly perplexing
21 one to me. I am a believer that scientific
22 discovery is new every day. But I also think that
23 where you can make conclusions, even on a
24 preliminary basis, you're compelled to do that.
25 And I'm reminded that several years ago

1 on the basis of scientific research that our staff
2 and contractors had done you felt quite strongly
3 that repowering was an important mitigation
4 measure, particularly in the Altamont Pass.
5 You persuaded us to the extent that we
6 put it very prominently as a recommendation in I
7 believe it was the 2004 Integrated Energy Policy
8 Report Update. As I recall we even had a picture,
9 for those that don't read our reports, to
10 understand how higher blade height would impact
11 avian mortality.
12 And I don't know if the problem or
13 rethinking or retrenching the staff has gone
14 through is away from that type of sweeping
15 conclusion. If you might be able to make more
16 regional-specific conclusions with respect to
17 repowering.
18 If you can, as Ms. Conway indicated,
19 draft some clarifying language indicating where it
20 may not be an appropriate candidate for Category
21 1. But to have it kind of fall off the face of
22 the map is troubling to me. And I'd be happy to
23 -- If you have any reaction now. I don't expect
24 that you need to have one. We've got a little bit
25 of time to figure out how to deal with this before

1 we take it to the full Commission but I do want to
2 register some concern there.
3 MR. WEINER: Mr. Chairman, may I just
4 make one point off of what you just said.
5 PRESIDING MEMBER GEESMAN: Go ahead.
6 MR. WEINER: The High Winds Project in
7 Solano County, which we believe staff is referring
8 to, was not a repowering project. It does involve
9 the use of taller turbines but it is not a repower
10 project. Diablo Winds in Altamont in Alameda
11 County is a repowering project. I believe that
12 parts of Shilo, which is an enXco project, may be
13 repowering.
14 But repowering and greenfield projects
15 are different. One of the issues is the
16 comparison and that's one of the reasons that
17 we're talking about repowering and would like to
18 make a distinction when we're talking about these
19 things.
20 MS. HOGAN: I just wanted to make a
21 comment about the timing perhaps. And I don't
22 know if this is exactly why --
23 PRESIDING MEMBER GEESMAN: You need to
24 introduce yourself.
25 MS. HOGAN: I'm sorry, I'm Bronwyn Hogan

1 and I'm on the Science Advisory Committee dealing
2 with bats.
3 One of the things that happened
4 basically right before I think that 2004 was the
5 issue of bat impacts coming from the East Coast.
6 So I think one of the issues with repowering and
7 taller turbines in general is the evidence, which
8 is not great because there haven't been a lot of
9 bat studies done anywhere in the country, but it's
10 growing that there potentially are more impacts to
11 bats from taller turbines.
12 So that's one of the things that's
13 coming up. And again, High Winds is not a
14 repowering project but it does have taller
15 turbines and it did have bat impacts. So I just
16 wanted to make that comment.
17 PRESIDING MEMBER GEESMAN: Thank you.
18 MS. HUGHES: Hi, I'm Nicole Hughes, I
19 represent RES Americas Developments. We are
20 currently permitting two commercial wind projects
21 in the state of California. I was not involved
22 with the earlier workshops. The opportunity
23 wasn't available so I'm playing catch-up. But I
24 appreciate the opportunity to voice my concerns.
25 And I wanted to echo a previous

1 speaker's concerns about the categories at the
2 beginning. It seems even though there's different
3 levels of study implied here there's really no
4 protocols for these. So a little bit further
5 delineation is required, I believe. Particularly
6 for Category 4. I think the category should be
7 removed all together. I don't see anywhere where
8 the National Park Service or the US Forest Service
9 was consulted on the inclusion of discussing not
10 to develop projects on national park lands so I
11 don't think that's necessary to include in this.
12 I work on permitting wind projects all
13 over the United States and it's widely known among
14 most energy developers that California has a
15 relatively complicated permitting process as it
16 is. We feel that the addition of these guidelines
17 for avian impacts will hurt the industry and force
18 developers to consider taking their business to
19 other states where permitting is less complicated.
20 Our main concerns are how agencies,
21 specifically the California Department of Fish and
22 Game, will be taking on additional review
23 responsibilities and how this will affect timing
24 and cost of development.
25 We appreciate the CEC's emphasis on the

1 voluntary nature of these guidelines but we are --
2 It has been suggested to me by one California
3 Department of Fish and Game office that these
4 guidelines will be adopted as, potentially adopted
5 as policy. And studies that don't include all the
6 recommended surveys will be dismissed as
7 inadequate.
8 We are already experiencing significant
9 delays with comments on projects from California
10 Department of Fish and Game. I'm at 125 days out
11 waiting on comments for an NOP right now. And it
12 has been suggested to me that the time it is going
13 to take to even draft these guidelines is one of
14 the reasons for the delays. It's putting
15 significant strain on our ability to do business
16 in the state of California.
17 We feel that the wind industry is being
18 unfairly singled out for relatively minor
19 environmental impacts to wildlife and would like
20 to point out that RES and other developers have
21 practiced sound -- have conducted sound studies
22 and done all the work necessary under CEQA to
23 assess impacts and mitigate these as necessary and
24 feel that these guidelines are unnecessary.
25 At a minimum considering that these

1 guidelines will be updated as necessary we'd like
2 to ask for a higher level of guidelines to be set
3 and that the specifics be left at the expert level
4 or at the California Department of Fish and Game
5 and US Fish and Wildlife Service and lead agency
6 level to be worked out on a site by site basis.
7 We'd like to see more references in the
8 document to following CEQA time lines when we're
9 talking about the responsibilities of Fish and
10 Game responding to comments. We'd like to see the
11 time lines listed in there.
12 You know, everyone knows under CEQA
13 there actually is no requirement for studies to
14 prepare impact statements. So we'd like to -- We
15 hope that the Department of Fish and Game will see
16 when it's not necessary for studies to be
17 conducted to determine potential impacts. And not
18 just assume because the guidelines weren't
19 followed that the appropriate level of work wasn't
20 conducted.
21 And finally I'd like to see a statement
22 in here limiting the retroactive use of these
23 guidelines. There's projects that are currently
24 in the permitting process or have finished
25 permitting or are in post-construction monitoring.

1 We feel that there is a potential that when these
2 guidelines are accepted that decisions will be
3 made to go back and retroactively apply the
4 guidelines and enforce more studies on projects
5 that are already in the permitting phase.
6 I don't have -- I didn't organize my
7 comments, again, chapter by chapter so I may come
8 up again.
9 PRESIDING MEMBER GEESMAN: That's fine.
10 MS. HUGHES: But thank you for the
11 opportunity.
12 PRESIDING MEMBER GEESMAN: Thank you,
13 Nicole. Anyone else on the step-by-step approach
14 or Chapter 1. Julia, you want a second bite?
15 MS. LEVIN: Julia Levin, National
16 Audubon Society. I just wanted to respond on the
17 repowering issue and make a suggestion so maybe we
18 could reach some closure on that.
19 I'm sympathetic to the wind industry and
20 the Commission and the renewable portfolio
21 standard goal that is going to be a very difficult
22 stretch for California and I would like to see
23 repowering occur as well. But we don't know
24 enough yet and what we do know about repowering is
25 that the results are mixed and for some species it

1 is actually worse than the smaller, older
2 turbines.
3 The limited data we have suggests that
4 we can't make this a categorical exemption or
5 automatically include repowering in Category 1. I
6 think it would be appropriate, however, to have
7 language in Category 1 that said that repowering
8 projects that otherwise fall within that category
9 could then be in Category 1. But I don't think
10 that there can be a statement that repowering per
11 se is on some fast track. Because in some places
12 repowering may have greater impacts than what's
13 there now or different impacts.
14 So Audubon would support language that
15 puts repowering, that qualifies that repowering
16 that otherwise has low impacts or meets the other
17 criteria in Category 1 should follow the
18 suggestions in Category 1. But Audubon would
19 strongly oppose language that implies that
20 repowering is given some sort of exemption or
21 automatic fast tracking.
22 PRESIDING MEMBER GEESMAN: You mentioned
23 data available. Do you know of any affecting
24 species other than bats?
25 MS. LEVIN: Yes.

1 PRESIDING MEMBER GEESMAN: And where?
2 MS. LEVIN: I believe it's the Diablo
3 project. Of the four raptor species in the
4 greater Altamont area three did appear to have
5 fewer fatalities. Again, it's just one year of
6 study and bird movements and patterns vary a great
7 deal from year to year. So I don't think one year
8 should be considered conclusive no matter what.
9 But in that one year three of the four raptor
10 species studied did appear to have lower
11 fatalities. But one species, and I believe it was
12 a hawk species, the red tail hawk, actually had
13 higher fatalities with the taller, larger
14 turbines.
15 So I think that the staff's caution is
16 entirely appropriate at this point but we would
17 like to work on some language that allows, you
18 know. There may be places in Southern California
19 in the desert or elsewhere where repowering does
20 make sense to put on a faster track. And I think
21 it would be helpful for the guidelines to say that
22 but not provide some categorical fast tracking for
23 it.
24 PRESIDING MEMBER GEESMAN: How would you
25 determine that?

1 MS. LEVIN: I think where it otherwise
2 meets the criteria laid out for Category 1 then it
3 should be placed in Category 1.
4 PRESIDING MEMBER GEESMAN: And up until
5 your remarks about hawks at the Diablo Wind
6 project, and other than the Solano experience with
7 bats, I would have thought it an appropriate
8 candidate for the Altamont. So how would you make
9 the determination as to where it is appropriate or
10 not?
11 MS. LEVIN: In the same way that I would
12 for any other new site, which is looking at
13 surrounding areas, looking at what's already known
14 about the site. If it's generally known to be a
15 low bird use or bat use area and there aren't
16 other surrounding sites. And we know at Altamont
17 it's a very high frequency use for a number of
18 species. So I think everything at Altamont speaks
19 to the need for caution and more data.
20 But I think there are other parts of the
21 state where we know with a pretty high degree of
22 confidence that it's relatively low, at least bird
23 use. I really can't speak to the bat issues, it's
24 just not an area I'm qualified to speak on. But
25 for bird use I think there are areas that are

1 appropriate for Category 1, including repowering
2 projects.
3 PRESIDING MEMBER GEESMAN: I certainly
4 agree with you with respect to bats because I
5 don't think bats, to put it bluntly, were on our
6 radar screen in 2004. But I think on the basis of
7 quite a bit of data and the analytic tools we had
8 available to us the staff felt, and quite easily
9 persuaded the Commission, that for the Altamont,
10 repowering as I recall, reduced mortality 83, 84
11 percent in the projections that were made.
12 Now that would seem to me to provide a
13 sounder basis to make that type of conclusion for
14 that particular region than we're likely to have
15 elsewhere. I acknowledge the fact that bats
16 weren't within our contemplation at the time. How
17 do we balance empirical evidence like that versus
18 your summary of one year's study at Diablo Wind?
19 MS. LEVIN: Well I think Altamont in
20 virtually every area is an exception. It has been
21 so well studied and there we know the impact level
22 is already very high and in violation of numerous
23 laws. So I think there we have a much better idea
24 of where to put the new turbines. It isn't just a
25 question of replacing them. It's in many cases

moving them.

PRESIDING MEMBER GEESMAN: The same study.

MS. LEVIN: Yes.

PRESIDING MEMBER GEESMAN: That dare not speak its name.

MS. LEVIN: Exactly. Well, there have been multiple studies there. I would not say we're all relying on just one. But I think in other parts of the state there is enough information to indicate that there is low bird use generally or there may just be an absence of information.

And that is my concern. That while I think most of us are hoping and would like to test the assumption that repowering will help at Altamont in other parts of the study we just don't have enough data to know whether repowering will help or hurt. I hope in many places it helps.

And we would like to work with industry to move as quickly down that path as possible and gather more data. Which kind of goes to Annie's point about, is this going to create a lot more work without really reducing impacts. Well, so much of the trouble we all face is lack of

1 certainty and I think that this process will
2 provide much better information so that in the
3 future we have more certainty and hopefully can
4 fast track more categories and more individual
5 projects. Thank you.
6 PRESIDING MEMBER GEESMAN: Thank you.
7 MR. NOBLE: Mr. Chairman, just very
8 quickly. If I could make one, short comment here.
9 PRESIDING MEMBER GEESMAN: Sure.
10 MR. NOBLE: I think as I hear all of
11 this, Altamont is Altamont and the desert is the
12 desert and you would be well-advised to consider
13 the regional nature of things.
14 We would like to repower 50 megawatts in
15 the desert. We have not found a dead bat or a
16 dead bird in 20 years except for one crow killed
17 by a transformer. That's the fact of life in the
18 desert and to tangle us up in the Altamont's
19 difficulties is a mistake. So I would highly urge
20 you to consider the regional nature of things.
21 Implicit in all of this is the demand we
22 prove a negative. There might be birds, there
23 might be bats. So I've got an offer to the
24 biologists. Anybody that can find a dead bat on
25 my real estate, and they can come look whenever

they want, I'll pay them $1,000 a bat. If anybody can find a dead bird in my real estate I'll pay them $1,000 a bird. And I'll do that for the next 90 days. They can come look whenever they want.

We have no problem down there, thank heavens. There is no game for the birds to hunt and so they don't, they don't come down there. We have burrowing owls and the burrowing owls have never been killed by a windmill in 30 years.

Perhaps you'll accept my statement in this regard as of equal weight to those who alter and forge documents. Thank you.

PRESIDING MEMBER GEESMAN: Paul.

MR. VERCRUYSSEN: Good morning, Commissioners. My name is Paul Vercruyssen, I'm here from the Center for Energy Efficiency and Renewable Technologies. I would like to thank the Commission for its leadership on this and the staff who has worked very diligently on this project for I guess over a year now. And we do support the process to develop these guidelines but I want to make the distinction that there are parts of these guidelines that still present some serious problems with the development process for wind developers.

1 And we have narrowed those, at the
2 credit of the staff and everyone else involved, we
3 have narrowed those down to some very specific
4 things. But they are, they are fairly major, I
5 think, from the perspective of many wind
6 developers and our organization as well. And
7 we'll get into those a little bit later so I don't
8 want to slow us down any more than we already
9 have.
10 I will say on the issue of bats, it's
11 come up a little bit already and which we will be
12 commenting on during the bat section. Part of the
13 frustration with the most recent draft of the
14 guidelines is that we have really tried to
15 participate constructively in offering alternative
16 solutions to language that has been proposed in
17 the draft. And I think Kim from Defenders was
18 mentioning a comment that was submitted by one of
19 the developers who couldn't be here today that the
20 guidelines should perhaps not address bats at all.
21 That frustration, I think that is more
22 frustration than an actual approach to these
23 guidelines because our suggestions have seemed to
24 have fallen on deaf ears in most cases. And we
25 are not quite sure where to go because we feel

that we have proposed very logical alternative solutions. So I want to sort of give a little bit of additional context to that.

And I want to sort of draw one distinction. And maybe it's just, I'm hoping that it's just simply a clarification. But it was discussed in the opening statements by the staff that the post-construction use monitoring, some additional flexibility had been added. This is in addition to bats the number two in terms of the concern that our organization has. And particularly the very costly post-construction bird use counts. It says on page 73 lines 2641:

"Data on bird and bat abundance and site use should accompany all fatality studies of wind energy project sites."

That is unambiguous language to me. So I think that should in some way be reconciled. But this is an example of some of the concerns that we have with the guidelines that are outstanding. And I'll save the rest of my comments for later on.

PRESIDING MEMBER GEESMAN: Anyone else on this first chapter?

MR. ZICHELLA: One last quick thing. I

1 don't think it was our understanding that
2 repowering would be excluded from Category 1, we
3 didn't read it that way. So I just wanted for the
4 Sierra Club, we wanted to second what Julia was
5 saying about some way of addressing inclusion of
6 repowering. If that needs to be explicitly put in
7 there, fine. We didn't think it was excluded.
8 PRESIDING MEMBER GEESMAN: Anything else
9 on the step-by-step or Chapter 1?
10 MR. WEINER: Well at some risk of --
11 Peter Weiner again.
12 PRESIDING MEMBER GEESMAN: Don't worry
13 about it. We're going to stay here as long as it
14 takes to get through this document.
15 MR. WEINER: It's so cool. I was
16 shocked and disappointed by the vehemence of
17 Julia's comments but of course as usual she made
18 me see the light. I think first of all, we're
19 still looking at the data from Diablo Winds and I
20 believe that Annie Mudge may have some other data
21 as well. But I think we are still persuaded that
22 repowering is an answer at Altamont. And indeed
23 that's what we're working with Golden Gate Audubon
24 and other Audubon chapters on.
25 But what strikes me most about

1 repowering is that you are not on a clean slate.
2 And what is most inappropriate about these
3 guidelines as they apply to repowering is that
4 they do assume a tabula rasa and say, let's do two
5 years of pre-construction, let's do this, let's do
6 that. Where instead you're working in a working
7 landscape, an already disturbed landscape, in the
8 sense that you already have wind turbines there.
9 And so what we need perhaps is instead a
10 different tier. A tier that is called repowering
11 and that says, these guidelines don't apply to
12 repowering. Rather, there are aspects of the
13 guidelines that may apply or may not apply because
14 you will already have some data in an existing
15 wind farm. You will need different data for
16 repowering in the Altamont than you perhaps do in
17 San Gorgonio.
18 And I think that that's really what is
19 appropriate to say here. It may be totally
20 streamlined, it may not be. But because certainly
21 in the Altamont we are doing studies on the
22 effects of repowering as we go along. What is
23 inappropriate is to apply these guidelines to a
24 repower project as if there were nothing there.
25 PRESIDING MEMBER GEESMAN: Anything

else? Nancy, you made it.

MS. RADER: I made it, sorry. That's what I get for not taking the train. (Laughter) But I was in my Prius. If it's all right, I did not anticipate the chapter by chapter approach and so I have one set of overall comments I would like to present and then can particularize those as we go along. But thank you and good morning.

PRESIDING MEMBER GEESMAN: You need to introduce yourself, Nancy.

MS. RADER: Nancy Rader, California Wind Energy Association. Nearly two years ago you might recall that CalWEA urged you not to launch this guideline development process because we pointed out there was really no evidence of a problem. That new wind energy facilities in California are sited with an appropriate environmental review, which is why the Altamont avian fatality problem remains unique.

We feared spending a lot of time and resources on solutions in search of a problem at a time when there are really very many real and significant issues facing the wind industry in California that require our attention if wind is going to help the state address the mother of all

1 environmental problems, global warming. And this
2 is taking resources away from our activities at
3 the ISO, the PUC and other areas.
4 Nevertheless over the past 14 months
5 CalWEA has participated substantively in every one
6 of the many workshops and hearings that have been
7 held all over the state and we submitted eight
8 sets of detailed comments. We did so in the hope
9 that the guidelines could be a useful tool for
10 developers and siting agencies alike. Frankly
11 though we never really felt that staff heard our
12 comments in this process because they never
13 engaged in real conversation about our initial
14 suggestions for how these guidelines should take
15 form or the concerns we raised later.
16 While the staff's drafts concerned us
17 greatly we had hoped that you had heard our
18 concerns and hopefully read our comments.
19 Unfortunately we now see the Committee's draft and
20 we have to strongly oppose it. While a number of
21 our particular comments have been incorporated the
22 major flaws remain. If the guidelines were to be
23 adopted in anything like their form, their current
24 form, they would have wide ranging negative and
25 unjustified impact on the development of wind

1 power in California.

2 I'd just like to briefly summarize our

3 problems in six points, which may seem familiar

4 since we've made them since the very beginning of

5 the process. First we feel that the overall

6 approach taken in the guidelines is wrong. It's

7 far too prescriptive going far beyond guidelines.

8 The draft prescribes particular courses of study

9 at every site despite various types of terrain,

10 varying wildlife populations and different bases

11 of knowledge at every site.

12 The guidelines should instead be focused

13 on the information that is needed to determine

14 whether significant impacts are likely to occur at

15 a proposed project site and they should recognize

16 the various existing sources of information and

17 the various scientifically valid techniques that

18 can supply the needed information. So second, the

19 result of that prescriptiveness is to

20 significantly raise the costs without necessarily

21 reducing impacts.

22 The guidelines prescribe specific long-

23 term field studies that are not necessary to make

24 determinations of significant impact under CEQA.

25 They recommend protocols that go far beyond local

1 agency and industry permitting practice under
2 CEQA. They would at a minimum recalculate and add
3 on the order of $2 million to the cost of
4 permitting each potential project, which is
5 already very costly in California.
6 You've already discussed the guidelines
7 would require acoustical monitoring studies for
8 bats at every site continually for three years,
9 even though the document itself states that this
10 technique has yet to be shown to be strongly
11 associated with estimates of collision risk or
12 impacts.
13 And worse, because little is known about
14 bats, and that became very clear to me in the
15 workshops, even collecting this data will not
16 inform determinations of significant impact
17 because there is simply an information void around
18 bats. So these excessive study requirements
19 effectively constitute state mandated research
20 projects at the expense of the wind industry.
21 Third, the Committee's draft would
22 significantly delay project permitting by
23 elevating the authority of CDFG in the CEQA
24 process. The draft guidelines require
25 consultation with, and in some cases approval by

1 CDFG on the study methods to be used at many
2 points before and after a land use permit is
3 issued by the CEQA lead agency. This will add
4 months if not years of delay to a process that
5 already routinely exceeds the one year time frame
6 intended under CEQA for preparing and certifying
7 an EIR.
8 CDFG is understaffed and already does
9 ont respond to requests for review within CEQA's
10 required comment period. These guidelines will
11 compound that problem many fold and we really want
12 CDFG staff to expend their limited resources on
13 wind projects instead of timber sales, housing
14 developments, dams and other far more
15 environmentally destructive projects.
16 In addition by inserting CDFG into the
17 CEQA process the Committee draft dilutes local
18 agencies' constitutional land use authority over
19 wind projects. Because CDFG is charged with
20 administering zero tolerance wildlife laws they
21 are likely to set a high bar for all projects in
22 order to catch a few projects that may be unable
23 to comply to the letter with very rigid wildlife
24 laws which prohibit the inadvertent take of even
25 one individual of a certain species.

1 By their nature wind projects cannot
2 achieve zero bird mortality. It's just a fact of
3 life. While CalWEA supports good faith attempts
4 to limit unnecessary bird and bat mortality we
5 believe the industry is taking those steps. We
6 disagree that funding expensive and unnecessary
7 research is required to demonstrate such good
8 faith efforts.
9 Fourth, the Committee draft misses an
10 opportunity to foster streamlined permitting for
11 low impact projects. In your 2006 IEPR update you
12 urged the state's energy agencies to evaluate
13 incentives to encourage the repower of aging wind
14 facilities to boost generation from these prime
15 wind sites while reducing avian impacts. And you
16 stated that as a fact, that repowering would
17 reduce avian impacts.
18 And yet there is nothing in this
19 document that would accelerate permitting for
20 repowers in areas of the state where avian usage
21 and impacts are known to be low. That is, we
22 already know the impacts are less than significant
23 under CEQA so we could expect that repowers under
24 reasonable studies, reasonable logic can be shown
25 to have less than significant impacts under CEQA.

1 And we didn't say it should be an
2 automatic thing. You should have to show certain
3 things. But once you show those certain things
4 you should be eligible for a categorical exemption
5 or a negative declaration.
6 CEQA and this Commission already enable
7 reduced environmental review for repowered fossil
8 fuel projects and many other types of projects.
9 Why shouldn't repower wind projects get similar
10 treatment? We propose that certain types of
11 projects including repowers be deemed eligible for
12 such treatment, meaning reduced study
13 requirements. But staff never engaged in a
14 dialogue on this proposal, even though as you have
15 heard avian groups do not object to the concept
16 across the board.
17 Fifth, the Committee draft cites
18 discredited reports. The Committee draft
19 continues to cite, and I will name it, the 2004
20 study by Smallwood and Thelander despite the fact
21 that your own, independent reviews cast serious
22 doubt on the credibility of the report's methods,
23 findings and conclusions. And you didn't even
24 review the data, which we did, and found
25 significant discrepancies between the raw data and

1 what was entered into the database.
2 Application of the findings of that
3 report could result in inaccurate impact
4 predictions and ineffective mitigation. I don't
5 think anybody wants that. That the Commission
6 cannot acknowledge and correct its own mistakes
7 greatly undermines trust in this agency's
8 commitment to good science.
9 Sixth and finally, the Committee draft
10 does not discourage retroactive application of the
11 guidelines. CalWEA members are already
12 experiencing efforts to retroactively apply these
13 guidelines. In one case a project that was in the
14 last stage of the permitting process was told that
15 approval of its EIR may need to wait for and be
16 reconducted based on the final version of the
17 guidelines. That kind of retroactive application
18 could set projects back by several years. The
19 Committee draft fails to advise lead agencies to
20 apply the document prospectively only.
21 More generally we are quite concerned
22 that the Committee draft will take on a life of
23 its own if it is not quickly withdrawn or
24 replaced. For all of these reasons we strongly
25 oppose this committee draft and we urge you to

1 reconsider this effort. The Energy Commission
2 should be seeking to reduce barriers to wind
3 development, not creating new barriers that
4 address problems that don't exist. Thank you.
5 PRESIDING MEMBER GEESMAN: Thank you,
6 Nancy. Is there anyone else?
7 MS. WOLFE: I'm Marcia Wolfe, plant and
8 wildlife ecologist working for Oak Creek Energy
9 Systems. And my comments are not according to
10 chapter so I'm totally discombuberated here. But
11 since this morning we have heard so many people
12 touting the fact that they believe that this has
13 been an interactive workshop process I need to say
14 something here. And it doesn't have to do with
15 Chapter 1, it has to do with the overall process.
16 And I hesitate to have to say this
17 because about seven of my friends have been
18 involved in staff positions working on this and I
19 still hope afterwards we're still talking. But we
20 don't -- Although the workshop process can be good
21 this really has not been an interactive workshop
22 process. And we don't believe because of that the
23 wind energy realities have been integrated fully
24 into the process.
25 We have had no response from agency

1 staff on any of our comments. In no place have
2 agency staff provided reasons for not considering
3 the majority of our comments nor have they
4 responded or engaged in a discussion concerning
5 the substance and importance of our comments nor
6 even has a request for clarification occurred.
7 And I hear they made lots and lots of
8 minor grammatical edits but that's not really what
9 we're worried about. Our comments have not been
10 frivolous or made of plain contentiousness. Our
11 comments have been serious and well thought out.
12 We are concerned with both the actual wind farm
13 operations and the science of attempting to
14 characterize baseline avian and bat issues.
15 Evaluating that information and somehow being able
16 to interpret it relative to potential impacts and
17 mitigation.
18 And by the way, this is something that
19 is complex and not easy to do. And it os not
20 something conducive to an inflexible cookbook
21 approach. And after having made many of the same
22 comments over and over again the conclusion is
23 that our comments and objectives are being
24 ignored. This is so disappointing as many, many
25 collective hours were spent on review, research,

1 compiling, preparing the comments and attending
2 the workshops.
3 And we heard this morning that or
4 comments that weren't accepted will be responded
5 to in some kind of decision document. That is not
6 an interactive process where we can then respond.
7 Perhaps their understanding or misunderstanding of
8 our comments -- if you know, if there had been an
9 integration of that we would have come up with
10 better results.
11 Something else that we kind of noticed
12 as well. That all our names are included in the
13 document and it is being kind of used to give the
14 impression that we all agree with what's in the
15 guidelines. I think just because someone
16 participated in this process doesn't mean that we
17 all agree with everything that's in it.
18 This is all choppy because I don't have
19 a chapter by chapter response so I'll be back.
20 Thank you.
21 PRESIDING MEMBER GEESMAN: Thank you.
22 Sir.
23 MR. WEBSTER: Good morning Mr. Chairman
24 and CEC Renewables Committee. My name is Stu
25 Webster and I am the permitting and environmental

1 manager for Clipper Windpower Development Company.
2 As an active developer of renewable wind energy in
3 California we greatly appreciate the attention and
4 the effort the CEC Board, staff and consultants
5 have put towards the guidelines development to
6 assist public and private stakeholders in
7 addressing avian and bat impacts. A pause here
8 for a moment just as a note. This is going to be
9 a thematic response. I have not read the document
10 about chapter by chapter.
11 In reflecting back on the evolution of
12 the draft siting guidelines, comments that I made
13 before this Board and those submitted to the Board
14 in writing I would characterize the effort today
15 as beneficial progress but short of having yet
16 reached a successful conclusion. What seems to
17 have occurred to date is a partial addressing of
18 the relatively straightforward comments and
19 concerns regarding such things as the guideline's
20 use of prescriptive language, inconsistent
21 recommendations and clarification of discretionary
22 enforcement.
23 However, what is lacked thus far is a
24 higher level view of the implications of the
25 guidelines as currently drafted have on developing

1 renewable wind energy in California. The draft
2 guidelines remain disconnected with the stated
3 intention of the CEC to facilitate a consistent
4 and robust understanding of what can be done to
5 understand the biological characteristics of a
6 proposed wind energy area. Rather it focuses on a
7 worst case scenario applied with little to no
8 flexibility and assessed outside of existing
9 environmental review mechanisms such as CEQA.
10 For example, the guidelines fail to
11 provide a discussion as to the scientific
12 reasoning for the recommended duration of the
13 suggested surveys. My efforts to date have not
14 discovered a single instance of a project
15 undergoing a 52 week avian survey period but
16 rather appropriately scoped surveys that fit the
17 conditions and uncertainties of the specific
18 project area and/or region.
19 Additionally there is no indication how
20 one year of pre-assessment surveys and two years
21 of post-construction surveys produce data that is
22 statistically significant when compared to surveys
23 conducted of a shorter duration, focused on a
24 regionally-specific species and conditions found
25 at a given project.

1 As the economic implications to
2 conducting the extensive pre-assessment and post-
3 construction surveys suggested in these guidelines
4 by my estimates, $1 million per year. A
5 scientifically reasoned justification for the
6 durations is necessary. Without providing
7 justification for the proposed durations the
8 protocol appears to be arbitrary and fully based
9 on a worst case scenario.
10 To speak to the aforementioned criticism
11 of only partially addressing stakeholder concerns
12 the current draft guidelines now suggest the
13 abridged studies may be agreed as appropriate by a
14 given project's stakeholders with sometimes
15 explicit concurrence from US Fish and Wildlife,
16 and more commonly, California Department of Fish
17 and Game. For example, lines 724 through 728.
18 This unfunded, quasi-mandate for these
19 agencies to review projects and proposed study
20 protocols is simply an inevitable bottleneck for
21 already resource-constrained agencies. To respond
22 that this is not the intent of the guidelines may
23 be accurate but our concerns to the contrary are
24 already self-evident with proposed project reviews
25 by the California Department of Fish and Game on

1 hold stating, the finalization of these guidelines
2 is the reason for the delay.
3 If this document is a truly voluntary
4 set of guidelines all references or implications
5 for the requirement to have Fish and Wildlife and
6 CDFG approve surveys, protocol and/or methodology
7 need to be removed or at least accurately applied
8 under CEQA.
9 We at Clipper believe that the legacy of
10 a given project's relatively benign ecological
11 impacts is a direct reflection on us as a wind
12 development company wishing to remain viable in a
13 highly competitive industry. And more
14 importantly, a broader reflection upon a necessary
15 and appropriate technology in the United States
16 progress toward diversified and renewable energy
17 generation, including California's efforts to meet
18 the renewable goals of AB 32.
19 Therefore I once again recommend that
20 the CEC consider these points, refocus the content
21 of the guidelines to be more robust, a menu of
22 options and conditions by which stakeholders
23 become more informed. This is not a substantial
24 undertaking as the content of the guidelines thus
25 far compiled contains useful information.

1 It is the implications that: one,
2 California wind energy development will
3 consistently occur in high avian and bat use
4 areas. Two, that the US Fish and Wildlife and
5 California Department of Fish and Game are to
6 carry an unfunded mandate to take on a more
7 discretionary role of project review than intended
8 by California law such as CEQA. And three, that
9 the lack of scientific knowledge concerning avian
10 and bat impacts by renewable energy should be
11 shouldered exclusively by industry and independent
12 of support by other private and public
13 stakeholders.
14 These are the concerns that we feel need
15 to be addressed. I stated for the record in a
16 February 2006 workshop that Clipper Windpower
17 endorses the intent of the draft guidelines but
18 takes significant exception to the content and
19 format that it was currently in.
20 Therefore to close and in order to
21 emphasize our position I'll reiterate that Clipper
22 remains supportive of the CEC efforts, will
23 continue to participate in the development process
24 and endorses the original intent of the guidelines
25 but unequivocally opposes the current state the

1 guidelines are in.
2 We encourage the CEC to retool the
3 document such that its contents can be used as a
4 consistent point of reference by all stakeholders,
5 similar to what has been developed in Kansas,
6 Pennsylvania, South Dakota, Washington and New
7 York, rather than presupposing the applicability
8 of a costly and oftentimes unnecessary burden to
9 renewable energy development. Thank you.
10 PRESIDING MEMBER GEESMAN: Thanks Stu.
11 Anyone else by steps, Chapter 1?
12 Let's move on to Chapter 2.
13 MS. MUDGE: Annie Mudge for CalWEA. I
14 just want to make three points here that are sort
15 of implicated by Chapter 2. First is -- And this
16 is the chapter that sort of integrates the
17 existing framework of the law with the guidelines.
18 It talks about CEQA and the federal and state
19 laws.
20 With respect to CEQA. I started this
21 morning by just sort of talking about a lost
22 opportunity here to have these guidelines provide
23 guidance. Again, voluntary guidance to local
24 agencies about the level of environmental review.
25 There is no discussion at all about what might be

1 appropriate here. And that decision is of course
2 left up to the local agencies. But if this
3 document doesn't encourage the use of certain
4 streamlined procedures the silence on that fact I
5 think is going to lead local agencies away from
6 the use of mitigated negative declarations and
7 categorical exemptions where appropriate.
8 So if the Committee is really interested
9 in encouraging wind energy development while
10 minimizing avian impacts I think it would be a
11 real benefit to these guidelines, which otherwise
12 place a very large burden on the industry, to show
13 the way. That these are available tools to it to
14 streamline appropriate projects.
15 You know, global warming is a choice so
16 let's not make it unreasonably difficult to permit
17 projects in California. I am seeing a trend of my
18 clients saying, hey, we're just not going to start
19 new projects in California, we're going to go to
20 Texas, we're going to go to Minnesota. It is
21 very, very difficult to get projects permitted in
22 this state. It is very expensive and it is very
23 difficult. We do have tools that allow
24 streamlining under certain circumstances and I
25 think it would be a lost opportunity to not

1 suggest that they be used where appropriate.
2 And that leads me to the repower issue.
3 And I want to echo what CEERT has been saying.
4 That I think that there is another opportunity
5 here to put repowers in a separate category. I am
6 aware of a project, I was involved in the
7 permitting of it up in Solano County, it's called
8 the enXco Five project. It removed ninety 56/100
9 turbines and replaced them with six 1.5 megawatt
10 turbines. So a vast, vast reduction in the number
11 of turbines.
12 There were robust studies that were done
13 pre-permitting that showed that there was going to
14 be a reduction in raptor kill. A mitigated
15 negative declaration was approved for that
16 repower. That's the model that I'm suggesting
17 here. I am not saying under all circumstances you
18 rush to a categorical exemption. Perhaps a cat ex
19 would have been appropriate there. The choice was
20 a mitigated neg dec.
21 I think the environmental impacts of the
22 repower were fully and fairly vetted and the
23 project was approved. So a reduction from ninety
24 turbines to six turbines without a loss in
25 electrical capacity. And it is showing a

1 reduction in raptor kill. So that's the enXco
2 Five project in California.
3 Peter mentioned something that I think
4 is work repeating and that is that repowers are
5 uniquely I think qualified for special
6 categorization because the areas are already
7 developed. They are already degraded, if you
8 will. Birds have already become habituated and
9 birds do habituate. Birds do learn to fly around
10 the wind turbines. Various birds do this better
11 than others.
12 But repowers are like in-fill urban
13 development. You already have wind power in that
14 area. Most repowers reduce, vastly reduce the
15 number of turbines without reducing electrical
16 energy. We should be encouraging repowers. And
17 the CEC guidelines are an important opportunity to
18 do that.
19 Finally, with respect to CDFG's role. I
20 also want to point out that right now the current
21 law is CDFG is a commenting entity to local
22 agencies under the CEQA process. And one of the
23 things I am concerned about in the guidelines is
24 that they elevate CDFG to more than a commenting
25 entity by virtue of having to get pre-approval

1 from CDFG to design your studies. It is going to
2 delay the process significantly.
3 If lead agencies today feel that they
4 need expert opinion from CDFG or US Fish and
5 Wildlife they certainly have the ability to go and
6 ask for a consultation. But the guidelines as
7 they are currently drafted put CDFG in a much
8 different position where you have to actually go
9 seek and obtain active approval from CDFG.
10 They are a very heavily worked agency
11 and there have been times when the responsiveness
12 has been less than ideal, through no fault of any
13 individual. But it is not an efficient use of the
14 CEQA process to inject them in that sort of active
15 role. Lead agencies when they need help in
16 designing survey protocols, if they're different
17 than what's been suggested here, can ask for
18 consultation. Thank you.
19 MS. HOGAN: I have a quick question
20 before you go. Were there any bat surveys done in
21 that repowering project?
22 MS. MUDGE: You know, I can't remember
23 but I would be happy to provide you a copy of the
24 document.
25 MR. FLINT: Can I make a comment real

1 quick?

2 PRESIDING MEMBER GEESMAN: Go ahead,

3 Scott.

4 MR. FLINT: I'd probably get to this

5 later. It's going to come up in Chapter 2 again

6 but just a couple of things. I've heard a theme

7 here of the guidelines inserting or elevating Fish

8 and Game's status. I just must point out that the

9 document doesn't read that way. The Department is

10 both a responsible agency and a public trustee

11 agency under CEQA. Consultation with the

12 Department is mandated in CEQA for projects.

13 What the guidelines are doing is laying

14 out a framework of study with plenty of

15 flexibility from site to site that can be brought

16 to Fish and Game for discussion. We are not

17 elevating our status, we're playing the same role

18 that we are always supposed to play in the CEQA

19 process. Chapter 2 simply outlines the existing

20 process, both with the environmental law of CEQA

21 and the other laws. It is simply 95 percent

22 recitation of what's in the statute. So I don't

23 see that necessarily the same way.

24 And I think Annie's example of this

25 project, this repowering project that had a study

1 beforehand to show it would reduce raptors, went
2 through the mitigated neg dec process and then
3 significantly reduced the number of turbines. I
4 think that's exactly the model that we're
5 proposing here in the guidelines.
6 That had an appropriate pre-project
7 study. They probably used existing information.
8 The same thing we're proposing in here in the
9 guidelines. And it was modified for the site-
10 specific conditions and the nature of that
11 project. That would be great if all of them went
12 that way.
13 PRESIDING MEMBER GEESMAN: Julia.
14 MS. LEVIN: I'd like to respond to a
15 couple of things that Annie said in the second
16 chapter and then make a few additional points. I
17 think CalWEA from the beginning of this process
18 has wanted to limit the applicability of the
19 guidelines to CEQA.
20 And I think the Commission has already
21 made the determination that the purpose of the
22 guidelines is to clarify existing laws to protect
23 birds and bats and it is not limited just to CEQA.
24 So I think --
25 The concern that I have heard from a

1 number of speakers about, as Scott said, elevating
2 the role of the Department of Fish and Game,
3 giving them an inappropriate role in CEQA, is not
4 really apropos to these guidelines, which are not
5 limited to compliance with CEQA. They are about
6 reducing impacts on wildlife, which is very much
7 not just the role but the obligation of the
8 Department of Fish and Game. They are a trustee
9 agency for all of us to enforce existing wildlife
10 laws.
11 Which is my other comment, particularly
12 about Chapter 2 but overall. I think that there
13 is a misperception about these guidelines. Aside
14 from the fact that they are voluntary I think the
15 purpose from the Commission has been clear from
16 the get-go. And from the stakeholders. That they
17 are to provide a framework for how to comply with
18 existing laws.
19 Which unfortunately have been largely
20 ignored until recent years. And the reason they
21 are no longer being ignored is there were a number
22 of lawsuits. Which I don't think any of us want
23 to see more of. Whatever the cost of compliance
24 with the guidelines I am quite sure as an attorney
25 myself, and there are many attorneys in the room,

that more litigation would be more expensive and slow the development of windpower down more. So I think it is in everyone's interest to find a way to avoid that.

Annie, you've made the comment and so have others about raising the bar. That these guidelines raise the bar. I think the bar has been there for many years. Many of these wildlife laws have been on the books for decades. The bar is there. What we're trying to avoid is having new developments or repowering projects bump into that bar.

So this is not a new bar, it is not a new requirement. I feel like a broken record and yet I don't think people are listening to that record. That we are not establishing new legal requirements here. We are trying to explain what compliance with existing legal requirements means in general categories of cases. I just wish we could move beyond that point. It's frustrating to continue to have to point that out.

PRESIDING MEMBER GEESMAN: Well let me jump in there and maybe this can be of assistance to others as well. You really don't have to persuade each other. You should be concerned

about whether Commissioner Pfannenstiel and I are listening. I can assure you we are. But like everybody else we have a limited attention span and a reduced tolerance for too much iteration, reiteration, re-re-reiteration.

So not specifically calling you out, Julia, but to everyone. There is no need to address your remarks to each other. You are really trying to clarify things for Commissioner Pfannenstiel and me.

MS. LEVIN: Okay. Well I would also like to say from at least Audubon's perspective, we have found staff and Commissioner, your staff, very receptive. And while I understand that not everyone has seen changes in this draft that they wanted to see, including Audubon. We would have liked to have seen more study in some places and the categories defined more clearly in some places as well.

I think there is a difference between staff not being receptive or ignoring comments, which I would strongly disagree with. That has not been our experience at all. I don't think it has been the experience of many of the wind companies. We are not all going to get what we

want but I don't think that there is a fair categorization or characterization of how staff has acted in this process.

My one other specific comment about Chapter 2 is I think that on page 33 you asked us to be very specific. There is an incorrect characterization of the Fully Protected Species Act. Well I would love to go hand-in-hand with wind companies to the Legislature in a few years and create a categorical exemption to the Fully Protected Species Act when wind developers take certain actions. I don't think we're there yet. Right now the law is very clear that there is no take except for very limited scientific purposes and recovery purposes.

So I think that the language on page 33 that suggests that minimizing impacts would be sufficient needs to be changed. There is similar language about the Federal Migratory Bird Treaty Act that I think would be more appropriate, it's on page 35 and elsewhere in the document that is to be honest a little squishier but I think that's what is more appropriate. That it would be seen as good faith compliance with things that are a little more general.

1 But it is not an accurate statement of
2 the Fully Protected Species law to say that simply
3 minimizing impacts is enough. That may not be as
4 any of us would like but that is existing law and
5 I think it is very important to be respectful of
6 the law. I think those were my only comments
7 about Chapter 2 for now, thank you.
8 PRESIDING MEMBER GEESMAN: Peter.
9 MR. WEINER: Peter Weiner and as
10 promised I have comments on Chapter 2.
11 The problem in walking the tightrope
12 between voluntary guidelines and underground
13 regulations, which are rules of general
14 application that haven't been adopted under the
15 APA, is that it's hard to do. And I think you
16 hear a lot of that tension in the room. People
17 would like to have the yellow brick road to follow
18 but they are worried that it will become a highway
19 without offramps, if you will.
20 The problem is that many of these
21 guidelines will be viewed as written as a standard
22 for compliance with CEQA. I think that some of
23 the remarks today certainly counsel me that what
24 we need in this document is a discussion of CEQA
25 tools in a paragraph. That under CEQA one can do

1 a categorical exemption, a negative declaration, a
2 mitigated negative declaration, an EIR, there may
3 be others. Certainly where you already have an
4 EIR you can have a supplemental, an addendum, et
5 cetera.
6 And what we need is a clear statement
7 that these guidelines are neutral as to which CEQA
8 tools should be used by a lead agency. I don't
9 think that it is appropriate in these guidelines
10 to say that they must counsel an EIR, must counsel
11 a categorical exemption or a negative declaration.
12 They should be neutral. That's with regard to
13 CEQA.
14 The other thing that is important I
15 think is to state that these guidelines are
16 general and as a consequence will not apply to
17 every site. You've done that in the tiering but I
18 think it's important to state that non-compliance
19 with everything recommended with the guidelines
20 will not be taken to be non-compliance with CEQA.
21 Nor will compliance with the guidelines, if you
22 want to go the other way, in certain situations be
23 sufficient.
24 The Pine Tree decision, which no one has
25 mentioned yet today, which is an unpublished Court

1 of Appeals case, is one which we will submit to
2 you as an attachment later on by the 22nd. But
3 the reason for it is not that it's a citeable case
4 as we lawyers would say but rather because it is
5 informative and good counsel as to how to look at
6 CEQA in these situations. And it does quote from
7 several published cases in this regard.
8 But what I would note is that a Court of
9 Appeal in the Pine Tree case found that just as an
10 example, some of the pre-construction monitoring,
11 which would be different and which I think the
12 gentleman from Clipper mentioned, focused studies
13 instead of 52 weeks and so on, were found to be
14 acceptable under CEQA.
15 Usually that case is noted because of
16 its refusal to require acoustic studies and
17 nighttime studies for songbirds. But it has other
18 examples as well that these guidelines are general
19 and they may apply generally but they don't apply
20 necessarily as a measure of CEQA compliance.
21 With regard to the relationship to other
22 wildlife laws. I want to be clear that yes, in
23 the first workshop that we had Carl Zichella said,
24 what we would like is guidelines that if people
25 comply with them there will be prosecutorial

1 discretion by the Department of Fish and Game, the
2 Fish and Wildlife Service, to not prosecute people
3 who are complying with the guidelines. If you
4 follow the rules you don't get hit.
5 And certainly it seems to me that that
6 was what was meant by the statement on page 33
7 lines 1181, 1182 that in the presence of fully
8 protected species we want to ensure impacts are
9 minimized. That has to do not with compliance
10 with the fully protected species law, not with
11 compliance with the Migratory Bird Treaty Act.
12 Those laws don't allow take. And we have several
13 other examples of that. But rather what
14 discretion will the agencies use as to whether to
15 prosecute those people who are trying to minimize,
16 following voluntary guidelines, rather than
17 emphasize one bird or one bat, whatever these
18 species may be. That was the intent I thought
19 from the get-go of these guidelines and its
20 relationship to other environmental laws.
21 It was not to say how to comply with
22 them, quote/quote, because compliance is no take
23 whatsoever, but rather to state the circumstances
24 under which the fish and wildlife agencies would
25 refrain from prosecution.

1 And in that first workshop we had a
2 gentleman on the phone from the Fish and Wildlife
3 Service who was talking about Fish and Wildlife's
4 use of its guidelines with regard to transmission
5 lines and saying that where people comply with
6 them we don't prosecute. And that was one of the
7 models that we followed there.
8 So it may be useful to state that that's
9 one of the intentions here is to provide, I won't
10 say quite a safe harbor, but a guideline for the
11 agencies that if people are in good faith trying
12 to minimize those impacts that that is a standard
13 for prosecutorial discretion.
14 So I wanted to state that with regard to
15 Chapter 2 because it has to do both with CEQA and
16 other wildlife laws. I think the guidelines have
17 a bearing on both. Thank you.
18 PRESIDING MEMBER GEESMAN: Thank you
19 Peter. Carl.
20 MR. ZICHELLA: Being Peter took my name
21 in vain, Carl Zichella. I think he's accurate
22 about how we were talking about trying to have
23 guidelines that if people complied with them that
24 they would be recognized and rewarded for that.
25 Because there are so many unknowns and we need to

1 have at least some basic level of compliance.
2 We've had quite a bit of conversation in
3 succeeding workshops about that and other people
4 disagreed with me.
5 But I have to say, just generally on
6 Chapter 2, the Sierra Club is fine with Chapter 2.
7 I don't have any problems with the way this is
8 written at all. I do think that if there was some
9 clarification about the entirety of the CEQA
10 process and what it entitled in total that would
11 be okay with me too. I don't think a paragraph
12 the likes of which Peter just described about the
13 various options under CEQA would be objectionable
14 because basically what Chapter 2 does is describe
15 the process. So I don't have a problem with
16 describing the process.
17 The fact is they are guidelines, they
18 are voluntary, they say it right up front. That
19 is all pretty clear to me so I don't think that
20 you need to have every single thing in there. And
21 I am not so sure that others would agree that
22 prosecutorial discretion needs to be explicit in
23 there.
24 What I have said repeatedly throughout
25 the process also is that I think this will be a

1 tool to provide discretion for those who might
2 have brought the lawsuits that have so tied
3 licensing and siting in knots in the state. That
4 this is going to be a very useful tool to prevent
5 those kinds of lawsuits.
6 I will mention, I think the Sierra Club
7 believes we need to move forward on this. I would
8 hate to see this process delayed any further. I
9 think we need to move forward. You can't have it
10 both ways. You can't say the fact the guidelines
11 aren't finalized are creating a bottleneck and the
12 guidelines themselves are a bottleneck. You know,
13 you have to be able to move forward at some point
14 and let's give it a try.
15 You can't make the perfect be the enemy
16 of the good. This document is dramatically
17 changed from the first iteration. Those people
18 that are saying that their comments have been
19 completely rejected I think are being
20 disingenuous, that's not true. That these
21 documents have definitely progressed, they have
22 changed.
23 We have made a lot of compromises after
24 listening carefully and actively to the concerns
25 of the wind energy industry. In fact the

1 categorization is a great example of that. We all
2 agreed that that was a useful way to provide
3 flexibility.
4 Finally I think you have to, and it is
5 your responsibility, to bear in mind that there is
6 a balance between some prescriptions that there
7 actually truly is a guideline and the flexibility
8 that people have so said they wanted. I have sat
9 in many workshops and heard people say they want
10 to be told what's necessary, they want clarity.
11 Then in the next breath they want
12 flexibility. Well there's a tension between those
13 two concepts and I think this document actually
14 addresses it pretty well. So I want to urge that
15 we move forward on this. Chapter 2 is fine with
16 me. But I would not hope that we get this thing
17 delayed any further.
18 We have a need to move forward. There
19 is federal legislation that we barely fought off
20 that would have been prescriptive that would have
21 made this look like a child's game had it gone
22 through the resources committee. And the
23 environmental groups like Audubon and Sierra Club
24 fought against that provision. And one of the
25 reasons was because we were working cooperatively

1 with industry to come up with guidelines that
2 mattered. Those here that are in the industry
3 that are speaking against these guidelines now, I
4 think you better think twice the next time a bill
5 comes up in the House of Representatives.
6 PRESIDING MEMBER GEESMAN: Well two
7 points. One, Commissioner Pfannenstiel and I have
8 not been asleep. We have paid careful attention
9 to the process for the last 18 months so we're
10 pretty familiar with what the history of the
11 various drafts and the various positions have
12 been.
13 Secondly, let's take off the table right
14 now any prospect for delay. Those that don't
15 think these guidelines are a good idea I'd suggest
16 you reserve your arguments for the full Commission
17 when we take it up on the 27th of September. What
18 we are trying to do today is focus on what the
19 content of the guidelines will be. So with that
20 notion any further comments on Chapter 2? Nancy.
21 MS. RADER: Nancy Rader again, CalWEA.
22 I had a couple of comments in response to some of
23 the other comments that were made, just briefly.
24 We were pleased to see the categories, which were
25 very similar to what we proposed, in there. The

1 thing that was missing was what goes along with
2 the easy category. There was no associated, and
3 CEQA should be easier for category whatever it
4 was, 1 or 4. You know, the low-impact category.
5 The sort of the punch was, you know, the important
6 part was missing.
7 Secondly I wanted to explain why it is
8 that CDFG's authority is in fact elevated in this
9 document beyond what CEQA requires. CEQA requires
10 consultation by the lead agency with CDFG. This
11 document requires prior approval of study methods
12 before you can deviate from the 52 weeks, three
13 years of study or the bat acoustical monitoring or
14 other things. You have to get advanced approval
15 from CDFG. That is not now a part of CEQA.
16 And then just to echo a little bit what
17 Peter Weiner said. The wildlife laws don't allow
18 even one take. This document seems to say, if you
19 collect reams and reams of data, years and years
20 of data, then we'll turn the other way. But
21 collecting reams of data won't eliminate the take.
22 So it doesn't -- it's like this document is
23 requiring a whole ton of research by the wind
24 industry in exchange for looking the other way on
25 one inadvertent take and we just don't think that

1 is appropriate. Thank you.
2 PRESIDING MEMBER GEESMAN: Others on
3 Chapter 2?
4 ASSOCIATE MEMBER PFANNENSTIEL: One on
5 the phone?
6 PRESIDING MEMBER GEESMAN: We have one
7 on the phone?
8 MR. McCULLOUGH: I think we have Kenneth
9 Stein on the phone.
10 PRESIDING MEMBER GEESMAN: Could we take
11 him first. I've had his card here for a few
12 minutes. Mr. Stein.
13 MR. STEIN: Yes, can you hear me?
14 PRESIDING MEMBER GEESMAN: Yes, go right
15 ahead.
16 MR. STEIN: All right, thank you. This
17 is Kenny Stein, I'm representing FPL Project
18 Management. Thank you, Commissioners. I manage
19 all of FPL Energy's environmental and permitting
20 initiatives in the Western US.
21 FPL Energy echoes others in commending
22 the CEC and Fish and Game staff for their efforts
23 to date. We continue to support the guideline
24 development process and remain hopeful that we'll
25 end up with a document that we can all be proud

1 of. However, we can't support the guidelines in
2 their current form since we believe, as many
3 others do here obviously, that there remain
4 several critical flaws in the document.
5 We have made several comments on the
6 previous draft issued in April. While we're happy
7 to see that many of them were accepted many were
8 apparently rejected since the July draft did not
9 reflect those comments.
10 Up until the second draft of the
11 guidelines there was, we believe, a fairly open
12 and productive exchange of ideas and opinions
13 amongst the various stakeholders. However that
14 dialogue essentially ceased once the April draft
15 came out. And because several critical and
16 crucial comments that we had on the draft were not
17 accepted we are left with very little
18 understanding as to why many of those comments
19 were not accepted.
20 I heard from Susan this morning that the
21 plan is in September once the final draft is
22 issued to have an explanation for those but it
23 seems a little late in the game. We would prefer
24 either in writing or via a more formal verbal
25 exchange an explanation as to why our comments

1 were not accepted and an opportunity to better
2 explain our positions in the event that maybe some
3 of our comments may have been misunderstood.
4 I think that kind of exchange is even
5 more critical now than it was in the early stages
6 of the guidelines. We now have words on paper
7 telling us exactly what is expected.
8 I guess I'll reiterate a couple of
9 concerns here, though they are the same ones that
10 we've made on previous drafts. Specifically with
11 respect to Chapter 2 there's only a couple. On
12 line 1043 of the July draft there's a statement
13 that says:
14 "The permit conditions
15 may have to include mitigation
16 measures that address the
17 other wildlife laws discussed
18 below, in addition to those
19 required by CEQA, to avoid,
20 minimize, and fully mitigate
21 impacts to birds and bats."
22 While we agree that measures should be taken to
23 evaluate and minimize impacts, perhaps even
24 impacts that might not otherwise be considered
25 significant under CEQA. Because I think as Scott

1 pointed out earlier a lot of times the studies
2 that you do, you'd have to do anyway regardless of
3 significance.
4 But we strongly disagree that wind
5 projects should be required to mitigate or
6 compensate for impacts that are less than
7 significant under CEQA. The guidelines as written
8 require mitigation in cases where frankly the law
9 currently doesn't require it.
10 For example, while certain strict
11 liability wildlife laws prohibit the take of
12 certain birds they don't necessarily require that
13 any and all takes be mitigated as the guidelines
14 currently imply. In fact, they don't allow
15 mitigation. And there is certainly no law
16 requiring that all bat impacts be mitigated for.
17 CEQA was intended to define those
18 impacts for which the state requires mitigation.
19 I'm concerned that the guidelines as written
20 suggest full mitigations for every single bird and
21 bat. And I don't think it's -- We don't think
22 it's appropriate for these guidelines to recommend
23 a mitigation threshold that is much higher for
24 renewable energy wind projects than what the law
25 currently prescribes for other projects.

1 One other, one other note on Chapter 2
2 on line 1030 and a similar statement is made on
3 line 306. At 1030 it says:
4 "-- following the CEQA
5 Guidelines alone may not
6 highlight all of the species
7 and issues that need
8 evaluation and mitigation."
9 I am not sure I agree with that. CEQA does really
10 require that you evaluate all environmental
11 impacts, birds and bats included, and then
12 determine significance. So we'd like -- I have
13 made this request before. I think having a
14 statement in there that suggests that CEQA doesn't
15 -- that somehow CEQA doesn't require us to assess
16 impacts on birds and bats isn't true. And I'll
17 save my other comments for the other chapters,
18 thank you.
19 PRESIDING MEMBER GEESMAN: Thank you
20 Kenny. Nicole.
21 MS. HUGHES: I just wanted to -- Scott,
22 you had addressed California Department of Fish
23 and Game's role in this. I just wanted to share a
24 story with you to show how we believe that this
25 will and has already impacted our ability to do

1 business in California.
2 In late 2005 we approached the
3 California Department of Fish and Game with a
4 protocol for studying birds, which included a
5 year-long study. At that time there was no
6 comments. Now since the inception of these draft
7 documents the Department of Fish and Game has come
8 back and basically said, all the things that are
9 -- you know, they haven't come out and said it but
10 all the items that are in these guidelines that we
11 have not conducted now are going to be needed for
12 our project.
13 So here is an example of where these
14 guidelines are being applied retroactively and
15 we're kind of being held hostage by the Department
16 of Fish and Game. We don't want to go to the step
17 of waiting for the Department of Fish and Game to
18 comment on our EIR once it's gone to the public
19 draft so we're being really patient and trying to
20 work with them on it but it has been pretty
21 difficult.
22 So there's two places in Chapter 2 that
23 I would like to point out where this is evident.
24 One is just on page 32 lines 1144 through 1149. I
25 would like to see, this would be a location where

1 I would like to see the CEQA time line inserted
2 into here to discuss -- there's review periods
3 that California Department of Fish and Game should
4 be following under CEQA. And that any non-
5 comments should be considered a concurrence with
6 your study plans.
7 And then additionally I just have a
8 small problem with on page 29, line 1009 through
9 1011:
10 "Inadequate data
11 acquisition may prompt a lead
12 agency to apply more stringent
13 impact avoidance, minimization
14 or mitigation measures to
15 ensure species protection and
16 may result in increased levels
17 of operations monitoring."
18 My concern is that, again, if we don't get timely
19 comments from California Department of Fish and
20 Game up front and at the back end of our project
21 the data analysis is considered adequate. We'll
22 then be penalized with more stringent mitigation
23 measures. So those are two parts of Chapter 2
24 that are really disconcerting to me.
25 PRESIDING MEMBER GEESMAN: Anyone else

on Chapter 2? Why don't we go to Chapter 3.

MR. BLUE: I thought I'd jump up here and get the soapbox while I can. Greg Blue with enXco. I am going to give a couple of comments on Chapter 3 but while I'm here, while I have the microphone I am going to make a couple of other quick comments.

We are members, board members of CEERT and CalWEA and we support their comments today. Also strongly support the ideas or suggestions about an explicit statement on grandfathering the projects that are already in the permitting process right now. It's not in there. Or a specific start date of this program is not in there.

Specifically we have heard a lot about the categorizations and I'll say this. From enXco's position there has been a lot of movement by staff. One of our major concerns earlier on was the formal role of the Science Advisory Committee. We've seen that drastically changed so we applaud that. We've seen some of the document reordered and some different orders from the earlier drafts. We appreciate that. We also see the attempt at the categorizations as a positive

1 step. Unfortunately, as I said earlier in my
2 earlier comments, this grades out as an
3 incomplete.
4 Our specific problem is, if you want to
5 go to a specific line is on page 37 starting on
6 line 1273. And also companion line 1361, that
7 paragraph there on page 39. What those two lines
8 are basically saying is that the burden of proof
9 is on the applicant to deviate from the standard
10 programs that have been laid out. Not only that,
11 the burden is being set by Fish and Wildlife
12 Service, California Fish and Game's biologists and
13 other appropriate stakeholders.
14 We think that's really not practical.
15 We think that if anybody is going to -- We would
16 be happy with the Energy Commission being the body
17 that sets the categories. We think you have
18 enough expertise to do that. The other specific
19 issue -- So we'll be giving you some written
20 comments on that particularly.
21 As I said, overall we think the comments
22 are moving in the right direction. Again, I think
23 there is time without delay to make some of these
24 changes that you are hearing today and I think
25 you're hearing some of the frustration. And I

1 think Mr. Stein from FPL really brought out the
2 issue that we haven't had dialogue in the last few
3 months to take some of these changes and I think
4 you're hearing some of that today. Thank you.
5 MR. LINEHAN: Good morning,
6 Commissioners. My name is Andy Linehan, I am
7 director of permitting for the wind portion of PPM
8 Energy. I work with projects nationally. I have
9 been part of this process of developing guidelines
10 over at least, it's been close to two years now
11 and I am very supportive of it and I'd like to see
12 it concluded on the schedule that you've set. And
13 I certainly compliment staff on responding to many
14 of the comments that the stakeholders have raised
15 over the course of the process. I think it's made
16 a lot of changes over time.
17 We still have a few specific issues that
18 I think are problematic to us and we'd like to see
19 fixed and I believe there is time to do that. And
20 I would like to focus specifically on what is said
21 about bat pre-project, pre-construction and post-
22 construction monitoring methods.
23 Now the bat issue is one that PPM is
24 very familiar with. We have been monitoring bats,
25 bat mortality at most of our projects around the

1 country whether required to by permit or not. We
2 are also founding members of the Bat and Wind
3 Energy Cooperative and have been working closely
4 with Bat Conservation International on a number of
5 fronts, including testing new risk assessment
6 technologies as well as starting last week testing
7 a bat deterrent device at our project in upstate
8 New York.
9 The guidelines as you know suggest that
10 there should be a full year of pre-project, I
11 should say pre-construction acoustic monitoring
12 with acoustic monitors raised up at close to hub
13 height and that these monitors be placed at a
14 frequency of approximately one per section of
15 land. We're familiar with that approach to pre-
16 project risk assessment.
17 We're working with BCI, Bat Conservation
18 International, at three of our sites in the
19 Northeast, Hoosac in Massachusetts, Casselman and
20 South Chestnut in Pennsylvania, and are attempting
21 or are trying that technology to see if in fact it
22 is a good method to assess bat risk. But as we do
23 that this is all -- the places where we're doing
24 that it has been entirely considered research by
25 the regulatory agencies.

1 In all cases the funding is coming from
2 multiple parties including BCI, the developer and
3 also state agencies. And the reason it's getting
4 multiple funding is that it is an untested
5 technology, an untested methodology. We don't
6 know if it will work to assess risk for bats at
7 sites. We believe it's hopeful but we don't know
8 that it will work yet.
9 In California at our Dillon site, which
10 is in the Palm Springs area, we're working with
11 Ted Weller of the Forest Service who has received
12 funding from PIER as well as from BCI as well as
13 funding from PPM Energy to test this methodology
14 at a 45 megawatt site in San Gorgonio. The
15 project has a budget of $200,000. That is only
16 for the acoustic portion of the testing. It does
17 not include post-construction mortality monitoring
18 which will have to accompany that. The funding
19 again is from multiple parties.
20 It is appropriate we think to be doing
21 research like this to see if that methodology will
22 in fact help us do a better job of assessing that
23 risk. But we do not believe it is appropriate for
24 all developers in all sites in California to be
25 required to do this as a routine manner.

1 What we proposed through CEERT was a set
2 of research projects funded by multiple parties,
3 including funding by developers who are not
4 involved in a particular site, at a range of sites
5 around California to try out this methodology in a
6 very rigorous way to see if in fact it works.
7 And we have obviously made our site in
8 Palm Springs available for that kind of research.
9 We'd certainly make other sites available to it
10 and would contribute funding to it. But we don't
11 believe that this should be required as a standard
12 practice at all sites until we know that in fact
13 it works.
14 And if you talk to many bat experts in
15 this field, for example Ed Arnett, and Ted Weller
16 may even say the same as well, this is still a
17 trial. We are not clear if this methodology will
18 work. And until we have a better track record
19 that in fact this will work at sites it should not
20 be required at all sites. Thank you.
21 PRESIDING MEMBER GEESMAN: Thank you
22 Andy. Other comments on Chapter 3?
23 MS. HOGAN: I'd like to briefly address
24 the issue on bats. I don't know if you were going
25 to talk about this. I have two comments and one

1 is going to slightly jump back to Chapter 2.
2 The bats that currently we are very
3 concerned about in California are migratory bats.
4 And I just have to look at this bit of CEQA. And
5 one of the things that CEQA is concerned about is
6 whether a project is going to interfere
7 substantially with the movement of any native
8 resident or migratory fish or wildlife species.
9 So to jump back to Chapter 3. I guess I
10 actually wish Ed or Ted were here to comment on
11 this because I am not sure that they would sort of
12 say, every site doesn't need to have surveys at
13 this point. Because again I think this gets back
14 to the fact that we do not have a mechanism to set
15 up a statistically appropriate way of surveying
16 for these things.
17 And in fact we do get project-specific
18 information from acoustic surveys at a site.
19 Solano County has been brought up a couple of
20 times. Solano County, based on the little
21 evidence that is there, is probably, is likely to
22 be a migratory corridor both north and south and
23 east and west for hoary bats and red bats and
24 possibly silver-haireds.
25 I just talked with Paul Cryan who has

1 been doing work on migratory hoary bats in the
2 Farallon Islands. In his opinion the evidence
3 shows that California is likely to be one of the
4 places where both male and female hoary bats,
5 potentially a majority of the population
6 potentially in the Western US and Canada, winter
7 in California. So this is really an important
8 thing. And project-specific acoustic monitoring
9 will give us information about pulses of migratory
10 activity of bats.
11 And I just want to make a comment that
12 we have in the guidelines put in, there was some
13 early concern about the cost of analyzing acoustic
14 data. And you get reams and reams of data if you
15 leave out acoustic monitors. There are ways to
16 filter that data and scan it and look for pulses
17 so you are not trying to identify the species of
18 every single bat call that you're getting.
19 So it's not that there's not expense but
20 sometimes I wonder if we're talking about exactly
21 the same thing when we're talking about expense in
22 terms of bat surveys. So I just wanted to make
23 that point.
24 MS. DELFINO: Kim Delfino, Defenders of
25 Wildlife again. That actually does go to a couple

1 of points I was going to make regarding the bat
2 survey methods. Defenders of Wildlife strongly
3 supports the survey methods that are currently in
4 the guidelines. Bats, as I am sure you have
5 already heard, they are long-lived, they have a
6 low reproductive rate. We are in what some people
7 think is a major migratory route.
8 Bats, if they are being impacted, will
9 because of their low reproductive rate are slow to
10 rebound. So we could have potentially huge
11 impacts on all bat populations. And for that
12 reason I think we need to take a precautionary
13 approach. These guidelines I don't think are
14 unreasonable in asking for this particular survey
15 method. I think Fish and Game has already made
16 the point about justifying why this method is the
17 right method.
18 And frankly, I would like to know what
19 -- I'd like to know what method the opponents
20 would propose for each project. I think it's good
21 to have a standardized approach. That's one of
22 the criticisms that Ed Arnett from Bat
23 Conservation International made in his testimony
24 before the House National Resources Committee in
25 May was that there is a lack of standardization of

information to know and understand what is going on in a broader context. And so here I actually think the standardization is a good thing.

And these are guidelines. So after a couple of years or a few years of doing research there is no reason why guidelines can't be changed. These are not etched into stone. So maybe it is appropriate. Maybe we need stronger surveys. But I think as a beginning point I think we would be very upset to see the change, any change made to the current survey protocols that are set forward for bats here in Chapter 3.

PRESIDING MEMBER GEESMAN: Let me ask. Do you think that it is reasonable to expect that there could be a potential adverse impact on bats at every site?

MS. DELFINO: On every single site?

PRESIDING MEMBER GEESMAN: Yes.

MS. DELFINO: You know, it's possible. And I think you made the point in Category 1 that if there are -- if there was existing data to show that surveys had been done in that particular area recently that bats don't exist then that's the case. And I think you've built wiggle room in here and some flexibility in the survey methods

1 under Category 1.
2 But, you know, with bats it's a hard
3 issue because there isn't a lot of data out there.
4 And again I would argue we'd be more protective
5 than less. Especially given the fact that we're
6 along major migration routes and they are slow to
7 reproduce so the impacts could be quite great. So
8 I think, again, that it's appropriate and I think
9 you have built in some flexibility in Category 1.
10 PRESIDING MEMBER GEESMAN: How easily
11 identified are those major migration routes?
12 MS. DELFINO: They are not that easy. I
13 mean, the data out there is not, there is not a
14 lot of data out there. So I don't know if Fish
15 and Game wants to give you any more detailed
16 response than that.
17 MS. HOGAN: Well again, I mean, up until
18 recently there just hasn't been the tools to even
19 begin to say anything about migratory corridors.
20 The issue of sort of the east/west, potential
21 east/west migration has actually been based on
22 things like museum records and what time of year
23 bats have been found in the Central Valley versus
24 on the Coast.
25 But there is now beginning to be a

1 network of detectors for various studies that are
2 actually showing these seasonal movements and
3 pulses and it is just sort of the tantalizing
4 beginning part of that. But again, based now on
5 talking with three different people who have been
6 doing acoustic work, and then also the work that's
7 been done out on the Farallons, there is
8 definitely migration going on in California.
9 And particularly for hoaries, which are
10 one of the species that are found, have been found
11 across the US and in California as mortality at
12 wind farms. Not just males but males and females
13 winter in California so you could potentially --
14 Again, this is one of these things where
15 I think the reason why it's important to be
16 precautionary is that my guess is there are going
17 to be a lot of sites where it is not a problem.
18 But at a site where it is a problem you could have
19 a really big impact on bats that breed in Canada.
20 You know, if your wintering females are all in
21 California and they are all funneling through a
22 certain area you could have a really significant
23 impact. So again, you know, the lack of
24 information is crazy-making.
25 PRESIDING MEMBER GEESMAN: Andy's point,

1 as I understood it, is that we have a clear
2 research need but that it is inappropriate to
3 saddle project applications with that research
4 need. Instead we should focus our requirements
5 for project applications on identifying what we
6 believe to be potentially adverse impact.
7 He also I think in invoking Ed and Ted,
8 who are easy to invoke since they are not here,
9 questioned whether this was a mature research
10 technique. And I think strongly inferred that it
11 would be more rational to fund a property
12 structured research study. The problem is there
13 are no resources to fund such a study so I think
14 that is a bit of a straw man.
15 How do you respond to that? Is this an
16 appropriate obligation to saddle new project
17 applications with?
18 MS. HOGAN: Well actually I may after I
19 answer this take a break and go see if I can get
20 them on the phone since we're talking about them.
21 They both may be available to call in.
22 I think there's kind of a two-part
23 answer. One is, I think it is appropriate on a
24 project-specific basis to get this information
25 because the question is, is this particular

1 project in this particular location in a potential
2 migratory corridor. And again, I am not sure one
3 year is going to tell you that. I mean, the
4 California Bat Working Group guidelines, their
5 recommendations were two years. The National
6 Nocturnal Methods and Metrics document that came
7 out recommends three years.
8 So it may be that you'll get negative
9 data and you haven't really answered the question.
10 But the fact is that you do get project-specific
11 information. If you get some pulses of activity
12 in the fall you then have some data saying, well
13 maybe we are in a migratory corridor and we need
14 to think how we're going to respond to that.
15 Then there is the secondary question of,
16 sort of two secondary questions, of how does that
17 relate to post-construction fatality. And that's
18 kind of a separate question and that gets into the
19 sort of research realm where -- again I think this
20 idea of a research fund is a great one. It's not
21 set up yet.
22 And frankly I was talking with Ed and he
23 said at this point if you did have a research fund
24 that was set up and you were already to go it may
25 be that sort of from a statistical point of view

you would want every single wind farm project that is being proposed to be part of the research because that's what you need to be able to have that information.

I mean, I'm kind of trying to separate the things because there is project-specific data that is worthwhile gathering from the acoustic stuff. There is the separate research question. But even if we had the fund it may be that the researcher setting it up would say, well you know, we need every wind farm that is being permitted right now in order to have a statistically valid study. Anyway, that's kind of --

PRESIDING MEMBER GEESMAN: I appreciate that. Kim, I'm sorry to interrupt you.

MS. DELFINO: That's okay. And actually she makes excellent points and I would completely agree with what she is saying.

I wasn't going to bring up the two year. The fact that it was originally proposed as two years for per-permitting and it was reduced to one. I frankly would have liked to have seen two years. But, you know, I'm happy with one. Two would have been better. Going down to nothing and simply doing a research fund is unacceptable. I

1 think that one year is appropriate to determine
2 site-specific impacts.
3 And I would wholeheartedly agree that we
4 do need additional research. And if there is a
5 way to set up a fund to do more research then I
6 would support that but I don't think it
7 substitutes for the one year pre-permitting survey
8 work.
9 And then let's see, one other point to
10 make. And that is on this issue that keeps being
11 brought up over Fish and Game's role in surveying,
12 approving survey protocols. In listening to the
13 discussion I went back and reread Chapter 3 again
14 thinking, I must have missed something.
15 But I have looked throughout the
16 document, looked at both pages 37 lines 1274
17 through 1276, then again under page 39 under the
18 heading, Securing Appropriate Expertise to Develop
19 Studies. It talks about working in consultation
20 with the lead agency, Fish and Game, Fish and
21 Wildlife, local environmental groups and other
22 agencies. On 37 it talks about, you know,
23 consulting the CEQA lead agency, Fish and
24 Wildlife, Fish and Game, biologists with other
25 expertise.

1 I find no reference here that somehow
2 Fish and Game has been given this higher role than
3 they already, that they somehow didn't have
4 before. They are a public trustee agency. They
5 are in charge of, constitutionally in charge of
6 our fish and wildlife for the state of California.
7 I don't understand where somehow there is this new
8 objection to a role they have already been playing
9 for many, many years.
10 And frankly if there's issues about Fish
11 and Game being slow in responding then my -- this
12 may be a little facetious but if I have to respond
13 here. You know, I'm up every year in front of the
14 Legislature asking for more money for the
15 Department of Fish and Game. They're one of those
16 under-funded agencies for the state of California
17 and charged with one of the most broad-reaching
18 responsibilities.
19 I would ask that the wind energy
20 companies complaining about slow permitting to go
21 and ask for more money from the Department to do
22 the job it's charged to do, rather than saying
23 that they somehow shouldn't be doing the job that
24 they should be doing. So that would just simply
25 be a point I would make on that. Thank you very

much.

PRESIDING MEMBER GEESMAN: Thank you. Other comments on Chapter 3? Paul.

MR. VERCRUYSSEN: Sure. Again, Paul Vercruyssen from CEERT.

On the bat issue again. I realize that Bronwyn isn't here and Ed may be calling on the phone so maybe we'll have to go back to this. But I think --

PRESIDING MEMBER GEESMAN: She's back.

MR. VERCRUYSSEN: Sorry. Okay, so she is here. The issue that is of concern. And again I want to stress that the wind industry and CEERT are not trying to ignore the bat issue. We understand it, we're trying to proceed in a logical way. And our concern is that through these acoustic studies thus far you have been for the most part unable to assess risk to the bat species.

And I'll read a couple of excerpts from a study that was published August 2006 by Ed Arnett that we submitted as a notation to our previous round of comments but is not actually a notation in the current draft of the guidelines. I feel that it is an important document from the

1 Casselman site that Andy referenced earlier.
2 "Interactions between
3 bats and wind turbines are
4 poorly understood."
5 Which we all have kind of come to that conclusion.
6 I think pretty much everyone agrees with that.
7 "Post-construction
8 monitoring has provided most
9 of what little information has
10 been gathered on bat
11 fatalities at wind farms.
12 Pre-construction surveys at
13 wind facilities have been
14 conducted and most commonly
15 employ acoustic detectors to
16 assess local bat species'
17 presence and activity.
18 However, using this
19 information to predict bat
20 fatality in thus risk at a
21 site has proved to be
22 challenging. Estimating the
23 amount of activity is
24 relatively straightforward but
25 estimating abundance requires

1 differentiation between
2 multiple passes of a single
3 bat and multiple bats making a
4 single pass, which is usually
5 not possible."
6 These are all points that get to being able to
7 differentiate. And I think what the concern of
8 both Defenders and the Department of Fish and Game
9 is, you know, trying to determine how to address
10 this problem. And while we don't dispute that
11 that's a concern we simply feel that requiring
12 these acoustic surveys doesn't get you there.
13 It has not been made clear and we have
14 asked this previously, what you would do with the
15 data. How that would how your project moves
16 forward. Because the data that you take in from
17 these acoustic surveys hasn't been able to be
18 correlated with risk at all.
19 Again, this leads to our concern that at
20 this point it is really just a research project.
21 it doesn't mean that you shouldn't be doing it but
22 it means that it really, the burden shouldn't be
23 entirely on the wind industry to do that kind of
24 research. And so it kind of --
25 Perhaps one of the other things that the

1 Department of Fish and Game can address is, once
2 you have this data how do you use it? Because
3 that really is not I don't think adequately
4 discussed in these guidelines. And they are a
5 significant cost to these companies.
6 The other issue that I'll just bring up
7 that actually came up during the previous session
8 a little bit was, it's continually been brought up
9 that the Department of Fish and Game has some
10 added authority from these guidelines. I think I
11 would for the most part agree that the guidelines
12 don't inherently give them some additional
13 authority that they don't already have.
14 However it is of great concern that
15 these guidelines are on behalf of the Department
16 of Fish and Game causing delays in projects
17 because people are waiting for their finalization
18 and retroactivity is being applied.
19 Also I would like to say we have been in
20 discussions with other public stakeholders in
21 going to the Legislature for additional funding to
22 the Department of Fish and Game to actually do
23 these project reviews. We have not officially
24 done it but we have had some informal
25 conversations with folks in the Legislature about

it. And I think depending on how these guidelines come out that is something that we would very likely do quite proactively. Depending on when this year's budget gets passed maybe this year or perhaps next year. Anyway, I would like to hear a little bit more feedback from the Department of Fish and Game on those two points.

MR. NOBLE: Commissioner, I'll be very brief here. A flaw in all of this is the assumption that if birds or bats are present that windmills kill them. That has just become scripture and it is not always the case. And I really renew my offer. If anybody can find a bird or a bat killed by a windmill in the San Gorgonio Pass I'll pay them $1,000 each. It just isn't happening in the desert.

So what I would like you to consider is exempting Riverside County until somebody can prove there is a problem. We're hearing it could be a problem, we're hearing lack of info is crazy-making. It is crazy-making. But there is a certain notion that, you know, guilty until proven innocent is probably a bad idea.

Until somebody can come forward and say that in Riverside County there is an issue here

1 you really have no business imposing a million
2 dollar expense on me to do bat studies if I want
3 to repower a project. It's not fair, I don't
4 think it will withstand legislative or judicial
5 scrutiny and it should be carefully considered.
6 The disconnect is between the presence
7 of creatures and whether the windmills kill them.
8 Or whether it's a power line that kills them or
9 another predator that kills them. The study whose
10 name cannot be spoken is obviously Exhibit A on
11 that notion. Prosecutor discretion a very
12 interesting concept.
13 I will tell you for sure that for every
14 bird killed by a windmill ten are killed by PG&E's
15 power lines and there's plenty of discretion being
16 applied in that regard. There is no high-rise
17 building in San Francisco that doesn't kill
18 hundreds of birds and prosecutorial discretion is
19 allowed there. Your cat probably kills more birds
20 than my windmills.
21 So until there is a connection between
22 the presence of the creatures and a study that
23 shows that the windmills are killing them in any
24 significant numbers, at least in Riverside County,
25 you really have no business going forward with

this kind of a set of rules because they have no rational basis in fact as it relates to Riverside County. So I would like you to consider exempting the area until somebody can find one dead bird or one dead bat. Thank you.

PRESIDING MEMBER GEESMAN: Couldn't Riverside County make that determination? I mean, is there anything in these guidelines that would compel Riverside County to apply them?

MR. NOBLE: Well.

PRESIDING MEMBER GEESMAN: Anything at all?

MR. NOBLE: These guidelines of course in de facto are not voluntary. The county governments know that if they don't follow them they're going to get sued. If you're going to enact this you should do it as a rule so it can be challenged correctly. The Board of Supervisors of Riverside County will pass a resolution requesting that it be exempted from the guidelines and that is coming down the road for you.

PRESIDING MEMBER GEESMAN: I want to clarify what we're trying to do here is chart a path through the jungle. We didn't make the jungle. But California, as I think everyone will

1 probably stipulate to, is a permitting jungle.
2 We're trying to articulate a set of guidelines
3 that if local agencies elect to follow them they
4 should have a reasonable assurance that this will
5 get through the jungle. And Ms. Delfino and
6 Mr. Zichella's local chapters won't come in and
7 harass your project.
8 MR. NOBLE: And that is a laudable goal.
9 It has as drafted unintended consequences and they
10 are fundamentally that it is such a labyrinth to
11 run that anybody that wants to litigate the EIR
12 can't lose because you just can't really do
13 everything that they could allege you should do.
14 That's number one.
15 Number two, it's irrational to apply a
16 statewide standard. The Altamont Pass, which has
17 trillions of rodents for the raptors to hunt,
18 versus the desert which has none. People think
19 maybe there's a migratory path somewhere in the
20 state, maybe there isn't. They're on the Farallon
21 Islands, which is 30 miles off the coast perhaps.
22 You know, let's define the problem
23 before we solve it, at least as it relates to my
24 part of the world, and let's not solve a problem
25 that doesn't exist. We just have had, I guess

it's good news for us s developers down there, it's a desert and we don't have the raptors coming down into the wind farm. They stay up in the mountains, 11,000 foot mountains. There's forests, they hunt up there.

So to apply all this on me and cost me two, three million bucks to repower a project, 50 megawatts, I'm not going to do it. I'll take down the old machines when they wear out, which is now, and I'll build trailer parks, which the county would like me to do. And then you'll get 500 cats. And I promise you, they'll kill more birds than every windmill in San Gorgonio Pass in the next 100 years. That's just the way it is. Thank you.

PRESIDING MEMBER GEESMAN: Thank you.

MS. LEVIN: Julia Levin, National Audubon Society. I have a couple of specific comments on Chapter 3. Again the Category 1. We strongly support the concept and we look forward to a time where we can have the majority of wind projects be fast-tracked. And I really do say that very, very sincerely. We want to see a five-fold increase of wind power in California. I think that is everyone's goal. We need to do it

1 to meet the RPS goals and hopefully expand the RPS
2 goals in the future.
3 So I think that Kim's -- Kim used the
4 word precautionary and I think that the point
5 here, or a lot of the point is these are existing
6 laws. To be sure that s we expand we don't have
7 ten more Altamonts. None of us wants to see that
8 again, in Northern or Southern California,
9 Mr. Noble.
10 So some of the challenge is we are
11 operating with a lack of data and the way that you
12 avoid things is to get better data. So I think
13 the reams of data I think will be very helpful.
14 And maybe we can all come back here in
15 two or three or five years and say, okay, we don't
16 need this part. It turns out it's really not a
17 problem, we don't need this part.
18 But if the turbines are already up and
19 running we see from Altamont how hard it is to fix
20 a problem later if we didn't do the research ahead
21 of time. I would be ecstatic, as would everyone
22 at Audubon, if it turns out not to be a problem.
23 We just don't know enough.
24 So for Category 1 we have a couple of
25 specific suggestions. I continue to be very

1 concerned that the emphasis is on similarity of
2 habitat. You can have very similar habitat on the
3 ground and completely different things flying in
4 the air. We can see that with Altamont and
5 elsewhere in the state. You can have similar
6 vegetation but on top of the hill there will be
7 one type of bird using it at one time of day or
8 one time of year and in the valley completely
9 different migratory use or species use.
10 So it's not enough to look at similarity
11 of vegetation or similarity of habitat because
12 that I think to the average person, to the average
13 permitting agency, is going to imply habitat on
14 the ground. It really needs to be similar habitat
15 and migratory use, migratory pathways.
16 Also I think the more Category 1
17 projects we have, and again I hope it's a lot and
18 more and more in the future, the more I think
19 there will be importance on looking at cumulative
20 impacts. Because we'll know single project, know
21 single in-fill, know single repowering may be a
22 problem when we do increase four or five or ten-
23 fold the windpower in the state and nationally.
24 They could become significant impacts
25 cumulatively. So I think that's very important to

1 bear in mind as we go through this.
2 And finally as I said earlier, I think
3 it's important even in Category 1 to give some
4 indication of whether any level of study is
5 recommended or if you're truly saying in Category
6 1, no amount of study is required. Because it
7 could be read that way now.
8 I think that one year should still be
9 recommended. I don't think that sets back
10 projects. I don't think it's anywhere near $1
11 million. I know what biologists cost, they come
12 really cheap. Much cheaper than most of us in
13 this room. I'm sorry for the biologists' sake. I
14 think it can be done for a very reasonable cost in
15 comparison to the cost of one turbine, which is
16 well over $1 million these days.
17 In Category 2 my comment is similar. I
18 think that two years is a minimal level of study
19 that should be required for projects in Category
20 2, which is defined as a category. We know there
21 will be significant impacts on wildlife. And
22 because both birds, and I am now starting to
23 learn, bats, vary a great deal from year to year,
24 one year may not be sufficient. There are a
25 number of birds listed specifically where it

1 probably won't be sufficient but I think there are
2 probably a whole lot more.
3 And from the presentations that we had
4 at the original AWEA, Audubon, CEC conference on
5 this it is very clear that wind permitting takes
6 several years in any case. And so I think again
7 to demonstrate good faith on the wind industry's
8 part there is no reason not to begin the bird and
9 bat studies very early on and then two years would
10 not create a delay in the project. I think that's
11 a reasonable request until we know enough to know
12 that it is not necessary.
13 In Category 4 I disagree strongly with
14 the comment earlier that this should be excluded.
15 We think this category is very, very important,
16 just as Category 1 is important to the wind
17 industry. I think we can all agree that there are
18 places where wind development is not appropriate.
19 The FAA and the military would set out certain
20 categories.
21 I think similarly if you look at the
22 founding purposes for national parks, state parks,
23 wilderness areas, wildlife refuges, some of the
24 other categories mentioned, none of those include
25 energy development as one of the purposes for

1 their creation. And I think most of us who
2 appreciate those very special and very limited and
3 already overtaxed areas would say that no
4 industrial development, energy or other, belongs
5 in those places.
6 And Audubon has met with the National
7 Parks Service and State Park Service and I think
8 if you met with Ruth Cole or others they would say
9 very clearly they do not consider it appropriate
10 to the trust resources that they are responsible
11 for. So we do thank you very much for including
12 Category 4 and recommend the other changes I just
13 mentioned.
14 PRESIDING MEMBER GEESMAN: Thank you.
15 Peter.
16 MR. WEINER: I do have to agree with
17 Julia that non-mission uses should not be placed
18 in state parks or national parks. That would
19 include wind projects.
20 With regard to the issues that have been
21 mentioned so far I would like to distinguish, as I
22 think it is probably possible to do, between birds
23 and bats.
24 When we talk about birds in these
25 guidelines we are talking about not only CEQA but

1 we are talking about the Fully Protected Species
2 Act, we're talking about the Migratory Bird Treaty
3 Act, we're talking about the special protection of
4 raptors under California law, of golden bald
5 eagles under federal law.
6 So it may be appropriate in some cases
7 that we talk in these guidelines about going
8 beyond CEQA because we're talking, as I discussed
9 earlier, about the relationship of these
10 guidelines to prosecutorial discretion and the
11 fish and wildlife agencies.
12 When we talk about bats we don't have
13 those laws. And so the guidelines as applied to
14 the bats come much more under CEQA unless we have
15 an endangered species. If we have an endangered
16 species of bat them those apply. But otherwise
17 we're really talking CEQA. And obviously CEQA has
18 constraints against speculation. It also doesn't
19 call for research.
20 So when we call for research here. And
21 I am strongly convinced that research is needed.
22 Imposing that as a guideline, as a study that must
23 be done for CEQA, is inappropriate because CEQA
24 doesn't require those kinds of studies. CEQA
25 requires full information, full presentation of

1 the information that currently exists. Not
2 further studies.
3 And indeed there is always a tension in
4 the cases between the need for early consideration
5 of those impacts before some studies are done
6 versus waiting until certain things that are
7 already in process are done that aren't required
8 by CEQA but that will be done.
9 So in this case yes, we can require
10 several years for permitting of wind projects. I
11 think its ironic that permitting of a fossil fuel
12 plant seems to take a lot less time than would be
13 required by these guidelines. So what are we
14 promoting here in terms of returns on capital?
15 Are we promoting fossil fuel or are we promoting
16 renewable energy?
17 With regard to the bat studies. Again,
18 I think to the extent that we cannot set up a
19 mitigation fund except through legislation
20 perhaps, perhaps that needs to be done. Because
21 there seems to be no doubt and everybody seems to
22 agree that more information is needed. But again,
23 imposing those on each and every project does not
24 seem justified by the science. It seems justified
25 by the need for information but that is not a

1 justification under CEQA.
2 Finally just one, small reiteration of
3 what I have been talking about a little while. On
4 page 58 lines 2067 and 2068 it says that
5 repowering -- it's just one sentence.
6 "Repowering requires pre-
7 permitting studies using the
8 same methods as those
9 described above for new
10 projects."
11 I take exception to that and would ask that that
12 sentence be deleted. The rest of the repowering
13 and pre-permitting assessment states that
14 applicable data may be available from the site
15 from the existing turbines and you should consider
16 whether recent, credible and applicable pre-
17 permitting study designs should address the fact
18 that new turbines have different characteristics
19 than set forth here.
20 That's fine, but it doesn't take the
21 same methods as those described for new projects.
22 That's over-reaching. Thank you.
23 PRESIDING MEMBER GEESMAN: Other
24 comments on Chapter 3? Nancy.
25 MS. RADER: Again I wanted to respond to

1 some things I heard, particularly your exchange
2 with Fred Noble about well gee, couldn't Riverside
3 County just decide not to use these guidelines.
4 But then you before or after that explained that
5 this gets this through the jungle. In other
6 words, they are going to be immune from lawsuits
7 if they follow these guidelines.
8 And that's where we're at. Is that
9 these guidelines put the weight of the state
10 behind a particular course of study, 52 weeks for
11 three years bird counts. So that if a project
12 wants to take a different approach, an approach
13 that was just approved by an appeals court in the
14 Pine Tree case, the county is going to have to
15 think twice. Because they're going to have to
16 think, gee, in a court of law now the litigant can
17 introduce these CEC guidelines to further bolster
18 their case.
19 Now hopefully the science will prove out
20 in the courts again. But what we don't want to do
21 is require an unnecessary course of study just to
22 avoid litigation. I mean, it's just wrong. And
23 like Peter said, it promotes fossil fuel not
24 renewables.
25 PRESIDING MEMBER GEESMAN: So in the

absence of these guidelines what's to stop someone in Mr. Zichella's local chapter going in and suggesting three years of acoustic surveys pre-construction for bats?

MS. RADER: Well nothing. But I guess, you know, the point is we want to consider rationally whether that is required under the CEQA process and I think Peter Weiner just explained that it is not.

I think what is most inappropriate is that clearly there is an information void about bats. My question is, why is it the wind industry's job to gather basic data about migration routes for bats across the state of California when we don't even know whether the presence of bats means that those bats are going to be killed by the wind projects.

Why isn't the housing industry, why isn't every other industry affecting bat habitat and bats flying into structures, why aren't they being also contributing to this research? Why is it the wind industry's job to fill this research void about bats. I mean, as G. Walker likes to point out, the fossil fuel industry isn't the one that did the research on global warming.

1 And here we are, one of the ways we are
2 going to fight global warming is being dragged
3 down by this research requirement that really has
4 no justification because we don't know that the
5 presence of bats means they are going to be killed
6 or in what circumstance. I mean, what would we do
7 if we found out there were migrating bats across
8 San Bernardino County where we have got a huge
9 concentration of wind resources, the second-next
10 to Tehachapi.
11 Where are we going to go? There is no
12 other resource area like that in the state. Are
13 we going to not develop there because there are
14 bats there? The implication is that we are not
15 going to develop there if there's bats, even
16 though we don't know that we're going to kill bats
17 in sufficient numbers to be significant.
18 I just don't know where it's going and I
19 don't think it's appropriate to put that kind of
20 burden on an industry that was trying to fight a
21 much larger environmental problem that is going to
22 affect every species on earth.
23 PRESIDING MEMBER GEESMAN: Anyone else
24 on Chapter 3?
25 MS. HOGAN: I'd actually just like to

1 address Chapter 3 briefly and also kind of to
2 Nancy's question. I think one of the things in
3 terms of -- sorry Andy. One of the things in
4 terms of the little bit of information that we do
5 have about bats is that so far the evidence is --
6 and again, it's not deep or wide but the evidence
7 is that it's migratory behavior, that it's
8 seasonal and that there are pulses.
9 So I guess one of the questions that
10 comes up is, okay, well if you don't want to do
11 any pre-construction monitoring to see whether
12 there is something going on are you willing to
13 agree to operational changes if it turns out these
14 are predictable, seasonal events that can be
15 avoided if you change operations.
16 And I don't know if that's going to be
17 the case but it's sort of -- And CEQA does require
18 that you look at whether a project is going to
19 interfere substantially with the movement of
20 resident or migratory fish and wildlife. And I
21 totally understand the frustration that other
22 impacts are not being addressed but we're not here
23 to talk about housing construction. And frankly,
24 you know, I do work on that issue and there are
25 people trying to work on those issues but this

1 isn't the process to do that.
2 So I guess I just have to say that you
3 do get project-specific information and there is a
4 question about what we would do if we find out
5 that there is a migratory pathway. And that leads
6 to the fact that we need to look at some
7 operational mitigation because that probably is
8 going to be the only -- I can't imagine that a
9 turbine is going to be removed unless there were
10 a really dramatic circumstance.
11 And I'm going to talk about Ed since
12 he's not here and he's in a management meeting so
13 he won't be able to call in soon. I was talking
14 to him the other day and he did want to talk about
15 there keeps being this discussion about well we
16 don't know if pre-construction acoustic monitoring
17 is going to tell us anything about or be able to
18 make a risk assessment about post-construction
19 fatality.
20 And as he likes to say there is a
21 difference between no correlation or the idea that
22 there is not a correlation based on lack of data,
23 which is what we have now. When people say there
24 is no correlation it is not that we know that
25 there is not a correlation, it's that we don't

have the data. And being able to say there is or isn't a correlation based on having collected data at a lot of sites across a state or a region and then say, after doing a proper analysis there is or isn't a correlation.

So I just wanted to put that out there because I keep hearing, well there is no correlation. Well, we don't know that there is not a correlation.

PRESIDING MEMBER GEESMAN: I've got a blue card from Ted Weller, USDA Forest Service. Is he on the phone?

MR. WELLER: I'm here. Can you hear me?

PRESIDING MEMBER GEESMAN: Yes, go right ahead.

MR. WELLER: Okay, great. My name came up a white ago and I called in then but it's taken a while for me to get here. I guess I agree with everyone who said that there is, that the link between pre-construction activity and potential fatalities is unknown. So the question is, how are we going to get at that?

And the way to do that is to measure the activity of bats during pre-construction and then to measure fatalities to look for correlations.

So I can only see two ways to go about that. One is to have some standardized protocol where we apply a limited amount of effort at each of these facilities and later link that with the data on mortality.

And this would address the person from Wintec who is saying there aren't any bats there. We would be able to determine, well we found a large number of bat activity yet we found no mortalities. So that would lead us to believe that there wasn't a strong link. I just ruined it myself there.

But there's two ways to go about it and one of them is to require some amount of activity monitoring at every site. The other is this idea of a research cooperative where we have several maybe more intensive efforts through this research fund and these would need to be conducted at several regions throughout the state because of the variability in habitat, et cetera. SO those are two options.

And just thinking about it from a scientific perspective and how we're going to get the best information, it could be that we get it from having every project do a little bit.

1 Because we know that there's a lot of variability
2 in the impact that we see. So a greater number of
3 sites with maybe lesser effort might be the way to
4 go.
5 And this was demonstrated I think best
6 in Alberta where there hadn't been any problems
7 with bats for years and there were several wind
8 farms online where they were searching for bats,
9 nothing. And then one came online and it killed
10 many, many bats. I don't know the numbers but I'd
11 say it's in the thousands of bats in a single
12 season was the estimated number. So it is not
13 always predictable. So I think a greater number
14 of sites is preferable to fewer.
15 The other point I wanted to make is that
16 Andy discussed the project that we're doing
17 cooperatively, the Dillon Project down in the San
18 Gorgonio area.
19 That's not entirely just addressing this
20 simple question of whether there is a link between
21 preconstruction activity and mortality but it's
22 more addressing some of the specifics that are in
23 these guidelines about what level, what amount of
24 monitoring do you need to conduct at each of these
25 facilities to start to get a good idea about the

1 total amount of activity by various species groups
2 and the variability that exists within an
3 individual wind site. Because there is a reason
4 to believe that it does vary from, that it might
5 vary say between three points at an individual
6 wind facility. So measuring just one of those
7 wouldn't provide you a very accurate measure.
8 So I'll stop there, I guess.
9 PRESIDING MEMBER GEESMAN: Thank you.
10 Andy.
11 MR. LINEHAN: You've heard me talk a lot
12 about that so I'll talk just a little bit more. I
13 think what Ted just clarified about the work at
14 Dillon, he said it better than I could articulate.
15 But I still think what we're trying to do is test
16 the methodology and see if it's something that is
17 useful to apply elsewhere.
18 So then the question is, what do you do
19 in the meantime? I think in the meantime we
20 either do a reduced form of what's been proposed.
21 That is not one bat per square kilometer -- excuse
22 me, per square mile, because that could be quite
23 intense, or we could look at other indicators of
24 whether there is likely to be significant bat
25 activity.

We know from the projects we have in the Northwest -- excuse me, in the Northeast, as well as those we have in the Northwest, that mortality of these migratory bats is correlated, particularly with the presence of wooded areas and water bodies. They tend to be in their migration using those wooded areas and water bodies for shelter and for roosting. And we have seen consistently higher mortality at those sites and lower at the sites that don't have a lot of wooded cover.

Now that may be a correlation that doesn't prove out long term. We really don't know a lot about bats. But we could be requiring that projects identify the presence of those kinds of risk factors. In addition there may be places where there are known bat hibernacula or bat activity. Those are obviously the higher indicators of higher levels of risk.

But they should also be required to demonstrate or to conduct post-construction mortality monitoring so that we can start to accumulate this data that shows where bat fatality is an issue and where it isn't.

The question has come up of if we went

to our recommendation to do a series of research projects in a variety of settings in California and what the funding mechanism might be. Well there is an existing funding mechanism, which is the Bat and Wind Energy Cooperative, which is administered and staffed by Bat Conservation International and it's used in a number of states as a mechanism to do exactly this kind of research. I am not aware of legal or other reasons why this couldn't be a tool in California as well. Thanks.

PRESIDING MEMBER GEESMAN: I've got a blue card from Kenny Stein and Jim Lindsay from FPL. I believe both of them are on the phone. One of you gentlemen want to address us?

MR. LINDSAY: FPL Energy Project Management and technical advisor to BWEC. Actually most of my comments have been very succinctly stated by a number of previous speakers. But in summary I feel that Energy Project Management endorses limited pre-construction acoustical monitoring with post-construction mortality monitoring to determine efficacy of the pre-construction work.

But the magnitude of monitoring proposed

in these guidelines adds an inordinate amount of cost and time the development of a project. And for answering more far-reaching research questions like determining broad front migration paths of multi-species such as red, hoary bats, that we would endorse more regional approaches such as what Mr. Linehan just talked about that. And he is very correct in that the mechanism is already in place through the Bat and Wind Energy Cooperative. Thank you.

MR. STEIN: This is Kenny Stein with FPL Project Management as well. I guess I will echo what Jim Lindsay just said. Also I just wanted to point out some statements from the draft guidelines. It states on line 2003 that:

> "Acoustic monitoring for bats is currently the most common method used for assessing bat activity at proposed wind development sites but has yet to be shown to be strongly associated with estimates of collision risk or impact. The correlation of pre-permitting acoustic data

with collision risk is an area of active research and topic worthy of further investigation by the collaborative, public-private research partnership being considered by the Energy Commission, CDFG, wind energy developers and non-governmental organizations interested in wind-wildlife."

It also states at line 1957 that:

"-- a fundamental gap exists regarding links between pre-permitting assessments and operations facilities."

FPL Energy is in favor of trying to better understand interactions between wind turbines and bats. But it's clear that just because we don't have a good understanding we shouldn't be requiring every single project to basically engage in research.

It would be a terrible precedent for these guidelines to set. This is not required anywhere else. Where there's an opportunity to

1 fund appropriate research we're interested in
2 participating in that. But to blanketly require
3 the application of a protocol that is clearly
4 still in the research phase is something we
5 wholeheartedly can't support.
6 PRESIDING MEMBER GEESMAN: Thank you,
7 anything else on Chapter 3?
8 MR. FLINT: I'd just like to clarify.
9 It seems to me there's some differences of opinion
10 on what is research versus what would be required
11 for perhaps assessing a site for CEQA.
12 And I just want to point out that we see
13 both things here. First of all there is a need to
14 have some credible information about what's going
15 on at the site to make a CEQA analysis.
16 Having that sort of assessment with the
17 best available technology is one thing. And
18 clearly something that goes on, that's imposed on
19 all developers at all sites for all kinds of
20 projects to figure out how to assess their
21 impacts.
22 As to the efficacy of that particular
23 methodology, that still needs to be researched.
24 As to the correlation between pre and post that
25 still needs to be researched.

1 There are both things going on here,
2 which is why we had made some changes to the
3 guidelines in response to comments we had to
4 reduce the level of post-project monitoring and
5 institute this payment into a research fund.
6 So I think we've, I just wanted to make
7 sure it got across in that way. That's what I
8 feel is in the document.
9 MS. WOLFE: Marcia Wolfe, Oak Creek
10 Energy. I think everybody else has kind of
11 summarized most of my bat comments already. But I
12 do have a little bit of additional information
13 here.
14 We're working on some bat studies in
15 Tehachapi. For over a half year now we've been
16 doing three-times-a-week, mortality, carcass
17 surveys and seasonal, daily monitoring and we
18 haven't found any dead bats.
19 Yet we are concerned about the extensive
20 requirements. And we're hoping to gear up for
21 this September to do a 13.5 square-mile, study
22 area. But I want you to know it will be very
23 expensive. The cost for the data collection would
24 be about a half million dollars a year. The
25 equipment alone for a single site we've got costs

us from two manufacturers $50,000 each site, so there's $100,000.

And that doesn't count good biologists who are experienced enough to be able to analyze the data and collate the data, analyze it and figure out what it means. Although some biological field techs come pretty cheap,people with experience and that know what they're really doing are not cheap. So that's it relative to bats. Not so inexpensive.

I have some other stuff on Chapter 3 that I held off on because it had to do with birds. Are we ready to change subjects or shall I step down?

PRESIDING MEMBER GEESMAN: No, anything in Chapter 3 is fair game.

MS. WOLFE: Okay. All right, great. I think one of the points, main points that we wanted to make about the guidelines is we felt they were economically burdensome while not providing the information that we think we're going to need to be able to properly site our wind farms. Or to provide protection to the affected species proportionate to the relative impacts of wind energy compared to other impacts to birds.

1 The guidelines would require two, Oak
2 Creek to hire two, full-time ornithologists to do
3 the weekly sampling. We felt that is burdensome
4 when seasonal sampling was statistically adequate.
5 A number of points would provide far better data.
6 The guidelines require on the bird use
7 counts one to 1.5 points per square mile and to
8 stratify those points among the different habitat
9 types.
10 I'm not a statistician but I've had
11 enough statistics classes and I've designed enough
12 scientific studies to know that if you a have 64
13 hundred square acre site and you only have 10 to
14 15 points stratified among several different
15 habitat types you will not have nearly the
16 statistically, adequate data that you need from
17 which to draw any type of conclusion.
18 Statistically whenever you have less
19 than 30 points you have a small, what's considered
20 to be a small number. And any conclusions based
21 on small numbers are suspect.
22 In general the nationwide sampling
23 standard for point counts are five to ten minutes
24 per the US Forest Service guidelines.
25 Increasing the sampling time to 30

1 minutes does not make up for an inadequate number
2 of points. Furthermore birds are highly mobile,
3 consequently being able to get statistically,
4 adequate data can be complicated, maybe impossible
5 in some cases.
6 But I'd sure hate to spend $100 million
7 of my money to design and construct a wind farm
8 that might end up being in the wrong place based
9 on conclusions from statistically, inadequate
10 data.
11 These are the types of issues that can
12 result in huge, biological and ecological
13 mistakes. And it's something that a friend of
14 mine calls BGOs, blinding glimpses of the obvious.
15 And we would certainly hope to eliminate these
16 from the guidelines.
17 PRESIDING MEMBER GEESMAN: Thank you.
18 MS. HOGAN: I actually have kind of a
19 question but I think it will clarify because
20 there's --
21 PRESIDING MEMBER GEESMAN: Okay.
22 MS. HOGAN: -- there's been some cost
23 talk. And I guess I have a question about what
24 kind of equipment is it that's costing, did you
25 say, $50,000? Is this for acoustic?

1 MS. WOLFE: ANABAT stations, yes.
2 MS. HOGAN: Is this for acoustic
3 stations?
4 MS. WOLFE: Yeah, and with solar --
5 MS. HOGAN: No, no, no. I just have to
6 say, I mean we just bought an AnABAT setup with
7 solar panels, with battery backups, with extra
8 flashcards with two mics, with the ZCAIM and
9 having them altered to deal with a flaw that came
10 from the factory. And the total cost, I mean an
11 over-estimate for the total cost for that was
12 $3,700. And so you're --
13 MS. WOLFE: Each one, and then you got
14 to have somebody get it up there and climb up on
15 another --
16 MS. HOGAN: Okay, so I'm just --
17 ASSOCIATE MEMBER PFANNENSTIEL: Excuse
18 me, if your comments are going to get into the
19 record you have to speak into the mic.
20 MS. HOGAN: Okay, sorry, I'm just, so I
21 guess because I, so you're saying that for your
22 whole study site that's how much? Okay. So not
23 per station. So, okay, okay.
24 PRESIDING MEMBER GEESMAN: Carl.
25 MR. ZICHELLA: Thank you. Just a couple

of quick things. We're generally okay with Chapter 3. We have been sympathetic to the question of funding throughout this conversation over the last, greater than a year now, a year and a half.

But we also think we need to use the best tools that we have available to us to get the information that we need. It may not be perfect. As others have said we can always modify these guidelines later to reflect new understandings, and should.

This would mirror the history of just basically every other environmental regulation we've ever had. If we don't have perfect understanding when we begin the alternative is to do nothing and doing nothing I don't think is acceptable under these circumstances.

So while I do agree with a lot of what I heard from Andy about having to have some joint funding and setting up more robust protocols that's not an excuse not to do a basic, fundamental bit of information gathering required anyway under CEQA using the best information technologies we have.

PRESIDING MEMBER GEESMAN: Thank you.

1 Anything further on Chapter 3?
2 MS. CONWAY: Michelle Conway, Oak Creek
3 Energy Systems. Chapter 3, page 39, lines 1341
4 through 1348. The guidelines still contain a
5 broad generalization with respect to larger sized
6 projects.
7 Oak Creek has disagreed with this in our
8 previous set of written comments. We see that
9 it's still in the guidelines. We've pointed out
10 that the number of turbines that make up a wind
11 project and the overall size of a wind project
12 may, of course, influence the need for more or
13 less study but they are not the sole indicators.
14 Because you could have a small project
15 with a small number of turbines in an area with a
16 high number of sensitive bird or bat species.
17 Therefore we requested in previous comments that
18 the guidelines not state that as the number of
19 turbines increase the magnitude of the potential
20 harm to bird and bat populations also increases in
21 every case.
22 We feel that this is misleading to the
23 public and to agencies to lead them to immediately
24 fear larger projects versus using the appropriate
25 tools contained in the guidelines to put the

1 project into Category 1, 2, or 3.
2 We need larger projects in lower bird or
3 bat impact areas. So we would request that the
4 staff please consider our comments again.
5 And I would just like to reiterate that
6 we agree with FPL's comment that September is too
7 long to wait for an explanation as to why some of
8 these comments haven't been included. Thank you.
9 PRESIDING MEMBER GEESMAN: Thank you.
10 MR. VERCRUYSSEN: One more brief
11 comment. Paul Vercruyssen again from CEERT. I
12 just want to clarify and I apologize if you're
13 already aware of this. But the question was
14 brought up, what the wind industry would propose
15 as sort of alternatives aside from the research
16 projects.
17 In the interim between the last formal
18 comment period and the release of this draft CEERT
19 organized a conference call with your staff, Ted
20 Weller, Ed Arnett, Carl Zichella was also on the
21 phone. To basically discuss some of the
22 alternatives that have been thrown out there
23 today. Looking at hibernacula, possibly doing
24 seasonal studies rather than a full year. Which,
25 I mean, Bronwyn was talking earlier about the fact

that what appears to be most at risk is migratory pathways which would be seasonal rather than a full year.

And so we, again, I just want to make it clear that we have really tried to proactively propose alternative solutions. And that's where the frustration that I mentioned earlier is coming from. And so I think you've heard a couple of those ideas throughout this discussion. Thank you.

PRESIDING MEMBER GEESMAN: Other comments on Chapter 3?

Let's move to Chapter 4.

MS. MUDGE: Annie Mudge, CalWEA. This is kind of a hybrid comment. But it strikes me that when we're talking about the Categories 1, 2, 3, those are -- Just as an example, Category 1 could be a high-impact or a low-impact project. The categories are really referring to the existence of data. And so for instance, Category 1 project sites with available wind data, Category 2, project sites with little existing information, Category 3, projects with higher uncertain potential. They are being categorized not into impact categories but data categories.

1 And so what I think is missing from the
2 guidelines is an encouragement by this body, say
3 no matter what -- after you've gotten the data
4 that you need to make that assessment, we
5 recommend local agency that you provide
6 opportunities for streamlining for low-impact
7 projects.
8 And I think the Audubon Society would
9 agree with that. That we should be focussing our
10 efforts on the high-impact projects. So let's not
11 lose sight of the fact that these categories are
12 about effort and research, they are not about
13 impact. And what's missing here is encouragement
14 by this body to get wind production going in
15 California for the lower-impact projects. In
16 particular, re-powers but also in-fill projects.
17 So I think people are talking about
18 these Categories 1, 2, 3 as high or low-impact and
19 that's not what they are. So I wanted to just
20 bring that out, thanks.
21 PRESIDING MEMBER GEESMAN: Julia.
22 MS. LEVIN: I have two comments. And
23 I'm sorry I'm not sure if they're Chapter 3 or
24 Chapter 4, I didn't track down and see where they
25 were.

1 And just on Annie's point, I'm not sure
2 whether I agree with that or not. I think that
3 there's a blending of how much we know versus what
4 level of impact is likely.
5 I think Category 2 is very much about
6 where there is likely to be a more significant
7 impact you need to do more. And Category 1 is if
8 you know enough to know you're not going to have a
9 very significant impact on protected species. I'm
10 not sure there's such a clear distinction there.
11 My other two comments are on the
12 Scientific Advisory Committee. We agreed with
13 industry that at least in the first draft of the
14 guidelines, while we agreed with the intention of
15 staff and consultants and drafters that it
16 appeared to be very burdensome and more regulatory
17 in nature than I think was the intention.
18 And so I think the way that it is
19 described now is very helpful. If anything we
20 would be more comfortable with a further
21 elaboration but that's probably not possible at
22 this point. We still do very much think it's an
23 important idea to pursue and encourage you to
24 pursue it in whatever ways you can moving forward.
25 And I do want to go back to Kim's plea

about the funding. Audubon and Sierra Club to our very -- it was a very controversial but we were out in front trying to stop federally-mandated guidelines because we felt that the good-faith efforts of industry in many states including here and the voluntary-guidelines process is likely to be more constructive, to happen more quickly and that we want to stand behind this process that we've begun, particularly in California.

Those were not easy decisions for our organization. They were very controversial. And we were attacked by other wildlife conservation groups for putting our weight which, actually to be honest was more important than the wind industry in this fight in saying that we would rather continue with the voluntary-guidelines process.

I haven't seen similar efforts from the wind industry in California when it comes to the funding. I've heard complaints about Fish and Game. And believe me we share your concerns. We wish Fish and Game had a lot more resources.

We would like to see parallel, good-faith efforts from the wind industry. Commissioner Geesman I know you've been helpful in

1 trying to make arrangements with the Department of
2 Fish and Game. But the original reason for the
3 Scientific Advisory Committee, to be very frank,
4 was because Fish and Game wasn't able to fulfill
5 those functions. Which were it adequately staffed
6 and funded I think much of what the Scientific
7 Advisory Committee would be doing could be done by
8 Fish and Game. But they just simply don't have
9 the resources and so we have to bring in these
10 outside experts.
11 So I would say in the same way that
12 Sierra Club and Audubon and Defenders and other
13 wildlife groups have gone to Congress, have gone
14 to the State Legislature, fought very hard to
15 renew the production tax credit, to pass the
16 renewable electricity standard federally.
17 I would ask the wind industry in
18 California as a demonstration of your good faith
19 to make, even if not the actual guidelines
20 themselves, but to reduce impacts and take
21 reasonable precautions, help us get that funding
22 for Fish and Game. It is critical to make all of
23 this work smoothly. And that is very much related
24 to the Scientific Advisory Committee.
25 My last very specific comment is in a

1 number of places risk zone and direct impacts are
2 limited to the rotor swept area or the turbine
3 area. And there are other direct impacts and
4 there are other risk zones, for lack of a
5 different term, including new transmission lines
6 that need to be built as a result of new wind
7 farms and other direct impacts as well.
8 And so I think it's important not to
9 ignore the other direct impacts that occur from
10 wind development and not to limit the definitions
11 or to narrow them more than is appropriate. Thank
12 you.
13 ASSOCIATE MEMBER PFANNENSTIEL: Julia, I
14 have a question. When you spoke to Congress about
15 preferring voluntary guidelines to the mandatory
16 guidelines that they were considering was this
17 based on California or other states having
18 successfully implemented voluntary guidelines?
19 MS. LEVIN: Honestly, we're not sure any
20 of the states have yet successfully implemented
21 guidelines. We have concerns of different types
22 in every state that's taken on the process.
23 The reason that we did that was twofold.
24 We feel like we have stated publicly that we
25 support the voluntary guidelines in a number of

1 states. And now Audubon along with many
2 conservation groups and industry members are on a
3 federal advisory committee process to redo the
4 federal draft guidelines.
5 And so we think those processes have
6 begun. And given the lack of good information
7 data that we don't, this isn't like in the
8 technology field with the coal planners where we
9 know if you do A, it will have B result.
10 We think given all of the uncertainties
11 and need for additional research that voluntary
12 guidelines are more appropriate at this point,
13 assuming that there is good-faith effort to strike
14 a reasonable balance.
15 We know we want the wind industry, we
16 wind power to expand but we want to protect
17 wildlife and other sensitive resources. But for
18 the time being we think it's more appropriate to
19 have voluntary guidelines until we have much
20 clearer answers.
21 And then as I said many times we would
22 love to stand up and create exemptions, create a
23 wind-appropriate, habitat-conservation-type-plan,
24 process if it will take permits. We just don't
25 know enough yet for mandatory guidelines or these

1 categorical exemptions.

2 ASSOCIATE MEMBER PFANNENSTIEL: Thank

3 you.

4 PRESIDING MEMBER GEESMAN: By my

5 estimate we've got about an hour and a half left.

6 And unless you all object violently I would

7 suggest we take an hour break and come back at

8 1:30. We'll see you at 1:30 then.

9 (Whereupon, the lunch recess

10 was taken.)

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1 AFTERNOON SESSION

2 PRESIDING MEMBER GEESMAN: We had heard
3 from Annie and Julia when we broke for lunch on
4 Chapter 4. So are there other comments on Chapter
5 4?

6 MR. WEINER: Peter Weiner for CEERT.
7 One of the things that we've observed over time is
8 that when it comes to mitigation, to put it
9 mildly, the jury is out.

10 We have estimated, we have various
11 researchers who have estimated what to do in order
12 to mitigate impacts. But they shift ground over
13 time so that what they said yesterday is not what
14 they say today and we have very little in the way
15 of proven mitigation measures.

16 The discussion beginning on page 62 on
17 impact avoidance and minimization is rife with
18 fudge language or qualifiers I guess we should
19 say. And that's the problem. Is that what we
20 need in here, and we'll suggest language, is some
21 frank discussion of the fact that we don't have
22 proven mitigation measures.

23 This is one of the reasons why at one
24 point we proposed an experimental, mitigation
25 fund, not research. But a fund that would conduct

1 experimental mitigation of some of the types that
2 are talked about in this discussion.
3 Because when you look at the recent
4 reduced impacts with appropriate turbine design
5 it, if we take all the language out of about half
6 a page worth it says, we don't know.
7 When you take a look at turbine layout
8 it talks about estimates of avoiding avian
9 mortality by various researchers who never were
10 able to show any correlation yet. We're trying to
11 do that for example at Altamont at this point.
12 But it's not known.
13 On page 65 there's a particular problem
14 where it talks about reducing artificial habitat
15 for prey at the turbine base area. One of the
16 issues that has arisen at the Altamont Pass wind
17 resource area is that researchers said that the
18 creation of artificial rock piles that were
19 developed when rocks were taken out so you could
20 level off turbine pads was a problem
21 But when our companies were prepared to
22 move them the Fish and Wildlife Service said, well
23 they can provide needed habitat for Kit fox and
24 other terrestrial species so don't do it yet.
25 And there's an ongoing question as to

1 whether to remove such artificial habitat or move
2 it instead of remove it. So these kinds of issues
3 are complex. They are experimental. Some of them
4 may be more proven such as avoiding power line
5 impacts which is stated here.
6 So, but calling out which are proven and
7 which are experimental and are possibilities I
8 think would be useful in this document. Because
9 it's almost always important to say what we know
10 and not what we don't know.
11 MS. WOLFE: Marcia Wolfe, Oak Creek
12 Energy. A little nit, Appendix H seems to be
13 missing from my copy. I don't know if anybody
14 else has Appendix H or not. But the reason I
15 noticed is because it's supposed to be backup data
16 for the use of reporting mortality per megawatt of
17 installed capacity per year.
18 And although I understand the rationale
19 behind that relative to needing or wanting to be
20 able to see some metric that makes things
21 consistent and to eliminate the difficulty and
22 complexity of attempting to describe the
23 differences in mortality between turbines of all
24 different sizes, it may well be in fact the
25 differences amongst the size turbines that make a

1 difference relative to mortality. And if you
2 report mortality per megawatt you will mask those
3 differences. You won't be able to see them.
4 PRESIDING MEMBER GEESMAN: Other
5 comments on Chapter 4? Anybody on the phone?
6 Okay, let's move to Chapter 5 then.
7 Comments on Chapter 5?
8 Comments on any of the appendices?
9 MS. WOLFE: Oh wait a minute I do have
10 something on five. I just --
11 PRESIDING MEMBER GEESMAN: Okay.
12 MS. WOLFE: -- because my comments were
13 not prepared in this order, I'm sorry. I was
14 trying to sort them out. Marcia Wolfe again.
15 Post-construction, bird-use monitoring
16 is required by the guidelines. And I understand
17 superficially why people want to see that but it
18 isn't going to help much and I'll try to explain
19 why.
20 We already know for example from Dick's
21 earlier studies in the Tehachapi that mortality of
22 certain birds species is disproportionate to their
23 presence in the base population. For example, you
24 might have, and now these are made up numbers, but
25 you might have two percent of the bird populations

being red tail hawks but 80 percent of the red tail, of the mortality may be red tail hawks.

So if you do post-construction monitoring what does it really mean if you have one or two years of data? If the birds after you put in the turbines, if there's more birds does that mean that maybe that the installation of the wind farm enhanced bird habitat? Or if there are fewer birds does that mean they were scared away? Well my contention is it doesn't really mean anything. Because you can't really tell anything from one or two years of data.

Bird populations go up and down naturally for dozens of different causes. Weather, food availability, disease and, excuse me, apparently global climate trends now as well. We need really long-term data, twenty plus years possibly to be able to even begin analyze trends and fluctuations in bird populations. And so monitoring birds post-construction for one or two years, well, that will give you some data but how are we going to interpret it?

So now am I suggesting that we need to monitor for 20 years before we can do a wind farm? No, that would be insane. But we need to be able

to use local, regional and statewide data to help get a handle on baseline conditions and what's happening.

This could be data from other wind farms, other types of studies and annual Audubon, regional, trend data. But the guidelines prohibit use of data that's older than five years.

And to me that makes no scientific sense when what we really need are longer data sets. So I wanted to make that point.

And I think that just because Dick's study in Tehachapi is older than five years right now according to the guidelines I can't use that information. Well that makes no sense. I'm building on that information. That's what we're doing. That's what we're doing now.

And I think that it seems like you have a lot of negative comments. They don't mean that Oak Creek Energy wants to do nothing. On the contrary, we are already implementing many environmental protective measures.

And we're interested in doing what makes sense for their project sites and the environment. For example, in the interest of reducing uncertainties Oak Creek has been conducting

1 carcass searches three times a week for the past
2 year instead of the prescribed once every two
3 weeks proposed in the guidelines.
4 And we're also doing a series of daily,
5 seasonal surveys for bat carcasses because
6 apparently like small birds they're getting picked
7 up much more quickly than the larger birds.
8 We're trying to do things that make
9 scientific sense. So cookbook guidelines do not
10 provide that approach. And they're rigidness will
11 prevent us from adapting our study methodologies
12 to those that may be more statistically and
13 scientifically sound for Oak Creek projects sites.
14 As well they do not allow for building
15 on existing avian data which only increased costs
16 but can preclude appropriate evaluation of
17 sampling results. Thank you.
18 PRESIDING MEMBER GEESMAN: Thank you
19 Marcia. Other comments on Chapter 5 or any of the
20 appendices?
21 MS. LEVIN: My comment is on Chapter 5.
22 Julia Levin, National Audubon Society. We think
23 that the post-construction monitoring is a
24 critical part of the guidelines at least until we
25 have much better data and a much higher degree of

1 certainty about the impacts.
2 I think we all in this room recognize
3 that there are a lot of open questions. And that
4 birds and bats do move from year to year. I was
5 happy to hear that acknowledged. The patterns are
6 not all the same from year to year.
7 In a perfect world if money were no
8 object the post-construction monitoring would
9 occur for much longer than two years but two years
10 is certainly better than no years. Particularly
11 where we are having to estimate or even
12 guesstimate. I think in a number of cases that
13 will be what occurs.
14 This is like a lot of areas in the
15 guidelines, something that I hope in two or five
16 or ten years we can all come back and say we only
17 need one year. And in the Category 1 cases maybe
18 we won't need at that point. But we're not there
19 yet.
20 Maybe it would make industry more
21 comfortable though if the guidelines explicitly
22 acknowledged that over time this requirement, it
23 may appropriate to or, not requirement, sorry I
24 misspoke, that this suggestion could be lowered as
25 we gain more knowledge about the habits of birds

and bats and particularly how they react to wind development in different parts of the state.

And with all the other changes going on maybe the suggested number of years for post-construction monitoring could go down in the future. But I don't think that at this point it would be appropriate at all. In fact, I think given the previous comments which we would agree with and all the changes from year to year if anything this is the lower end of the range that we think would be appropriate until we know a whole lot more.

PRESIDING MEMBER GEESMAN: Other comments on Chapter 5?

MR. VERCRUYSSEN: Paul Vercruyssen again from CEERT. On the post-construction or the operations monitoring. There's two sort of very important different pieces to what's being recommended in the guidelines which is the fatality monitoring. Going around looking for dead birds and then the use monitoring, which is essentially, excuse me, doing the same observations, the same use counts that you were doing pre-construction.

And in my conversations with the staff I

1 understand that the view from the staff in
2 requiring the use monitoring is to be able to put
3 a proper context on what the fatalities numbers
4 are which is to say that if you had an unusually
5 high amount of use by a bird species for one year
6 then unexpectedly high levels of mortality could
7 be explained by that. And it wouldn't necessarily
8 mean that there was having, that the site was
9 having an unexpected level of impact.
10 That's the argument that's been put
11 forward as I understand it. And this is in off-
12 line conversations I've had with your staff since
13 the last round came out.
14 In our last round of guidelines or last
15 round of comments on the guidelines we had asked
16 that these requirements for use studies which are
17 the most expensive part of a monitoring regime,
18 generally speaking, could be useful post-
19 construction but in very limited circumstances.
20 Which we hired a biological consultant who helped
21 to draft our comments and you can refer back to
22 those. But there are some displacement impacts
23 that could be, where it could be useful, some
24 other instances like that.
25 But given the cost to be incurred we

1 didn't feel that it was going to be helpful to
2 simply go out and see how the birds were using the
3 landscape. That said, I think it's, I think it
4 could be useful if you did in fact have a higher
5 level of impacts than anticipated if you in
6 subsequent years then maybe did acquire some use
7 monitoring.
8 But I think as a blanket statement and I
9 certainly, I don't disagree with Julia at all that
10 post-construction monitoring is one of the most
11 crucial ways to determine, to fill a lot of these
12 gaps that we've been talking about all day. But
13 most of that is fatality monitoring that we're
14 going to essentially be proving or disproving the
15 efficacy of our pre-construction estimates.
16 And to use the use monitoring, post-
17 construction works in certain instances and it
18 could be sort of a later trigger but we don't
19 think that it works as a blanket requirement. And
20 we'll be adding some additional, more technical
21 comments in our written comments.
22 Obviously I'm not a biologist but I have
23 had a good deal of contact with them on this
24 issue. And so, thank you.
25 PRESIDING MEMBER GEESMAN: Other

1 comments from the audience on Chapter 5?
2 Mr. Stein are you on the line?
3 MR. STEIN: I am.
4 PRESIDING MEMBER GEESMAN: Do you have a
5 comment on Chapter 5?
6 MR. STEIN: I do and I actually have a
7 few comments on three and four. I tried to chime
8 in earlier but something must have been not
9 working.
10 PRESIDING MEMBER GEESMAN: Okay.
11 MR. STEIN: On five and I apologize that
12 I missed this because I was a couple of minutes
13 late. I heard earlier that the two years of post-
14 construction monitoring for, acoustic monitoring
15 for bats was no longer required or even
16 recommended. But it does seem that there's still
17 language in the guidelines that says that those
18 kind of studies should accompany all sites.
19 And there's another couple of places
20 where it says, well, two years of post-
21 construction bat monitoring would be necessary if
22 the agency and the stakeholders think that it
23 would be helpful for contextual purposes.
24 So I'd like some clarification as to
25 whether or not I'm misunderstanding that because

with the language as it is we'd have to assume certainly from a cost point of view that we have to do that post-construction, bat monitoring as well.

I'd like to say we did not work with, I think it was Stu Webster from Clipper, but in doing some math came up with approximately the same number. About a million dollars a year to do both the avian and bat monitoring that's required with one year pre and two years post. You're looking at somewhere around three million dollars.

I'm wondering if, like it's done with the federal government when environmental regulations are issued and OMB requires that the agency do some sort of an economic impact analysis because we're talking about extremely costly studies here.

If the CEC and Fish and Game staff have done, gone through the effort of trying come up with a cost for implementing these protocols, give us an opportunity to discuss those costs so that the Commission has a better understanding of the cost/benefit analysis of some of the protocols that are being proposed.

On sticking with Chapter 5, when long-

1 term monitoring might be required we've made
2 comments a couple of times that we don't think
3 certainly after two years that there should be an
4 open-ended requirement for long-term monitoring.
5 The criteria when for when that would kick in is
6 pretty vague. It just seems -- says that if
7 fatality levels are high, but that's not really
8 defined.
9 We suggested that if that was something
10 that agencies or stakeholders or others would be
11 interested in that perhaps the guidelines should
12 recommend that the proponents open their sites up
13 to allow agencies to conduct longer-term studies.
14 But it not be a requirement of the
15 project proponent to do studies for potentially
16 the life of the project. That comment was not
17 taken and I haven't had an opportunity to get any
18 reaction on that.
19 Protocols for post-construction, avian
20 use monitoring as Paul just mentioned. We're
21 concerned that the blanket requirement to do two
22 full years of avian point counts in addition to
23 the mortality monitoring ,so we're talking 52
24 weeks a year for two years is, you know, at a
25 significant cost. The benefits you get from that

1 don't justify the costs.
2 We'd like to explore, we see the value,
3 the potential value depending on the site, of
4 having some use data in conjunction with mortality
5 monitoring. But perhaps there's a lower level of
6 study that can be done maybe for focussed periods
7 during certain seasons or less frequent site
8 visits that can lower the cost of doing two full
9 years of post-construction, avian mortality but
10 still get data that's useful for providing the
11 context for mortality data that you're looking
12 for.
13 Going back to Chapter 4, where we had
14 made some comments regarding adaptive management
15 where if you're going to require additional
16 compensation in cases where mortality turns out to
17 be higher than expected that the project proponent
18 will be credited if the mortality turns out to be
19 much lower than expected.
20 And that comment was not taken so I'd
21 like before the hearings why that was the case.
22 If we should be paying more when there's higher
23 than expected than why wouldn't we want to pay
24 less if it's less than expected.
25 We also in Chapter 4 suggested that in

1 talking about mitigation lands that we should be
2 required when mitigation lands are appropriate to
3 find lands that have a biological value equal to
4 or higher than the area impacted. That comment
5 was not taken when and the guidelines just require
6 that the mitigation land have a high biological
7 value. However if the area that we're impacting
8 has a low biological area I am not understanding
9 why you necessarily have to find equal mitigation
10 that has a high biological value.
11 And a couple of minor points. Back in
12 Chapter 3, my apologies for going backwards. In
13 the use count, pre-construction use count which I
14 guess carries over to post-construction since you
15 have to follow the same protocol, it still
16 suggests that we include reference sites in there.
17 And I think we had all come to the
18 conclusion that reference sites may be appropriate
19 for studies where there's displacement issues but
20 not necessarily for just bird use, avian use
21 through the area. And that seems to remain in the
22 guidelines. And coming up with reference sites is
23 often really difficult because either we don't
24 have control over those sites for the long term or
25 if they're really good reference sites, meaning

similar habitat, similar vegetation we may very well want to put wind turbines there at some point.

Also I have the same comment that was made earlier that while in one statement it suggests that most projects would only be required to do one year of pre-construction studies, which we agree with, but then goes on to say that post projects that involve developing multiple groups of turbines over large geographic areas may need multi-year studies.

Well, that basically negates the first statement because most projects, or certainly a lot of them will be large projects with multiple turbine configurations so you take that almost immediately out of that one year category with that statement.

Another requirement in pre-construction was to do net searches out to three miles. When you have certain raptors, for example, golden eagles that might be in the area, we've commented that we thought going out to one mile was probably sufficient but didn't understand the requirement to go out to three miles.

Because if you're requiring pre-

1 construction point counts 52 weeks a year to
2 understand what birds are at risk for flying
3 through the rotor swept area then any birds that
4 reside two, three, four, five miles out, you'll
5 pick up that risk via the point counts.
6 But to actually go out and have to find
7 every resident raptor within three miles, we just
8 don't understand the basis for that requirement
9 since it doesn't necessarily indicate risk over at
10 the site. And the point counts are intended to do
11 just that.
12 And finally a couple of general comments
13 to just reiterate what has been said before.
14 We're concerned that the guidelines don't have any
15 statement regarding retro how they would be, how
16 they could potentially be applied retroactively.
17 So right now without things being explicit in
18 there we're concerned that they would be applied
19 retroactively to projects that are already started
20 down the detailed, pre-construction phase.
21 And we also made a comment that the term
22 pre-permitting be changed to pre-construction so
23 that lead agencies would have the opportunity as
24 they sometimes do to allow some of the studies
25 that are longer term to finish after a permit has

been issued with appropriate conditions suggesting that if for some reason in the last few months of the study the conclusions showed something different than what was assumed then you now insist that obviously you'd have to go back and review them.

But we've had situations in the past and hope there would be in the future where we wouldn't hold up the permitting process because a one or two year study needed to be completed and allow the lead agency the opportunity to condition the permit on completion of those studies. Thank you.

PRESIDING MEMBER GEESMAN: Thank you. Other comments on Chapter 5 or the appendices?

MR. ZICHELLA: Carl Zichella of the Sierra Club. Just one quick comment. I thought we had addressed that five year issue in a previous draft. I've just looked through this and I couldn't find it anywhere. Where we wanted to keep the research as current as possible recognizing that climate change is driving a lot of changes in behavior and when birds and bats and other animals migrate.

So, yeah we do want to have current data

1 but if there was a relevant study we were
2 convinced I thought at a previous workshop. Isn't
3 that right, it's not a five year thing. Right,
4 that's what I thought.
5 So I just wanted to clarify that point.
6 And the two year, post-construction monitoring
7 issue was a considerable compromise. Realizing we
8 agreed that, you know, longer is better but we
9 need to get these facilities on line and operating
10 and not keeping undue costs on the generators.
11 PRESIDING MEMBER GEESMAN: Nancy.
12 MS. RADER: Nancy Rader, CalWEA. I just
13 wanted to point out one of many instances where
14 CDFG's approval is required to reduce the level of
15 study. And this instance in Chapter 5 is on page
16 72, line 2596 where it says, if you want to reduce
17 the operational, the post-construction,
18 operational monitoring shorter than two years you
19 need to get the approval of CDFG and the US Fish
20 and Wildlife Service.
21 So, you know, you'll probably wait for a
22 response for them before, you'll probably wait the
23 entire two years before you get a response from
24 them but you'll probably have to do it anyway.
25 But since we know that they're inclined

1 to want more information there's, it's not likely
2 that your studies are going to be shortened.
3 That's just one of a number of instances where it
4 says you have to get approval to deviate from the
5 prescribed study.
6 MR. WEINER: Peter Weiner, one more
7 thing. Kenny Stein mentioned the cost of these
8 studies. And they are significant. And one of
9 the questions is whether the Commission would feel
10 comfortable perhaps outside the guideline process
11 advocating to the Public Utilities Commission that
12 these costs be rate recoverable pursuant to
13 Section 701.1 and 701.3 of the Public Utilities
14 Code.
15 Those sections, although I do not have
16 them before me, and I hadn't thought about it
17 before I came here today, are, if I recall
18 correctly, authorization for the Commission to
19 pass on costs of renewable energy projects to the
20 public where justified by the environmental
21 benefit. That's outside the market referent price
22 and so on and so forth so far as I can tell in
23 terms of statutory authorization.
24 And if we are going to impose these
25 costs on a renewable energy source that we

otherwise think is beneficial to the environment in terms of our carbon footprint and all the other reasons we like renewable energy, then perhaps that is something that the Commission could at least let the PUC know that they've considered and might be advisable for the PUC to consider. Thank you.

PRESIDING MEMBER GEESMAN: Other comments on Chapter 5 or the Appendices? Well I think for today then we're just about done. As the notice points out we are soliciting written comments until August 22. The notice says, and I quote:

> "The most useful comments are those that reference page and line numbers of the document and provide specific, recommended revisions."

That probably goes without saying.

I believe the staff has committed to responding to all of the various comments that we received with some written document when you release the next draft. Do you have a sense as to when that is likely to be?

MS. WARD: Let's see. The Business

1 Meeting is on the 26th of September so I would
2 anticipate that to be about two weeks before then.
3 PRESIDING MEMBER GEESMAN: So
4 approximately the 12th of September.
5 MS. WARD: We have it on our schedule as
6 the 14th.
7 PRESIDING MEMBER GEESMAN: The 14th of
8 September.
9 MS. WARD: Yes. That's when the
10 Committee's final draft and decision document are
11 posted online. And we intended address comments
12 not taken. The many changes that did make we
13 didn't feel that we needed to --
14 PRESIDING MEMBER GEESMAN: Okay. But
15 the ones that you rejected then you would address.
16 MS. WARD: Yes.
17 PRESIDING MEMBER GEESMAN: And explain
18 why you rejected it.
19 MS. WARD: Right.
20 PRESIDING MEMBER GEESMAN: Okay. Paul.
21 MR. VERCRUYSSEN: Paul Vercruyssen again
22 from CEERT. I actually had a question for you and
23 perhaps for your staff as well.
24 The biological consultant which we have
25 been using throughout the past couple of rounds of

1 commenting I have actually already talked to him
2 and it is going to very difficult to have fully
3 developed comments from him by the 22nd.
4 And I actually had talked to some of the
5 other public stakeholders, one being Golden Gate
6 Audubon, that had wanted to be here today but was
7 unable to be here today. So I'm wondering how
8 hard and fast that data is? I realize that the
9 next Commission Business Meeting would be coming
10 up fairly soon and so there is not a whole lot of
11 flexibility. So I'm wondering how hard and fast
12 that date is.
13 PRESIDING MEMBER GEESMAN: Let me
14 address it from the back end. I think that you
15 should regard the September 26 date, which I think
16 I earlier misstated as September 27. The
17 September 26 Business Meeting as hard and fast.
18 MR. VERCRUYSSEN: Right.
19 PRESIDING MEMBER GEESMAN: And the
20 August 22 deadline is a desirable deadline.
21 You've heard the staff say that they intend to
22 release the decision draft on September 14. So I
23 think the closer you get to September 14 the more
24 you reduce the likelihood that your comments will
25 be reflected in that draft. The more that you end

1 up having to rely on the Commission changing
2 something in the decision at the Business Meeting
3 of the 26.
4 MR. VERCRUYSSEN: Okay.
5 PRESIDING MEMBER GEESMAN: So it's
6 really your call.
7 MR. VERCRUYSSEN: I wonder if actually,
8 and I apologize, if I could make one final
9 comment.
10 PRESIDING MEMBER GEESMAN: Sure.
11 MR. VERCRUYSSEN: I was actually struck
12 today listening to some of the discussion earlier
13 and this morning and thinking about some of the
14 other work that I do, sometimes with your
15 Commission and before the Commission in other
16 places.
17 There are power plants in the state of
18 California which quite apart from the global
19 warming impact emit massive amounts of criteria
20 pollutants, particularly particulate matter, which
21 has a hand in the premature death of thousands of
22 Californians each year.
23 Through the direction of the laws of the
24 state of California those impacts can be mitigated
25 with pollution offsets, which can be purchased

1 various ways and achieved various ways through the
2 different air districts.
3 But that's deaths of human beings that
4 we're talking about and that's why -- it's one of
5 the reasons I and I think a lot of the people in
6 this room work very hard to get a lot of these
7 projects permitted.
8 And there is -- This has been said many
9 times before in many settings. There is no silver
10 bullet to global warming or any of these problems
11 and there is no completely benign energy resource
12 anywhere. This includes solar, this includes
13 wind, geothermal, fossil fuels obviously.
14 And I would just urge everyone in this
15 room. Staff, the Commission, the public
16 stakeholders, to keep that in mind because it is
17 something that sometimes when we get bogged down
18 in the specifics of the scientific data we forget
19 that there is an alternative scenario out there
20 that I think everyone in this room seems to be
21 committed to avoiding. It struck me today that
22 sometimes we have gotten away from that.
23 So thank you.
24 PRESIDING MEMBER GEESMAN: I guess I
25 would -- Your having said that I want to add what

1 I think is the complementary view, which I recall
2 quite distinctly from the joint workshop that the
3 Audubon Society and I believe it was the American
4 Wind Energy Association sponsored in Los Angeles
5 now more than a year and a half ago.
6 And that is that it is belief at the
7 Commission that we very much need to accelerate
8 the development of wind energy in California. And
9 that the example of a litigative and scientific
10 and political quagmire such as the Altamont proved
11 to be is something that stands as a very real
12 dangerous impediment to our objective in
13 accelerating the development of wind energy.
14 It has been our belief since 2005 that
15 the best way to do that would be to develop in as
16 consensual a way as possible a set of voluntary
17 guidelines that local lead agencies could rely
18 upon in making permitting decisions. That's what
19 we're trying to do. We won't be done until the
20 end of September. Even when we are done it's
21 going to be an imperfect document.
22 But I think that it has benefited
23 greatly by the input from a variety of different
24 interests, many of whom I suspect over the course
25 of the last 18 months have had varying feelings of

support and non-support. These things being the way they are I suspect as we get closer to the close it's more likely that we'll hear the non-support than the support, and that's fine.

MR. VERCRUYSSEN: Sure.

PRESIDING MEMBER GEESMAN: And that's fine. It helps us improve the end product. But I think that we shouldn't lose sight of the fact that the Commission's motivation here is one of energy policy and a very strong desire to accelerate the development of wind energy in California.

MR. VERCRUYSSEN: That is evident and I appreciate and agree with those. Thank you.

ASSOCIATE MEMBER PFANNENSTIEL: I would like to add just a thought on that too though. I think there have been a few implications in the course of today that we're somehow impeding development of this resource, which as Commissioner Geesman just pointed out, couldn't be further from the truth.

But I would also like to point out that when the state passed AB 32 and adopted the greenhouse gas targets that we did, we did so very consciously saying, we will not allow degradation

of our environmental programs that are currently in effect. That we see the challenge of AB 32 as being able to reduce greenhouse gases while protecting the environment with the other regulations that are in place.

I just think it is really important for people to understand that from our perspective it isn't one or the other, we do intend to do both.

PRESIDING MEMBER GEESMAN: We'll be adjourned.

(Whereupon, at 2:14 p.m., the Committee Hearing was adjourned.)

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CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Committee Workshop; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said workshop, nor in any way interested in outcome of said workshop.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of August, 2007.