RENEWABLES COMMITTEE HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION

In the Matter of: )
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

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
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

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
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 Vercruysse, 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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PRESIDING MEMBER GEESMAN: I want to welcome you all to a workshop of the California Energy Commission's Renewables Committee. I am John Geesman, the Presiding Member of the Committee. To my left, Commissioner Jackalyne Pfannenstiel, the Commission's Chair and the Associate Member of this committee. And to my right, Suzanne Korosec, my staff advisor.

This is a workshop on our proposed guidelines for reducing the impacts to birds and bats from wind energy development. I think that most of you have probably participated in our earlier workshop, several staff workshops on the same topic. It is our hope that we can wrap this up today.

As a consequence what I'd like to do go into as much detail as any of the commentors feel is necessary or appropriate for us to fully understand the content of what you're saying and attempt to work through areas.

I recognize the likelihood that there will be particular topics in which people simply don't agree. That's fine. What Commissioner
Pfannenstiel and I need to do is determine as best we can where each of the parties stands on a particular issue.

So if you will, this may be a little more painstaking than some of our past workshops but I think that the effort today will hopefully bear some fruit.

With that, our agenda, we have a welcome and schedule update from Misa Ward of our staff. Misa.

MS. WARD: Thank you, Commissioner Geesman. As stated my name is Misa Ward, I work in the biology unit of the California Energy Commission. I am here just to go through a couple of things with you.

First of all I want to thank everybody for coming out. We hear that some members may be delayed due to an accident so we're hoping that they will be able to join shortly here before we get too deep into the discussion.

Just a few housekeeping items before we begin. For those of you not familiar with the building, and I see that a lot of you probably are, the closest restrooms are located either to your left or to your right as you exit the hearing.
room here. There is a snack bar on the second
floor underneath the white awning if you need any
refreshments. And lastly, should there be an
emergency, we ask you to follow the employees to
the appropriate exits and we'll reconvene at
Roosevelt Park, which is just diagonally across
the street from this building.

With those items covered I just want to
go through some other things here. And that would
be that there are a number of handouts at the
front on the tables. We actually have some copies
of the guidelines document for those of you that
may not have a copy with you today.

We have the Notice of Availability for
the documents and we have a workshop notice which
contains instructions for commenting and how to
docket items that you might want to submit on the
guidelines document.

The agenda is also there and I'll go
through that with you. There is also a sign-in
sheet. In case you didn't see that, we'd like to
record your names, make sure we get them accurate
for the transcript here.

There are also some blue cards out front
and those are if you would like to make a
statement. You can give those blue cards to Brian McCullough who is sitting up front. We also have some -- We may have some people on the phone that may want to give some comments and Brian will also be filling out blue cards for those folks.

There is also a lunch map out front should this go into the lunch time and you need a place to go near the building.

So as far as the agenda review. It's going to follow a similar format to the last meeting, which is we are going to have a brief staff presentation on the committee draft guidelines and then we'll open it up to public comments. Then after that the Renewables Committee may have some concluding remarks and next steps for us.

So with that I'll jump right into the schedule update. Since the last workshop the document has since become a committee draft. And that means the Renewables Committee has been and will continue to direct CEC and Fish and Game staff to make final adjustments for the Committee final draft.

We expect some changes to the document from this hearing to be reflected in the final
document to be considered for adoption. The Business Meeting to consider adoption will be September 26. The Committee final draft plus a decision document, which states reasons for changes not made, will be posted on-line just before that Business Meeting.

As a reminder, the comments for this draft are due on August 22. And just to close out the guidelines website, we plan to leave that operational posted option for ongoing feedback. And that's all I have, thank you.

PRESIDING MEMBER GEESMAN: Susan, are you going to give the staff overview?

MS. SANDERS: Um-hmm. My name is Susan Sanders, I'm one of the four authors of the draft guidelines. And I'd like to thank you all for the many detailed, specific comments that you have once again provided and for the many useful suggestions for improvements to the guidelines.

As with past drafts we've incorporated many but not all of the comments and suggested revisions. A decision document, as Misa mentioned, will be released with the next version of the guidelines to discuss all the comments that were not incorporated, along with the reasons they
were not accepted.

Many of the changes that were made were minor rewordings and there were quite a few specific suggestions on some of the technical elements of study protocols, especially in Chapters 3 and 5. Many of these were accepted and we are grateful to those experts who read the draft so carefully and made so many thoughtful recommendations for improvements.

I won't go over those minor rewordings or technical revisions today but will summarize the major topics for which we received suggestions and how they were addressed. These include, one, tiering and categories of projects; two, recommended methods for bats; three, research fund; four, science advisory committee; five, operations monitoring; and six, the voluntary nature of the guidelines.

Scott will then go over some of the comments received on Chapters 2 and 4 and will discuss the Department of Fish and Games decisions on some of the recommended revisions.

One, tiering and categories of projects. CalWEA and CEERT provided some detailed 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
Category 1 does not include any kind of categorically exempt status for a project that would sidestep the careful site assessment and evaluation of existing data. And Scott will talk more about this.

Category 1 does not explicitly mention repowering projects because we don't yet have the data to support the conclusion that newer, taller turbines reduce bird and bat impacts. Repowering data are still developing but a comparison of fatality data for repowered turbines versus old turbines in Solano County suggest wildlife impacts may not be reduced with repowering, or may be reduced for some species but not for others. A recent analysis of bat fatality data throughout North America suggest that bat collisions increase as turbine heights exceed 65 meters.

The categories and the guidelines are sufficiently flexible so that some repowering projects may fit into Category 1 and need less study but that decision cannot be made without a project by project assessment.

Two, bats. Some commentors pointed out 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
data with fatalities, indicates that recommendations may change with new research, and that this is an issue that will receive research attention.

With respect to contributions to an experimental mitigation fund as an alternative to project-specific studies for bats. Currently there is no such fund and no mechanism for an applicant to contribute money on a project-by-project basis so it can not yet be included as a recommendation and guidelines.

And that brings us to the third topic, the research fund. Everybody here strongly supports establishment of a mitigation research fund with contributions from private and public sources to do collaborative, focused research on the impacts of wind development on bats, and other issues about which research is needed.

The Energy Commission and Fish and Game agree that a research fund would have great benefits. The Energy Commission has already committed $1 million for PIER to study wind wildlife issues and would like to see additional research above and beyond this program. PIER's research plan will identify opportunities to
leverage research funds and certainly supports collaborative efforts for stakeholders.

Some of the unresolved issues on the suggestion is determining which entity has the authority and the resources to collect the funds and administer the program. Also contributions by a research fund by itself is not a legally acceptable, project-specific impact assessment or mitigation measure.

Discussion of how to create and manage a mitigation research fund is a large and complex topic and it is beyond the scope of these guidelines. However, the revised draft includes language that serves as a placeholder until a research fund and program can be developed for a science advisory committee. Some comment letters noted that an open, public process would be needed for creation of a statewide standing science advisory committee.

Some commentors wanted the guidelines to describe a more expansive wrong for the standing SAC and wanted them to clarify that no SAC members would have a conflict of interest. The SAC discussion in the revised draft now consists of 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
operations is essential in order to interpret the
fatality data and to determine if pre-permitting
assumptions and estimates were accurate. If
fatalities turn out to be higher than forecast we
need to know whether or not this difference
resulted from unusually high numbers of birds in
the area or if some other unanticipated factor is
at work.

In other parts of the operations
monitoring chapter we have added the language
suggested by commentors to increase the
flexibility of how operations monitoring might be
conducted, particularly in the second year. For
example, we have added the suggestion that the
second year of operations monitoring could be
conducted a few years after the first, which would
provide time for habitat to recover in temporarily
disturbed areas and for birds to possibly
habituate to the turbines.

We've noted that the second year of
monitoring may need to focus more effort on
turbines on habitat types where impacts were
higher than expected by shifting searches away
from areas that showed little or no fatalities.
Similarly we suggest that first year monitoring
results might warrant a reallocation of study efforts to those seasons where more impacts were recorded.

And finally the voluntary nature of the guidelines. Some commentors said the guidelines were too prescriptive and inflexible in the recommended pre-permitting and operations monitoring study protocol. They suggest that instead of providing specifics such as conduct 30 minute surveys once per week that we outline goals and the kind of information needed to answer questions about bird and bat impacts, and leave the specifics of methodology to be determined on a project-by-project basis.

Some commentors were also concerned that permitting agencies might interpret and treat the guidelines as mandatory, and language throughout that document such as will, should require, reinforce that interpretation. The revised draft has replaced those terms where possible and included some phrasing suggested by commentors that better emphasizes the voluntary nature of the guidelines.

However, the specific recommendations 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
general many minor changes were made in wording. More specifically some commentors had asserted that the guidelines have regulatory weight and that the guidelines recommend mitigation beyond that required by CEQA and that this recommendation rises to, therefore rises to a level of rulemaking. They also note that it is impossible to comply with state and federal wildlife laws and therefore studies should be aimed at securing the information needed to inform citing decisions under CEQA.

Again, as I said, we made some minor revisions and clarifications in response to the specific comments. There was an area in the document where we added some incomplete wording out of CEQA, that has been corrected.

However, in general we think the approach in Chapter 2 is sound, related to the other wildlife laws. It's not a matter of -- The guidelines aren't out there as a way to describe how we would comply with the wildlife laws. The guidelines are out there to guide project siting, make better project decisions when citing to minimize impacts to birds and bats, that's the purpose of the guidelines.
The studies are, the study protocols are laid out and designed, and study timings and study recommendations are laid out and designed to collect that information. The same information that would be required to make decisions on how to minimize impact to birds and bats from the other wildlife laws is the same set of information that is required to make analysis of CEQA significance by a lead agency under CEQA. So regardless of the purpose of collecting the data this is the same sort of data that would be required to make all decisions about project impacts.

In the impacts and mitigation chapter both the industry and environmental groups commented that compensation should be a last resort mitigation option if avoidance and minimization fail. Industry commented that compensation should occur only for CEQA-significant impacts and that seasonal shutdowns should be off the table as a mitigation option.

We made revisions to emphasize that compensation is the last resort to mitigation. That's always been the process we walk through as we make decisions on project siting and is the process that this document walks through.
Avoidance and minimization are the first steps to reducing impacts.

And in the case of citing wind energy facilities the citing is the primary avoidance measure once a project is built there are not many ways to -- built and in place and operating. There are not many opportunities to change citing, if any, and not a lot of other ways to minimize impacts so those remaining impacts need to be compensated for.

And in the case of a wind facility that goes ahead and constructs in an area with high bird mortality, if there's not any other way to compensate or minimize that, seasonal shutdowns still remain a possibility that we may need to use from time to time.

As far as the flexibility of the document, we think the document is highly flexible. The categories that we have added lay out some ways to break projects into groups or look at how they may need to be addressed under the guidelines. We did not add a category on categorical exempt sites.

We felt that was beyond the scope of this document, this being a technical document to
advise lead agencies on how to study sites for the CEQA process. So we did not specifically put that there. We also thought that would be clearly usurping local authority for making that decision under the CEQA process. The lead agency can still decide what sites may receive a categorical exemption for construction.

While we've had some comments throughout the process on streamlining, how to streamline and move the process faster, we feel this document goes a long way towards that by setting a framework, a common framework of study that can be applied to most sites across the state.

Lead agencies will have this information going into discussions on siting a new project so there won't be timely discussions on the type of studies that need to be done. Those lead agencies that haven't encountered such projects will be quickly informed as to the potential impacts they need to be looking for and how to study those for the CEQA process.

That's what I have for this morning, thank you.

PRESIDING MEMBER GEESMAN: Thanks Scott.

Okay, what I'd like to do is, at the
risk of having many of you get out of your chairs
more frequently than perhaps you're accustomed to
at these workshops, I'd like to break this into
several different segments. It is my intention to
go chapter by chapter and ask for comments on each
chapter. As I think the notice indicates, it is
more helpful if you can focus on a word, rather a
page and line number. But if your comment is
thematic in nature that's fine as well but I am
going to ask you to determine which chapter they
relate to.

The first group that I am going to take
is the Step-by-Step Approach to Implementing the
Guidelines combined with Chapter 1, the
Preliminary Site Screening chapter. So if there
are members of the audience that would care to
address us on either the Step-by-Step Approach or
the Preliminary Site Screening it's open mic.

Yes sir. You need to make certain the
green light is on on the microphone. There's a
button there on the base of the mic.

MR. NOBLE: I don't see the button. Now
it's on, I see it.

Mr. Chairman of the Subcommittee and
members of the Energy Commission staff, I am
Frederick Noble, President of Wintec Energy, Limited. I am here today on behalf of the Desert Wind Energy Association composed of wind park operators in the San Gorgonio Pass near Palm Springs and on behalf of my own company. I think I am going to give you some things that I find difficult to say and you may not want to hear but they should be said.

The Energy Commission sponsored my first windmill project in 1980. There would be no wind energy industry in California if it hadn't been for your predecessors, Bob Thomas and some of the early staff members who set up the legislation. And I was there when that happened.

As it relates to Riverside County, and perhaps statewide, you are about to impose unnecessary expense and give opponents a free hand to attack and slow down and stop wind energy projects throughout the state. The guidelines are based upon a foundation of quicksand. The driver here has always been the Thelander and Smallwood study in Altamont Pass.

I have for you, if you care to look at it, some examples of the altered and forged documents which are the underpinning of the study.
and which were produced by your staff as a result
of a freedom of information request. It is my sad
duty to call your attention to the fact that over
and over again the studies done or the reports
done by the field investigators have been altered
when they went into your database.

For example, the field data shows cause
of death of a bird as unknown. When it shows up
in your database it's shown as a turbine
collision, per protocol. Perhaps you'd like to
see this.

What you are going to see is just the
tip of the iceberg. It was difficult to get this
information from staff but it is damning in terms
of the fundamental study that was accomplished,
which underpins your rulemaking activity.

As it relates to the San Gorgonio Pass
there is one study that has some weight. It was
done by NREL by Mr. Anderson. And he concluded in
a recent letter in connection with an EIR that
bird/windmill interaction in the desert is
biologically insignificant. Yet you have
statewide guidelines which essentially shut us
down for two or three or four years.

In my case I would like to repower some
old projects, about 50 megawatts. But I've got to
tell you, if these rules or anything like them get
adopted I'm just not going to do it, I'll take it
down and put in trailer parks, which the city
would like to have me do. And the cats owned by
the trailer owners will kill far many birds, more
birds than we ever have.

I visit my projects, 1100 acres, every
day. My office is in the wind farms. In my 30
years in this business in the desert I have found
one dead bird in a wind farm, and it was a crow
killed by a transformer that was open being
maintained. He was electrocuted.

In the desert we do not have rodents for
the birds to hunt. They don't come down. So you
are going to impose upon us a solution for a
problem that doesn't exist.

Inevitably as the underpinning and the
errors found in the underpinning, which is the
study, bubble to the surface, it will get
legislative and judicial scrutiny to the great
discredit of the Commission if you don't look into
it yourself. It's a serious, serious matter.

Another great flaw in the study is the
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
good if you did.

As I said, this will bubble to the top
if it isn't fixed here, to your great discredit.
To the biologists I will simply say that you know
the ends do not justify the means. Legitimate
study to solve legitimate problems would have my
wholehearted support. I would contribute to those
funds. However, we will not be held hostage to
false data or to rules that have no application to
our part of the state. Thank you.

PRESIDING MEMBER GEESMAN: Thank you,
Mr. Noble. Anyone else care to address the Step-
By-Step approach or Chapter 1, the Preliminary
Site Screening? Come on up, Greg.

MR. BLUE: Good morning. I have a
presentation, and I can give it later, but since
you're going to go this way I'll just give a few
comments on this. I'm Greg Blue, I'm with enXco
Development. EnXco is a California-based
renewable energy developer specializing in wind
and recently announced now going into solar energy
development, both here in California and in the
west.

As far as the step-by-step approach to
implementing the guidelines. We think these are
good recommendations if in fact this document is a set of recommendations. It goes back to the voluntary nature, I guess. Actually I do have one comment before this, it's actually on the cover page. It should read, Voluntary California Guidelines, just to make the point there.

As far as Chapter 2. These are all the things that any developer is going to do anyway, whether we have these guidelines or not. A lot of us are already being proactive on avian issues, whether we have guidelines or not.

ASSOCIATE MEMBER PFANNENSTIEL: Greg,
when you say Chapter 2 do you mean the chapter that's labeled --

MR. BLUE: Excuse me.

ASSOCIATE MEMBER PFANNENSTIEL: --

Chapter 1?

MR. BLUE: Chapter 1.

ASSOCIATE MEMBER PFANNENSTIEL:

Preliminary Site Screening.

MR. BLUE: That's correct, sorry. Those types of activities are already going on, whether we had guidelines or not. I do have some other comments a little bit later if we're going to go by section. I guess in general I think the staff
has done -- has moved. We'd give it an incomplete
if we were going to give a report card and I'll
give you some more comments. And of course we're
going to file written comments with more details.
Thank you.

PRESIDING MEMBER GEESEMAN: Okay, thank
you. Anyone else on the Step-By-Step Approach or
Chapter 1, Preliminary Site Screening?

MS. LEVIN: I'm sorry, it's going to be
a little more disorganized, I wasn't expecting to
go through this chapter by chapter by my own fault
for not reading the notice carefully enough. I
wasn't planning to start this way but I do feel --

PRESIDING MEMBER GEESEMAN: You need to
introduce yourself, Julia.

MS. LEVIN: I'm sorry. Julia Levin,
formerly the California policy director for
Audubon California, I am now the national global
warming director for the National Audubon Society.
I do want to respond to a couple of comments of
Mr. Noble and above all point out that while the
guidelines are themselves voluntary, and I think
the word guideline implies that, if they were not
they would be regulations. They are supposed to
help explain what is likely to be required by
existing state law.

And I'm troubled that in front of this Committee of the Commission that someone would essentially say that that's not very important to this process and that it's okay to ignore what are very important state and federal laws. And if there are people present, wind companies or others that don't like those laws, I think they should take up those issues in the Legislature.

But I think it is very important that this body and the stakeholders in this process remain focused on the fact that these laws exist already and the purpose of these guidelines is to make clear what compliance with those laws, with good faith efforts I think that the guidelines are very clear now, what good faith efforts to comply with those laws would look like.

And I think that they provide enough flexibility and they are very helpful in that regard. So I am very troubled that this late in the process there would still be members of the wind industry claiming that they are regulatory in nature when they are so clearly not and that the underlying laws are themselves not important to 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...
guidelines is much clearer. And again I encourage Mr. Noble and others who still have concerns about the purpose to reread that and reread some of the underlying wildlife and environmental laws.

Then my two comments on the first two chapters in particular are, while I agree with CEERT and CalWEA that I think that creating the categories so long as they aren't absolute and there remains some flexibility for local permitting agencies, I think the creation of the categories is very, very helpful and I appreciate the effort that CEERT, CalWEA and staff and the consultants took to define them in the way that they did and continue to allow some flexibility.

I am as a wildlife advocate a little bit troubled or nervous about Category 1, particularly the fact that it doesn't specify any length of study and you could read it to mean that no amount of study is suggested or required. And I think -- I can't quite imagine the case where absolutely no study would need to be conducted. At least I don't think we're there yet. I don't think we know enough even about in-fill or repowering or neighboring sites to say that those can go without 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
to the chapter by chapter approach but the first chapter does bring forward a lot of the main ideas. So while I may have some additional comments I do have sort of some thematic comments that are raised by this chapter.

And the first is just that in reviewing this in terms of the balance of approach of what we are trying to achieve by the guidelines I do think that the guidelines are going to add a significant burden to wind development in California. I am involved on a day to day basis in trying to get permits for wind projects and this is a raising of the bar in terms of the kind of data that is going to be sought now by the local agencies. So a lot of information is going to be collected.

What I am somewhat skeptical about is whether or not this is going to have a real impact in reducing avian mortality. I am really not certain it is. So I think what we're going to see is a very large increase in burden without a concomitant benefit.

I also think that what the effect of these are going to be is it is going to push most projects towards full blown EIRs and I think that
is unfortunate. Even though I think the
guidelines don't say that they are going to be
interpreted in that way.

And so I think we're missing an
opportunity here if the goal of this Committee,
and I think it is, is to provide a benefit and to
encourage wind development at the same time as
minimizing bird impacts. That you provide
expressed suggestions, and merely suggestions if
indeed these guidelines are voluntary, they cannot
usurp the role of the local agency. So I think it
is a little disingenuous to say it would usurp the
role of the local agency to make suggestions about
what kind of CEQA approach to take.

To suggest that there may projects for
which categorical exemptions and mitigated
negative declarations would be appropriate.
Because right now I think a local agency decision-
maker reading these guidelines is going to think
to themselves, EIR, on just about every project
that comes before them. And I just don't think
that that's necessary. I think that adds an
enormous amount of time. And frankly, in many
cases, wasted energy and paper to projects when
there are certain projects that really this
Commission, this Committee, should be encouraging.

So in terms of the Category 1 I do think, like the CEQA guidelines that OPR puts out, these guidelines should suggest that there are certain categories of projects that may be appropriate for streamlined CEQA review. Not that they are or -- they can't, obviously, these are voluntary guidelines. And it is up to the local agency to make that ultimate decision.

But without some encouragement from these guidelines the local agencies I think are going to err on the side of going to full blown EIRs. I think it's a misunderstanding to say that a categorical exemption does not require a baseline of data, it does. In order to use a categorical exemption under CEQA you have to prove that your project will have no significant environmental impact. And if there is evidence that it will have a significant environmental impact you're going to flip into a higher category of environmental review.

So the idea that a cat ex does not require a baseline of data is simply wrong. Like the OPR CEQA guidelines I would urge you to 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
those of us in the environmental community understand a lot of the constraints on them and I think we have helped them understand that it is critically important to us that these wind energy facilities be sited and as quickly as we can site as many of them as we need to do.

There is a balance between protecting the wildlife and getting these wind energy resources online and I think these guidelines really sort of nail it at this point.

I really appreciated the presentations this morning from the staff explaining some of the additions that were made and changes that were made to the document. I really appreciate the direction that this has taken.

I do think that the step-by-step process and the categorizations that were mentioned earlier and that are in the document are very flexible. They do provide the sort of range of review options that people were looking for in the previous workshops. I think they really get us there. I think they also reflect a lot of the compromises I was just talking about from environmental groups trying to understand the constraints on the wind energy industry and not to
impose undue financial burdens on them.

I don't think anyone can predict whether
or not counties are going to require EIRs for
every project. I disagree with that notion. But
I do think that people who are in good faith
complying with these guidelines and taking a step
by step approach that is described here are going
to have a much easier path I think in getting
their programs up and running and also avoiding
the kind of obstructionism that was described by
our first speaker today.

And I'm sorry that he didn't attend any
of the workshops and was not involved in any of
the discussions on this because I think his mind
would be substantially more at ease had he done
so. Denouncing one study was not a constructive
thing because that isn't the basis of these
guidelines, wasn't the basis of these guidelines,
and the guidelines were established to help people
on both sides of this question come together to
get wind farms sited. So like Julia I wanted to
make a quick comment on that. Sorry to be so
scattered, I wasn't expecting to go chapter by
chapter either.

I don't think this process is going to
replace CEQA so the categorical exemption process
still stands. I think this does lay out a process
by which people who care about wildlife can be
assured that they will be properly considered in
the siting of these projects. And that is a very,
very important and useful thing.

One final comment I wanted to have is
that something I had mentioned at our last
workshop that I attended about certification of
compliance. There is no way at the end of the day
that people can just understand who actually made
an effort to comply with the guidelines and who
haven't. And I think for organizations like ours
it would be very useful for us to know that.

One of the things that I have repeatedly
said, and the Sierra Club would like to reinforce
is that we don't want good players in the wind
energy industry to be penalized by people who have
no intention of complying with the guidelines. If
people are going to spend money and spend precious
project time in doing the kinds of things that are
outlined in these guidelines we want to see those
people treated fairly.

So I think there is additional scrutiny
that we as public interest organizations would
apply to organizations that do not, wind energy
companies that do not intend to comply with the
guidelines or don't make a good faith effort to do
so. Now I would personally like to see the
document amended in some way to reflect some sort
of certification process that at the end of the
day you can say that this company made every
effort reasonably to comply with the wildlife
guidelines for the state of California.

And finally, the Sierra Club led the
effort in Congress recently to prevent the more
prescriptive regulatory regime from being applied
to wind energy companies nationwide. We have
worked in good faith in this process to help find
a voluntary way forward that people would comply
with and use to help address our concerns about
wildlife.

Now I have to say that the comment that
this is really ground-breaking or this is going to
be setting a high bar isn't necessarily all that
true. I think we are going to be the first out of
the gate with state voluntary guidelines, yes.
But I think it's inevitable that there is likely
to be some national guidelines to follow.

The National Academy of Sciences, as you
know, have been involved in this effort. So it's been incumbent upon us, those of us who have worked together to make this document work, to come up with something that actually physically works.

It's critically important for this country that we get wind energy, wind farms built, wind energy facilities built across our country. And we will not be able to do that. We'll be fighting litigation right and left if we don't have meaningful guidelines. And we think that this is a very well-measured, balanced way to go forward on this. I want to thank you again. I'll have other comments in other sections.

PRESIDING MEMBER GEESMAN: Thank you, Carl. Peter.

MR. WEINER: Thank you, Mr. Chairman, members of the committee. I'm Peter Weiner on behalf of CEERT. Like everyone else I didn't exactly organize my remarks appropriately but I am going to try very hard to comply. I have a lot of comments on Chapter 2 and the voluntariness of the guidelines in relationship to CEQA and other environmental laws. I will withhold them for now.

In Chapter 1 the tiering system is first
set out. And I think what is troubling to me about the tiering system at the moment is that staff has said that there is not enough information on repowering to justify a more streamlined tier for repowering.

At least from our experience at the Altamont with Diablo Winds we have one year of data, we don't have a lot of years yet. It certainly seems to be that repowering is one answer. Not the answer but one answer, and a very important answer to reducing avian mortality. It cannot replace good siting decisions, it cannot replace other things, but it is very important. In part because you have so many fewer turbines and we know all the rest of the reasons.

For these guidelines to even think of becoming final without streamlining any kind of tiering for repowering I think will be a great disservice to the advancement of wind energy and reduction of avian mortality in the state of California. If what we do is insist that people live out the entire economic lives of the turbines they have because repowering is so difficult under these guidelines and therefore under CEQA, which we'll get to in Chapter 2, then I think we've done
a great disservice rather than a great service.

That is the one thing that we should be able to count on going forward in addition to new wind energy is repowering. So I would urge that we take another look at the information we have.

We have one study from Solano but we also have the study from Alameda, there may be others. I would appreciate a re-look at this. Because otherwise I fear that we are going to put in concrete that repowering is not entitled to streamlining and that would be a great disservice. Thank you.

MS. DELFINO: Good morning, Commissioners. My name is Kim Delfino and I am the California director for Defenders of Wildlife. I just wanted to give a couple of quick comments and we'll follow up with other comments as we move through the chapters.

First of all just to get it out in the open. We strongly support these guidelines. We thank you for taking leadership and moving forward and doing such a good job. I think Carl and Julia have already stated fairly eloquently the points I would have been making anyway so I'll just echo what they said.

My comments today are going to be
focused more on bats than birds. I think Julia will probably, and Carl, will cover the bird area and we would strongly support the points that they make. But I did want to come and give a plug for the issue of bats because I know it has been one of the more controversial issues. So I'll be prefacing this for the rest of my comments.

We strongly believe bats should be included in the guidelines. Again, these are guidelines. And bats, while it is true there has not been an enormous amount of research done in California, there is research. And the bat experts are telling us that we need, there are impacts to bats. And there are certain things that we need to be doing in both pre-permitting and post-construction projects to get a better handle on what the impacts are to bats.

And I think it would be better for us to get a handle on this issue sooner rather than later. Taking an approach of sort of sticking your head in the sand and hoping that the impacts are not that great is, I think, a shortsighted way of going. So we would strongly encourage that bats stay within the guidelines.

Also I wanted to address the issue -- we
also support the categorization that you have laid out here in the first chapter. I would though echo Julia's comment regarding Category 1. It is a little vague in how this set of projects are described. It simply says that some proposed projects have the advantage of an existing foundation of data on bird and bat use and potential impacts from nearby, similar projects. That's very vague. I have no idea what level of data, what quality of data. In order to be able to give a category of projects lesser scrutiny I think there needs to be maybe a little more specificity in what you're looking for.

And then the point about how these guidelines are now going to trigger a deluge of EIRs. The only point I would make here is I think one of the strengths of these guidelines is that it is going to provide a good foundation of existing data from which you can make the decision of whether or not you should have a categorical exclusion or a mitigated neg dec or an EIR. And I don't think that having pre-permitting or surveying requirements necessarily means that you are going to trigger a much weightier CEQA review. 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-
by-step approach section I just wanted to come up
and state that we don't agree that the categories
as they have been included go far enough. We'd
like to see more delineation amongst the
categories. We appreciate staff for taking
industry's suggestion that they be included but
it's still fuzzy and the categories still seem to
require the same bird use counts and bat studies
across the board. So we'd like to see more
delineation.

And to emphasize the comment by CEERT
about repower. We do understand that repowers may
not be appropriate in every instance and we are
not suggesting that they are but we don't agree
that it shouldn't be included in Category 1. I
think staff could easily draft language to explain
where it would and wouldn't be appropriate. Thank
you.

PRESIDING MEMBER GEESMAN: I will say,
this repowering question is a fairly perplexing
one to me. I am a believer that scientific
discovery is new every day. But I also think that
where you can make conclusions, even on a
preliminary basis, you're compelled to do that.

And I'm reminded that several years ago
on the basis of scientific research that our staff
and contractors had done you felt quite strongly
that repowering was an important mitigation
measure, particularly in the Altamont Pass.

You persuaded us to the extent that we
put it very prominently as a recommendation in I
believe it was the 2004 Integrated Energy Policy
Report Update. As I recall we even had a picture, for those that don't read our reports, to
understand how higher blade height would impact
avian mortality.

And I don't know if the problem or
rethinking or retrenching the staff has gone
through is away from that type of sweeping
conclusion. If you might be able to make more
regional-specific conclusions with respect to
repowering.

If you can, as Ms. Conway indicated, draft some clarifying language indicating where it
may not be an appropriate candidate for Category 1. But to have it kind of fall off the face of
the map is troubling to me. And I'd be happy to
-- If you have any reaction now. I don't expect
that you need to have one. We've got a little bit
of time to figure out how to deal with this before
we take it to the full Commission but I do want to
register some concern there.

MR. WEINER: Mr. Chairman, may I just
make one point off of what you just said.

PRESIDING MEMBER GEESMAN: Go ahead.

MR. WEINER: The High Winds Project in
Solano County, which we believe staff is referring
to, was not a repowering project. It does involve
the use of taller turbines but it is not a repower
project. Diablo Winds in Altamont in Alameda
County is a repowering project. I believe that
parts of Shilo, which is an enXco project, may be
repowering.

But repowering and greenfield projects
are different. One of the issues is the
comparison and that's one of the reasons that
we're talking about repowering and would like to
make a distinction when we're talking about these
things.

MS. HOGAN: I just wanted to make a
comment about the timing perhaps. And I don't
know if this is exactly why --

PRESIDING MEMBER GEESMAN: You need to
introduce yourself.

MS. HOGAN: I'm sorry, I'm Bronwyn Hogan
and I'm on the Science Advisory Committee dealing with bats.

One of the things that happened basically right before I think that 2004 was the issue of bat impacts coming from the East Coast. So I think one of the issues with repowering and taller turbines in general is the evidence, which is not great because there haven't been a lot of bat studies done anywhere in the country, but it's growing that there potentially are more impacts to bats from taller turbines.

So that's one of the things that's coming up. And again, High Winds is not a repowering project but it does have taller turbines and it did have bat impacts. So I just wanted to make that comment.

PRESIDING MEMBER GEESMAN: Thank you.

MS. HUGHES: Hi, I'm Nicole Hughes, I represent RES Americas Developments. We are currently permitting two commercial wind projects in the state of California. I was not involved with the earlier workshops. The opportunity wasn't available so I'm playing catch-up. But I appreciate the opportunity to voice my concerns.

And I wanted to echo a previous
speaker's concerns about the categories at the beginning. It seems even though there's different levels of study implied here there's really no protocols for these. So a little bit further delineation is required, I believe. Particularly for Category 4. I think the category should be removed all together. I don't see anywhere where the National Park Service or the US Forest Service was consulted on the inclusion of discussing not to develop projects on national park lands so I don't think that's necessary to include in this.

I work on permitting wind projects all over the United States and it's widely known among most energy developers that California has a relatively complicated permitting process as it is. We feel that the addition of these guidelines for avian impacts will hurt the industry and force developers to consider taking their business to other states where permitting is less complicated.

Our main concerns are how agencies, specifically the California Department of Fish and Game, will be taking on additional review responsibilities and how this will affect timing and cost of development.

We appreciate the CEC's emphasis on the
voluntary nature of these guidelines but we are --
It has been suggested to me by one California
Department of Fish and Game office that these
guidelines will be adopted as, potentially adopted
as policy. And studies that don't include all the
recommended surveys will be dismissed as
inadequate.

We are already experiencing significant
delays with comments on projects from California
Department of Fish and Game. I'm at 125 days out
waiting on comments for an NOP right now. And it
has been suggested to me that the time it is going
to take to even draft these guidelines is one of
the reasons for the delays. It's putting
significant strain on our ability to do business
in the state of California.

We feel that the wind industry is being
unfairly singled out for relatively minor
environmental impacts to wildlife and would like
to point out that RES and other developers have
practiced sound -- have conducted sound studies
and done all the work necessary under CEQA to
assess impacts and mitigate these as necessary and
feel that these guidelines are unnecessary.

At a minimum considering that these
guidelines will be updated as necessary we'd like
to ask for a higher level of guidelines to be set
and that the specifics be left at the expert level
or at the California Department of Fish and Game
and US Fish and Wildlife Service and lead agency
level to be worked out on a site by site basis.

We'd like to see more references in the
document to following CEQA time lines when we're
talking about the responsibilities of Fish and
Game responding to comments. We'd like to see the
time lines listed in there.

You know, everyone knows under CEQA
there actually is no requirement for studies to
prepare impact statements. So we'd like to -- We
hope that the Department of Fish and Game will see
when it's not necessary for studies to be
conducted to determine potential impacts. And not
just assume because the guidelines weren't
followed that the appropriate level of work wasn't
conducted.

And finally I'd like to see a statement
in here limiting the retroactive use of these
guidelines. There's projects that are currently
in the permitting process or have finished
permitting or are in post-construction monitoring.
We feel that there is a potential that when these guidelines are accepted that decisions will be made to go back and retroactively apply the guidelines and enforce more studies on projects that are already in the permitting phase.

I don't have -- I didn't organize my comments, again, chapter by chapter so I may come up again.

PRESIDING MEMBER GEESMAN: That's fine.

MS. HUGHES: But thank you for the opportunity.

PRESIDING MEMBER GEESMAN: Thank you, Nicole. Anyone else on the step-by-step approach or Chapter 1. Julia, you want a second bite?

MS. LEVIN: Julia Levin, National Audubon Society. I just wanted to respond on the repowering issue and make a suggestion so maybe we could reach some closure on that.

I'm sympathetic to the wind industry and the Commission and the renewable portfolio standard goal that is going to be a very difficult stretch for California and I would like to see repowering occur as well. But we don't know enough yet and what we do know about repowering is that the results are mixed and for some species it
is actually worse than the smaller, older turbines.

The limited data we have suggests that we can't make this a categorical exemption or automatically include repowering in Category 1. I think it would be appropriate, however, to have language in Category 1 that said that repowering projects that otherwise fall within that category could then be in Category 1. But I don't think that there can be a statement that repowering per se is on some fast track. Because in some places repowering may have greater impacts than what's there now or different impacts.

So Audubon would support language that puts repowering, that qualifies that repowering that otherwise has low impacts or meets the other criteria in Category 1 should follow the suggestions in Category 1. But Audubon would strongly oppose language that implies that repowering is given some sort of exemption or automatic fast tracking.

PRESIDING MEMBER GEESMAN: You mentioned data available. Do you know of any affecting species other than bats?

MS. LEVIN: Yes.
PRESIDING MEMBER GEESMAN: And where?

MS. LEVIN: I believe it's the Diablo project. Of the four raptor species in the greater Altamont area three did appear to have fewer fatalities. Again, it's just one year of study and bird movements and patterns vary a great deal from year to year. So I don't think one year should be considered conclusive no matter what. But in that one year three of the four raptor species studied did appear to have lower fatalities. But one species, and I believe it was a hawk species, the red tail hawk, actually had higher fatalities with the taller, larger turbines.

So I think that the staff's caution is entirely appropriate at this point but we would like to work on some language that allows, you know. There may be places in Southern California in the desert or elsewhere where repowering does make sense to put on a faster track. And I think it would be helpful for the guidelines to say that but not provide some categorical fast tracking for it.

PRESIDING MEMBER GEESMAN: How would you determine that?
MS. LEVIN: I think where it otherwise meets the criteria laid out for Category 1 then it should be placed in Category 1.

PRESIDING MEMBER GEESMAN: And up until your remarks about hawks at the Diablo Wind project, and other than the Solano experience with bats, I would have thought it an appropriate candidate for the Altamont. So how would you make the determination as to where it is appropriate or not?

MS. LEVIN: In the same way that I would for any other new site, which is looking at surrounding areas, looking at what's already known about the site. If it's generally known to be a low bird use or bat use area and there aren't other surrounding sites. And we know at Altamont it's a very high frequency use for a number of species. So I think everything at Altamont speaks to the need for caution and more data.

But I think there are other parts of the state where we know with a pretty high degree of confidence that it's relatively low, at least bird use. I really can't speak to the bat issues, it's just not an area I'm qualified to speak on. But for bird use I think there are areas that are
PRESIDING MEMBER GEESMAN: I certainly agree with you with respect to bats because I don't think bats, to put it bluntly, were on our radar screen in 2004. But I think on the basis of quite a bit of data and the analytic tools we had available to us the staff felt, and quite easily persuaded the Commission, that for the Altamont, repowering as I recall, reduced mortality 83, 84 percent in the projections that were made.

Now that would seem to me to provide a sounder basis to make that type of conclusion for that particular region than we're likely to have elsewhere. I acknowledge the fact that bats weren't within our contemplation at the time. How do we balance empirical evidence like that versus your summary of one year's study at Diablo Wind?

MS. LEVIN: Well I think Altamont in virtually every area is an exception. It has been so well studied and there we know the impact level is already very high and in violation of numerous laws. So I think there we have a much better idea of where to put the new turbines. It isn't just a question of replacing them. It's in many cases

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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
certainty and I think that this process will provide much better information so that in the future we have more certainty and hopefully can fast track more categories and more individual projects. Thank you.

PRESIDING MEMBER GEESMAN: Thank you.

MR. NOBLE: Mr. Chairman, just very quickly. If I could make one, short comment here.

PRESIDING MEMBER GEESMAN: Sure.

MR. NOBLE: I think as I hear all of this, Altamont is Altamont and the desert is the desert and you would be well-advised to consider the regional nature of things.

We would like to repower 50 megawatts in the desert. We have not found a dead bat or a dead bird in 20 years except for one crow killed by a transformer. That's the fact of life in the desert and to tangle us up in the Altamont's difficulties is a mistake. So I would highly urge you to consider the regional nature of things.

Implicit in all of this is the demand we prove a negative. There might be birds, there might be bats. So I've got an offer to the biologists. Anybody that can find a dead bat on 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 Vercruysse, 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.
And we have narrowed those, at the credit of the staff and everyone else involved, we have narrowed those down to some very specific things. But they are, they are fairly major, I think, from the perspective of many wind developers and our organization as well. And we'll get into those a little bit later so I don't want to slow us down any more than we already have.

I will say on the issue of bats, it's come up a little bit already and which we will be commenting on during the bat section. Part of the frustration with the most recent draft of the guidelines is that we have really tried to participate constructively in offering alternative solutions to language that has been proposed in the draft. And I think Kim from Defenders was mentioning a comment that was submitted by one of the developers who couldn't be here today that the guidelines should perhaps not address bats at all.

That frustration, I think that is more frustration than an actual approach to these guidelines because our suggestions have seemed to have fallen on deaf ears in most cases. And we 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
don't think it was our understanding that repowering would be excluded from Category 1, we didn't read it that way. So I just wanted for the Sierra Club, we wanted to second what Julia was saying about some way of addressing inclusion of repowering. If that needs to be explicitly put in there, fine. We didn't think it was excluded.

PRESIDING MEMBER GEESMAN: Anything else on the step-by-step or Chapter 1?

MR. WEINER: Well at some risk of -- Peter Weiner again.

PRESIDING MEMBER GEESMAN: Don't worry about it. We're going to stay here as long as it takes to get through this document.

MR. WEINER: It's so cool. I was shocked and disappointed by the vehemence of Julia's comments but of course as usual she made me see the light. I think first of all, we're still looking at the data from Diablo Winds and I believe that Annie Mudge may have some other data as well. But I think we are still persuaded that repowering is an answer at Altamont. And indeed that's what we're working with Golden Gate Audubon and other Audubon chapters on.

But what strikes me most about
repowering is that you are not on a clean slate.
And what is most inappropriate about these
guidelines as they apply to repowering is that
they do assume a tabula rasa and say, let's do two
years of pre-construction, let's do this, let's do
that. Where instead you're working in a working
landscape, an already disturbed landscape, in the
sense that you already have wind turbines there.

And so what we need perhaps is instead a
different tier. A tier that is called repowering
and that says, these guidelines don't apply to
repowering. Rather, there are aspects of the
guidelines that may apply or may not apply because
you will already have some data in an existing
wind farm. You will need different data for
repowering in the Altamont than you perhaps do in
San Gorgonio.

And I think that that's really what is
appropriate to say here. It may be totally
streamlined, it may not be. But because certainly
in the Altamont we are doing studies on the
effects of repowering as we go along. What is
inappropriate is to apply these guidelines to a
repower project as if there were nothing there.

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
environmental problems, global warming. And this is taking resources away from our activities at the ISO, the PUC and other areas.

Nevertheless over the past 14 months CalWEA has participated substantively in every one of the many workshops and hearings that have been held all over the state and we submitted eight sets of detailed comments. We did so in the hope that the guidelines could be a useful tool for developers and siting agencies alike. Frankly though we never really felt that staff heard our comments in this process because they never engaged in real conversation about our initial suggestions for how these guidelines should take form or the concerns we raised later.

While the staff's drafts concerned us greatly we had hoped that you had heard our concerns and hopefully read our comments. Unfortunately we now see the Committee's draft and we have to strongly oppose it. While a number of our particular comments have been incorporated the major flaws remain. If the guidelines were to be adopted in anything like their form, their current form, they would have wide ranging negative and unjustified impact on the development of wind
power in California.

I'd just like to briefly summarize our problems in six points, which may seem familiar since we've made them since the very beginning of the process. First we feel that the overall approach taken in the guidelines is wrong. It's far too prescriptive going far beyond guidelines. The draft prescribes particular courses of study at every site despite various types of terrain, varying wildlife populations and different bases of knowledge at every site.

The guidelines should instead be focused on the information that is needed to determine whether significant impacts are likely to occur at a proposed project site and they should recognize the various existing sources of information and the various scientifically valid techniques that can supply the needed information. So second, the result of that prescriptiveness is to significantly raise the costs without necessarily reducing impacts.

The guidelines prescribe specific long-term field studies that are not necessary to make determinations of significant impact under CEQA. They recommend protocols that go far beyond local
agency and industry permitting practice under CEQA. They would at a minimum recalculate and add on the order of $2 million to the cost of permitting each potential project, which is already very costly in California.

You've already discussed the guidelines would require acoustical monitoring studies for bats at every site continually for three years, even though the document itself states that this technique has yet to be shown to be strongly associated with estimates of collision risk or impacts.

And worse, because little is known about bats, and that became very clear to me in the workshops, even collecting this data will not inform determinations of significant impact because there is simply an information void around bats. So these excessive study requirements effectively constitute state mandated research projects at the expense of the wind industry.

Third, the Committee's draft would significantly delay project permitting by elevating the authority of CDFG in the CEQA process. The draft guidelines require consultation with, and in some cases approval by
CDFG on the study methods to be used at many
points before and after a land use permit is
issued by the CEQA lead agency. This will add
months if not years of delay to a process that
already routinely exceeds the one year time frame
intended under CEQA for preparing and certifying
an EIR.

CDFG is understaffed and already does
not respond to requests for review within CEQA's
required comment period. These guidelines will
compound that problem many fold and we really want
CDFG staff to expend their limited resources on
wind projects instead of timber sales, housing
developments, dams and other far more
environmentally destructive projects.

In addition by inserting CDFG into the
CEQA process the Committee draft dilutes local
agencies' constitutional land use authority over
wind projects. Because CDFG is charged with
administering zero tolerance wildlife laws they
are likely to set a high bar for all projects in
order to catch a few projects that may be unable
to comply to the letter with very rigid wildlife
laws which prohibit the inadvertent take of even
one individual of a certain species.
By their nature wind projects cannot achieve zero bird mortality. It's just a fact of life. While CalWEA supports good faith attempts to limit unnecessary bird and bat mortality we believe the industry is taking those steps. We disagree that funding expensive and unnecessary research is required to demonstrate such good faith efforts.

Fourth, the Committee draft misses an opportunity to foster streamlined permitting for low impact projects. In your 2006 IEPR update you urged the state's energy agencies to evaluate incentives to encourage the repower of aging wind facilities to boost generation from these prime wind sites while reducing avian impacts. And you stated that as a fact, that repowering would reduce avian impacts.

And yet there is nothing in this document that would accelerate permitting for repowers in areas of the state where avian usage and impacts are known to be low. That is, we already know the impacts are less than significant under CEQA so we could expect that repowers under reasonable studies, reasonable logic can be shown to have less than significant impacts under CEQA.
And we didn't say it should be an automatic thing. You should have to show certain things. But once you show those certain things you should be eligible for a categorical exemption or a negative declaration.

CEQA and this Commission already enable reduced environmental review for repowered fossil fuel projects and many other types of projects. Why shouldn't repower wind projects get similar treatment? We propose that certain types of projects including repowers be deemed eligible for such treatment, meaning reduced study requirements. But staff never engaged in a dialogue on this proposal, even though as you have heard avian groups do not object to the concept across the board.

Fifth, the Committee draft cites discredited reports. The Committee draft continues to cite, and I will name it, the 2004 study by Smallwood and Thelander despite the fact that your own, independent reviews cast serious doubt on the credibility of the report's methods, findings and conclusions. And you didn't even review the data, which we did, and found significant discrepancies between the raw data and
what was entered into the database.

Application of the findings of that report could result in inaccurate impact predictions and ineffective mitigation. I don't think anybody wants that. That the Commission cannot acknowledge and correct its own mistakes greatly undermines trust in this agency's commitment to good science.

Sixth and finally, the Committee draft does not discourage retroactive application of the guidelines. CalWEA members are already experiencing efforts to retroactively apply these guidelines. In one case a project that was in the last stage of the permitting process was told that approval of its EIR may need to wait for and be reconducted based on the final version of the guidelines. That kind of retroactive application could set projects back by several years. The Committee draft fails to advise lead agencies to apply the document prospectively only.

More generally we are quite concerned that the Committee draft will take on a life of its own if it is not quickly withdrawn or replaced. For all of these reasons we strongly oppose this committee draft and we urge you to
reconsider this effort. The Energy Commission
should be seeking to reduce barriers to wind
development, not creating new barriers that
address problems that don't exist. Thank you.

PRESIDING MEMBER GEESMAN: Thank you,
Nancy. Is there anyone else?

MS. WOLFE: I'm Marcia Wolfe, plant and
wildlife ecologist working for Oak Creek Energy
Systems. And my comments are not according to
chapter so I'm totally discombuberated here. But
since this morning we have heard so many people
touting the fact that they believe that this has
been an interactive workshop process I need to say
something here. And it doesn't have to do with
Chapter 1, it has to do with the overall process.

And I hesitate to have to say this
because about seven of my friends have been
involved in staff positions working on this and I
still hope afterwards we're still talking. But we
don't -- Although the workshop process can be good
this really has not been an interactive workshop
process. And we don't believe because of that the
wind energy realities have been integrated fully
into the process.

We have had no response from agency
staff on any of our comments. In no place have agency staff provided reasons for not considering the majority of our comments nor have they responded or engaged in a discussion concerning the substance and importance of our comments nor even has a request for clarification occurred.

And I hear they made lots and lots of minor grammatical edits but that's not really what we're worried about. Our comments have not been frivolous or made of plain contentiousness. Our comments have been serious and well thought out. We are concerned with both the actual wind farm operations and the science of attempting to characterize baseline avian and bat issues. Evaluating that information and somehow being able to interpret it relative to potential impacts and mitigation.

And by the way, this is something that is complex and not easy to do. And it os not something conducive to an inflexible cookbook approach. And after having made many of the same comments over and over again the conclusion is that our comments and objectives are being ignored. This is so disappointing as many, many collective hours were spent on review, research,
compiling, preparing the comments and attending
the workshops.

       And we heard this morning that or
comments that weren't accepted will be responded
to in some kind of decision document. That is not
an interactive process where we can then respond.
Perhaps their understanding or misunderstanding of
our comments -- if you know, if there had been an
integration of that we would have come up with
better results.

       Something else that we kind of noticed
as well. That all our names are included in the
document and it is being kind of used to give the
impression that we all agree with what's in the
guidelines. I think just because someone
participated in this process doesn't mean that we
all agree with everything that's in it.

       This is all choppy because I don't have
a chapter by chapter response so I'll be back.
Thank you.

       PRESIDING MEMBER GEESMAN: Thank you.

       Sir.

       MR. WEBSTER: Good morning Mr. Chairman
and CEC Renewables Committee. My name is Stu
Webster and I am the permitting and environmental
manager for Clipper Windpower Development Company. As an active developer of renewable wind energy in California we greatly appreciate the attention and the effort the CEC Board, staff and consultants have put towards the guidelines development to assist public and private stakeholders in addressing avian and bat impacts. A pause here for a moment just as a note. This is going to be a thematic response. I have not read the document about chapter by chapter.

In reflecting back on the evolution of the draft siting guidelines, comments that I made before this Board and those submitted to the Board in writing I would characterize the effort today as beneficial progress but short of having yet reached a successful conclusion. What seems to have occurred to date is a partial addressing of the relatively straightforward comments and concerns regarding such things as the guideline's use of prescriptive language, inconsistent recommendations and clarification of discretionary enforcement.

However, what is lacked thus far is a higher level view of the implications of the guidelines as currently drafted have on developing
renewable wind energy in California. The draft guidelines remain disconnected with the stated intention of the CEC to facilitate a consistent and robust understanding of what can be done to understand the biological characteristics of a proposed wind energy area. Rather it focuses on a worst case scenario applied with little to no flexibility and assessed outside of existing environmental review mechanisms such as CEQA.

For example, the guidelines fail to provide a discussion as to the scientific reasoning for the recommended duration of the suggested surveys. My efforts to date have not discovered a single instance of a project undergoing a 52 week avian survey period but rather appropriately scoped surveys that fit the conditions and uncertainties of the specific project area and/or region.

Additionally there is no indication how one year of pre-assessment surveys and two years of post-construction surveys produce data that is statistically significant when compared to surveys conducted of a shorter duration, focused on a regionally-specific species and conditions found at a given project.
As the economic implications to conducting the extensive pre-assessment and post-construction surveys suggested in these guidelines by my estimates, $1 million per year. A scientifically reasoned justification for the durations is necessary. Without providing justification for the proposed durations the protocol appears to be arbitrary and fully based on a worst case scenario.

To speak to the aforementioned criticism of only partially addressing stakeholder concerns the current draft guidelines now suggest the abridged studies may be agreed as appropriate by a given project's stakeholders with sometimes explicit concurrence from US Fish and Wildlife, and more commonly, California Department of Fish and Game. For example, lines 724 through 728.

This unfunded, quasi-mandate for these agencies to review projects and proposed study protocols is simply an inevitable bottleneck for already resource-constrained agencies. To respond that this is not the intent of the guidelines may be accurate but our concerns to the contrary are already self-evident with proposed project reviews by the California Department of Fish and Game on
hold stating, the finalization of these guidelines is the reason for the delay.

If this document is a truly voluntary set of guidelines all references or implications for the requirement to have Fish and Wildlife and CDFG approve surveys, protocol and/or methodology need to be removed or at least accurately applied under CEQA.

We at Clipper believe that the legacy of a given project's relatively benign ecological impacts is a direct reflection on us as a wind development company wishing to remain viable in a highly competitive industry. And more importantly, a broader reflection upon a necessary and appropriate technology in the United States progress toward diversified and renewable energy generation, including California's efforts to meet the renewable goals of AB 32.

Therefore I once again recommend that the CEC consider these points, refocus the content of the guidelines to be more robust, a menu of options and conditions by which stakeholders become more informed. This is not a substantial undertaking as the content of the guidelines thus far compiled contains useful information.
It is the implications that: one, California wind energy development will consistently occur in high avian and bat use areas. Two, that the US Fish and Wildlife and California Department of Fish and Game are to carry an unfunded mandate to take on a more discretionary role of project review than intended by California law such as CEQA. And three, that the lack of scientific knowledge concerning avian and bat impacts by renewable energy should be shouldered exclusively by industry and independent of support by other private and public stakeholders.

These are the concerns that we feel need to be addressed. I stated for the record in a February 2006 workshop that Clipper Windpower endorses the intent of the draft guidelines but takes significant exception to the content and format that it was currently in.

Therefore to close and in order to emphasize our position I'll reiterate that Clipper remains supportive of the CEC efforts, will continue to participate in the development process and endorses the original intent of the guidelines but unequivocally opposes the current state the
guidelines are in.

We encourage the CEC to retool the document such that its contents can be used as a consistent point of reference by all stakeholders, similar to what has been developed in Kansas, Pennsylvania, South Dakota, Washington and New York, rather than presupposing the applicability of a costly and oftentimes unnecessary burden to renewable energy development. Thank you.

PRESIDING MEMBER GEESEMAN: Thanks Stu. Anyone else by steps, Chapter 1?

Let's move on to Chapter 2.

MS. MUDGE: Annie Mudge for CalWEA. I just want to make three points here that are sort of implicated by Chapter 2. First is -- And this is the chapter that sort of integrates the existing framework of the law with the guidelines. It talks about CEQA and the federal and state laws.

With respect to CEQA. I started this morning by just sort of talking about a lost opportunity here to have these guidelines provide guidance. Again, voluntary guidance to local agencies about the level of environmental review. There is no discussion at all about what might be
appropriate here. And that decision is of course left up to the local agencies. But if this document doesn't encourage the use of certain streamlined procedures the silence on that fact I think is going to lead local agencies away from the use of mitigated negative declarations and categorical exemptions where appropriate. So if the Committee is really interested in encouraging wind energy development while minimizing avian impacts I think it would be a real benefit to these guidelines, which otherwise place a very large burden on the industry, to show the way. That these are available tools to it to streamline appropriate projects.

You know, global warming is a choice so let's not make it unreasonably difficult to permit projects in California. I am seeing a trend of my clients saying, hey, we're just not going to start new projects in California, we're going to go to Texas, we're going to go to Minnesota. It is very, very difficult to get projects permitted in this state. It is very expensive and it is very difficult. We do have tools that allow streamlining under certain circumstances and I think it would be a lost opportunity to not
suggest that they be used where appropriate.

And that leads me to the repower issue.

And I want to echo what CEERT has been saying.

That I think that there is another opportunity
here to put repowers in a separate category. I am
aware of a project, I was involved in the
permitting of it up in Solano County, it's called
the enXco Five project. It removed ninety 56/100
turbines and replaced them with six 1.5 megawatt
turbines. So a vast, vast reduction in the number
of turbines.

There were robust studies that were done
pre-permitting that showed that there was going to
be a reduction in raptor kill. A mitigated
negative declaration was approved for that
repower. That's the model that I'm suggesting
here. I am not saying under all circumstances you
rush to a categorical exemption. Perhaps a cat ex
would have been appropriate there. The choice was
a mitigated neg dec.

I think the environmental impacts of the
repower were fully and fairly vetted and the
project was approved. So a reduction from ninety
turbines to six turbines without a loss in
electrical capacity. And it is showing a
reduction in raptor kill. So that's the enXco Five project in California.

Peter mentioned something that I think is work repeating and that is that repowers are uniquely I think qualified for special categorization because the areas are already developed. They are already degraded, if you will. Birds have already become habituated and birds do habituate. Birds do learn to fly around the wind turbines. Various birds do this better than others.

But repowers are like in-fill urban development. You already have wind power in that area. Most repowers reduce, vastly reduce the number of turbines without reducing electrical energy. We should be encouraging repowers. And the CEC guidelines are an important opportunity to do that.

Finally, with respect to CDFG's role. I also want to point out that right now the current law is CDFG is a commenting entity to local agencies under the CEQA process. And one of the things I am concerned about in the guidelines is that they elevate CDFG to more than a commenting entity by virtue of having to get pre-approval.
from CDFG to design your studies. It is going to delay the process significantly.

If lead agencies today feel that they need expert opinion from CDFG or US Fish and Wildlife they certainly have the ability to go and ask for a consultation. But the guidelines as they are currently drafted put CDFG in a much different position where you have to actually go seek and obtain active approval from CDFG.

They are a very heavily worked agency and there have been times when the responsiveness has been less than ideal, through no fault of any individual. But it is not an efficient use of the CEQA process to inject them in that sort of active role. Lead agencies when they need help in designing survey protocols, if they're different than what's been suggested here, can ask for consultation. Thank you.

MS. HOGAN: I have a quick question before you go. Were there any bat surveys done in that repowering project?

MS. MUDGE: You know, I can't remember but I would be happy to provide you a copy of the document.

MR. FLINT: Can I make a comment real
Quick?

PRESIDING MEMBER GEESMAN: Go ahead, Scott.

MR. FLINT: I'd probably get to this later. It's going to come up in Chapter 2 again but just a couple of things. I've heard a theme here of the guidelines inserting or elevating Fish and Game's status. I just must point out that the document doesn't read that way. The Department is both a responsible agency and a public trustee agency under CEQA. Consultation with the Department is mandated in CEQA for projects.

What the guidelines are doing is laying out a framework of study with plenty of flexibility from site to site that can be brought to Fish and Game for discussion. We are not elevating our status, we're playing the same role that we are always supposed to play in the CEQA process. Chapter 2 simply outlines the existing process, both with the environmental law of CEQA and the other laws. It is simply 95 percent recitation of what's in the statute. So I don't see that necessarily the same way.

And I think Annie's example of this project, this repowering project that had a study
beforehand to show it would reduce raptors, went through the mitigated neg dec process and then significantly reduced the number of turbines. I think that's exactly the model that we're proposing here in the guidelines.

That had an appropriate pre-project study. They probably used existing information. The same thing we're proposing in here in the guidelines. And it was modified for the site-specific conditions and the nature of that project. That would be great if all of them went that way.

PRESIDING MEMBER GEESSMAN: Julia.

MS. LEVIN: I'd like to respond to a couple of things that Annie said in the second chapter and then make a few additional points. I think CalWEA from the beginning of this process has wanted to limit the applicability of the guidelines to CEQA.

And I think the Commission has already made the determination that the purpose of the guidelines is to clarify existing laws to protect birds and bats and it is not limited just to CEQA. So I think --

The concern that I have heard from a
number of speakers about, as Scott said, elevating
the role of the Department of Fish and Game,
giving them an inappropriate role in CEQA, is not
really apropos to these guidelines, which are not
limited to compliance with CEQA. They are about
reducing impacts on wildlife, which is very much
not just the role but the obligation of the
Department of Fish and Game. They are a trustee
agency for all of us to enforce existing wildlife
laws.

Which is my other comment, particularly
about Chapter 2 but overall. I think that there
is a misperception about these guidelines. Aside
from the fact that they are voluntary I think the
purpose from the Commission has been clear from
the get-go. And from the stakeholders. That they
are to provide a framework for how to comply with
existing laws.

Which unfortunately have been largely
ignored until recent years. And the reason they
are no longer being ignored is there were a number
of lawsuits. Which I don't think any of us want
to see more of. Whatever the cost of compliance
with the guidelines I am quite sure as an attorney
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 GEESEMAN: 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.
But it is not an accurate statement of the Fully Protected Species law to say that simply minimizing impacts is enough. That may not be as any of us would like but that is existing law and I think it is very important to be respectful of the law. I think those were my only comments about Chapter 2 for now, thank you.

PRESIDING MEMBER GEESMAN: Peter.

MR. WEINER: Peter Weiner and as promised I have comments on Chapter 2.

The problem in walking the tightrope between voluntary guidelines and underground regulations, which are rules of general application that haven't been adopted under the APA, is that it's hard to do. And I think you hear a lot of that tension in the room. People would like to have the yellow brick road to follow but they are worried that it will become a highway without offramps, if you will.

The problem is that many of these guidelines will be viewed as written as a standard for compliance with CEQA. I think that some of the remarks today certainly counsel me that what we need in this document is a discussion of CEQA tools in a paragraph. That under CEQA one can do
a categorical exemption, a negative declaration, a mitigated negative declaration, an EIR, there may be others. Certainly where you already have an EIR you can have a supplemental, an addendum, et cetera.

And what we need is a clear statement that these guidelines are neutral as to which CEQA tools should be used by a lead agency. I don't think that it is appropriate in these guidelines to say that they must counsel an EIR, must counsel a categorical exemption or a negative declaration. They should be neutral. That's with regard to CEQA.

The other thing that is important I think is to state that these guidelines are general and as a consequence will not apply to every site. You've done that in the tiering but I think it's important to state that non-compliance with everything recommended with the guidelines will not be taken to be non-compliance with CEQA. Nor will compliance with the guidelines, if you want to go the other way, in certain situations be sufficient.

The Pine Tree decision, which no one has mentioned yet today, which is an unpublished Court
of Appeals case, is one which we will submit to you as an attachment later on by the 22nd. But the reason for it is not that it's a citeable case as we lawyers would say but rather because it is informative and good counsel as to how to look at CEQA in these situations. And it does quote from several published cases in this regard.

But what I would note is that a Court of Appeal in the Pine Tree case found that just as an example, some of the pre-construction monitoring, which would be different and which I think the gentleman from Clipper mentioned, focused studies instead of 52 weeks and so on, were found to be acceptable under CEQA.

Usually that case is noted because of its refusal to require acoustic studies and nighttime studies for songbirds. But it has other examples as well that these guidelines are general and they may apply generally but they don't apply necessarily as a measure of CEQA compliance.

With regard to the relationship to other wildlife laws. I want to be clear that yes, in the first workshop that we had Carl Zichella said, what we would like is guidelines that if people comply with them there will be prosecutorial
discretion by the Department of Fish and Game, the Fish and Wildlife Service, to not prosecute people who are complying with the guidelines. If you follow the rules you don't get hit.

And certainly it seems to me that that was what was meant by the statement on page 33 lines 1181, 1182 that in the presence of fully protected species we want to ensure impacts are minimized. That has to do not with compliance with the fully protected species law, not with compliance with the Migratory Bird Treaty Act. Those laws don't allow take. And we have several other examples of that. But rather what discretion will the agencies use as to whether to prosecute those people who are trying to minimize, following voluntary guidelines, rather than emphasize one bird or one bat, whatever these species may be. That was the intent I thought from the get-go of these guidelines and its relationship to other environmental laws.

It was not to say how to comply with them, quote/quote, because compliance is no take whatsoever, but rather to state the circumstances under which the fish and wildlife agencies would refrain from prosecution.
And in that first workshop we had a
gentleman on the phone from the Fish and Wildlife
Service who was talking about Fish and Wildlife's
use of its guidelines with regard to transmission
lines and saying that where people comply with
them we don't prosecute. And that was one of the
models that we followed there.

So it may be useful to state that that's
one of the intentions here is to provide, I won't
say quite a safe harbor, but a guideline for the
agencies that if people are in good faith trying
to minimize those impacts that that is a standard
for prosecutorial discretion.

So I wanted to state that with regard to
Chapter 2 because it has to do both with CEQA and
other wildlife laws. I think the guidelines have
a bearing on both. Thank you.

PRESIDING MEMBER GEESMAN: Thank you
Peter. Carl.

MR. ZICHELLA: Being Peter took my name
in vain, Carl Zichella. I think he's accurate
about how we were talking about trying to have
guidelines that if people complied with them that
they would be recognized and rewarded for that.
Because there are so many unknowns and we need to
have at least some basic level of compliance.

We've had quite a bit of conversation in
succeeding workshops about that and other people
disagreed with me.

But I have to say, just generally on
Chapter 2, the Sierra Club is fine with Chapter 2.
I don't have any problems with the way this is
written at all. I do think that if there was some
clarification about the entirety of the CEQA
process and what it entitled in total that would
be okay with me too. I don't think a paragraph
the likes of which Peter just described about the
various options under CEQA would be objectionable
because basically what Chapter 2 does is describe
the process. So I don't have a problem with
describing the process.

The fact is they are guidelines, they
are voluntary, they say it right up front. That
is all pretty clear to me so I don't think that
you need to have every single thing in there. And
I am not so sure that others would agree that
prosecutorial discretion needs to be explicit in
there.

What I have said repeatedly throughout
the process also is that I think this will be a
tool to provide discretion for those who might
have brought the lawsuits that have so tied
licensing and siting in knots in the state. That
this is going to be a very useful tool to prevent
those kinds of lawsuits.

I will mention, I think the Sierra Club
believes we need to move forward on this. I would
hate to see this process delayed any further. I
think we need to move forward. You can't have it
both ways. You can't say the fact the guidelines
aren't finalized are creating a bottleneck and the
guidelines themselves are a bottleneck. You know,
you have to be able to move forward at some point
and let's give it a try.

You can't make the perfect be the enemy
of the good. This document is dramatically
changed from the first iteration. Those people
that are saying that their comments have been
completely rejected I think are being
disingenuous, that's not true. That these
documents have definitely progressed, they have
changed.

We have made a lot of compromises after
listening carefully and actively to the concerns
of the wind energy industry. In fact the
categorization is a great example of that. We all agreed that that was a useful way to provide flexibility.

Finally I think you have to, and it is your responsibility, to bear in mind that there is a balance between some prescriptions that there actually truly is a guideline and the flexibility that people have so said they wanted. I have sat in many workshops and heard people say they want to be told what's necessary, they want clarity.

Then in the next breath they want flexibility. Well there's a tension between those two concepts and I think this document actually addresses it pretty well. So I want to urge that we move forward on this. Chapter 2 is fine with me. But I would not hope that we get this thing delayed any further.

We have a need to move forward. There is federal legislation that we barely fought off that would have been prescriptive that would have made this look like a child's game had it gone through the resources committee. And the environmental groups like Audubon and Sierra Club fought against that provision. And one of the reasons was because we were working cooperatively
with industry to come up with guidelines that
mattered. Those here that are in the industry
that are speaking against these guidelines now, I
think you better think twice the next time a bill
comes up in the House of Representatives.

PRESIDING MEMBER GEESMAN: Well two
points. One, Commissioner Pfannenstiel and I have
not been asleep. We have paid careful attention
to the process for the last 18 months so we're
pretty familiar with what the history of the
various drafts and the various positions have
been.

Secondly, let's take off the table right
now any prospect for delay. Those that don't
think these guidelines are a good idea I'd suggest
you reserve your arguments for the full Commission
when we take it up on the 27th of September. What
we are trying to do today is focus on what the
content of the guidelines will be. So with that
notion any further comments on Chapter 2? Nancy.

MS. RADER: Nancy Rader again, CalWEA.
I had a couple of comments in response to some of
the other comments that were made, just briefly.
We were pleased to see the categories, which were
very similar to what we proposed, in there. The
thing that was missing was what goes along with the easy category. There was no associated, and CEQA should be easier for category whatever it was, 1 or 4. You know, the low-impact category. The sort of the punch was, you know, the important part was missing.

Secondly I wanted to explain why it is that CDFG's authority is in fact elevated in this document beyond what CEQA requires. CEQA requires consultation by the lead agency with CDFG. This document requires prior approval of study methods before you can deviate from the 52 weeks, three years of study or the bat acoustical monitoring or other things. You have to get advanced approval from CDFG. That is not now a part of CEQA.

And then just to echo a little bit what Peter Weiner said. The wildlife laws don't allow even one take. This document seems to say, if you collect reams and reams of data, years and years of data, then we'll turn the other way. But collecting reams of data won't eliminate the take. So it doesn't -- it's like this document is requiring a whole ton of research by the wind industry in exchange for looking the other way on one inadvertent take and we just don't think that
is appropriate. Thank you.

PRESIDING MEMBER GEESMAN: Others on Chapter 2?

ASSOCIATE MEMBER PFANNENSTIEL: One on the phone?

PRESIDING MEMBER GEESMAN: We have one on the phone?

MR. McCULLOUGH: I think we have Kenneth Stein on the phone.

PRESIDING MEMBER GEESMAN: Could we take him first. I've had his card here for a few minutes. Mr. Stein.

MR. STEIN: Yes, can you hear me?

PRESIDING MEMBER GEESMAN: Yes, go right ahead.

MR. STEIN: All right, thank you. This is Kenny Stein, I'm representing FPL Project Management. Thank you, Commissioners. I manage all of FPL Energy's environmental and permitting initiatives in the Western US.

FPL Energy echoes others in commending the CEC and Fish and Game staff for their efforts to date. We continue to support the guideline development process and remain hopeful that we'll end up with a document that we can all be proud
However, we can't support the guidelines in their current form since we believe, as many others do here obviously, that there remain several critical flaws in the document. We have made several comments on the previous draft issued in April. While we're happy to see that many of them were accepted many were apparently rejected since the July draft did not reflect those comments.

Up until the second draft of the guidelines there was, we believe, a fairly open and productive exchange of ideas and opinions amongst the various stakeholders. However that dialogue essentially ceased once the April draft came out. And because several critical and crucial comments that we had on the draft were not accepted we are left with very little understanding as to why many of those comments were not accepted.

I heard from Susan this morning that the plan is in September once the final draft is issued to have an explanation for those but it seems a little late in the game. We would prefer either in writing or via a more formal verbal exchange an explanation as to why our comments
were not accepted and an opportunity to better explain our positions in the event that maybe some of our comments may have been misunderstood.

I think that kind of exchange is even more critical now than it was in the early stages of the guidelines. We now have words on paper telling us exactly what is expected.

I guess I'll reiterate a couple of concerns here, though they are the same ones that we've made on previous drafts. Specifically with respect to Chapter 2 there's only a couple. On line 1043 of the July draft there's a statement that says:

"The permit conditions may have to include mitigation measures that address the other wildlife laws discussed below, in addition to those required by CEQA, to avoid, minimize, and fully mitigate impacts to birds and bats."

While we agree that measures should be taken to evaluate and minimize impacts, perhaps even impacts that might not otherwise be considered significant under CEQA. Because I think as Scott
pointed out earlier a lot of times the studies that you do, you'd have to do anyway regardless of significance.

But we strongly disagree that wind projects should be required to mitigate or compensate for impacts that are less than significant under CEQA. The guidelines as written require mitigation in cases where frankly the law currently doesn't require it.

For example, while certain strict liability wildlife laws prohibit the take of certain birds they don't necessarily require that any and all takes be mitigated as the guidelines currently imply. In fact, they don't allow mitigation. And there is certainly no law requiring that all bat impacts be mitigated for.

CEQA was intended to define those impacts for which the state requires mitigation. I'm concerned that the guidelines as written suggest full mitigations for every single bird and bat. And I don't think it's -- We don't think it's appropriate for these guidelines to recommend a mitigation threshold that is much higher for renewable energy wind projects than what the law currently prescribes for other projects.
One other, one other note on Chapter 2 on line 1030 and a similar statement is made on line 306. At 1030 it says:

"-- following the CEQA Guidelines alone may not highlight all of the species and issues that need evaluation and mitigation."

I am not sure I agree with that. CEQA does really require that you evaluate all environmental impacts, birds and bats included, and then determine significance. So we'd like -- I have made this request before. I think having a statement in there that suggests that CEQA doesn't -- that somehow CEQA doesn't require us to assess impacts on birds and bats isn't true. And I'll save my other comments for the other chapters, thank you.

PRESIDING MEMBER GEESMAN: Thank you Kenny. Nicole.

MS. HUGHES: I just wanted to -- Scott, you had addressed California Department of Fish and Game's role in this. I just wanted to share a story with you to show how we believe that this will and has already impacted our ability to do
business in California.

In late 2005 we approached the California Department of Fish and Game with a protocol for studying birds, which included a year-long study. At that time there was no comments. Now since the inception of these draft documents the Department of Fish and Game has come back and basically said, all the things that are -- you know, they haven't come out and said it but all the items that are in these guidelines that we have not conducted now are going to be needed for our project.

So here is an example of where these guidelines are being applied retroactively and we're kind of being held hostage by the Department of Fish and Game. We don't want to go to the step of waiting for the Department of Fish and Game to comment on our EIR once it's gone to the public draft so we're being really patient and trying to work with them on it but it has been pretty difficult.

So there's two places in Chapter 2 that I would like to point out where this is evident. One is just on page 32 lines 1144 through 1149. I would like to see, this would be a location where
I would like to see the CEQA time line inserted into here to discuss -- there's review periods that California Department of Fish and Game should be following under CEQA. And that any non-comments should be considered a concurrence with your study plans.

And then additionally I just have a small problem with on page 29, line 1009 through 1011:

"Inadequate data acquisition may prompt a lead agency to apply more stringent impact avoidance, minimization or mitigation measures to ensure species protection and may result in increased levels of operations monitoring."

My concern is that, again, if we don't get timely comments from California Department of Fish and Game up front and at the back end of our project the data analysis is considered adequate. We'll then be penalized with more stringent mitigation measures. So those are two parts of Chapter 2 that are really disconcerting to me.

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
step. Unfortunately, as I said earlier in my earlier comments, this grades out as an incomplete.

Our specific problem is, if you want to go to a specific line is on page 37 starting on line 1273. And also companion line 1361, that paragraph there on page 39. What those two lines are basically saying is that the burden of proof is on the applicant to deviate from the standard programs that have been laid out. Not only that, the burden is being set by Fish and Wildlife Service, California Fish and Game's biologists and other appropriate stakeholders.

We think that's really not practical. We think that if anybody is going to -- We would be happy with the Energy Commission being the body that sets the categories. We think you have enough expertise to do that. The other specific issue -- So we'll be giving you some written comments on that particularly.

As I said, overall we think the comments are moving in the right direction. Again, I think there is time without delay to make some of these changes that you are hearing today and I think you're hearing some of the frustration. And I
think Mr. Stein from FPL really brought out the issue that we haven't had dialogue in the last few months to take some of these changes and I think you're hearing some of that today. Thank you.

MR. LINEHAN: Good morning, Commissioners. My name is Andy Linehan, I am director of permitting for the wind portion of PPM Energy. I work with projects nationally. I have been part of this process of developing guidelines over at least, it's been close to two years now and I am very supportive of it and I'd like to see it concluded on the schedule that you've set. And I certainly compliment staff on responding to many of the comments that the stakeholders have raised over the course of the process. I think it's made a lot of changes over time.

We still have a few specific issues that I think are problematic to us and we'd like to see fixed and I believe there is time to do that. And I would like to focus specifically on what is said about bat pre-project, pre-construction and post-construction monitoring methods.

Now the bat issue is one that PPM is very familiar with. We have been monitoring bats, bat mortality at most of our projects around the
country whether required to by permit or not. We are also founding members of the Bat and Wind Energy Cooperative and have been working closely with Bat Conservation International on a number of fronts, including testing new risk assessment technologies as well as starting last week testing a bat deterrent device at our project in upstate New York.

The guidelines as you know suggest that there should be a full year of pre-project, I should say pre-construction acoustic monitoring with acoustic monitors raised up at close to hub height and that these monitors be placed at a frequency of approximately one per section of land. We're familiar with that approach to pre-project risk assessment.

We're working with BCI, Bat Conservation International, at three of our sites in the Northeast, Hoosac in Massachusetts, Casselman and South Chestnut in Pennsylvania, and are attempting or are trying that technology to see if in fact it is a good method to assess bat risk. But as we do that this is all -- the places where we're doing that it has been entirely considered research by the regulatory agencies.
In all cases the funding is coming from multiple parties including BCI, the developer and also state agencies. And the reason it's getting multiple funding is that it is an untested technology, an untested methodology. We don't know if it will work to assess risk for bats at sites. We believe it's hopeful but we don't know that it will work yet.

In California at our Dillon site, which is in the Palm Springs area, we're working with Ted Weller of the Forest Service who has received funding from PIER as well as from BCI as well as funding from PPM Energy to test this methodology at a 45 megawatt site in San Gorgonio. The project has a budget of $200,000. That is only for the acoustic portion of the testing. It does not include post-construction mortality monitoring which will have to accompany that. The funding again is from multiple parties.

It is appropriate we think to be doing research like this to see if that methodology will in fact help us do a better job of assessing that risk. But we do not believe it is appropriate for all developers in all sites in California to be required to do this as a routine manner.
What we proposed through CEERT was a set of research projects funded by multiple parties, including funding by developers who are not involved in a particular site, at a range of sites around California to try out this methodology in a very rigorous way to see if in fact it works.

And we have obviously made our site in Palm Springs available for that kind of research. We'd certainly make other sites available to it and would contribute funding to it. But we don't believe that this should be required as a standard practice at all sites until we know that in fact it works.

And if you talk to many bat experts in this field, for example Ed Arnett, and Ted Weller may even say the same as well, this is still a trial. We are not clear if this methodology will work. And until we have a better track record that in fact this will work at sites it should not be required at all sites. Thank you.

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

MS. HOGAN: I'd like to briefly address the issue on bats. I don't know if you were going to talk about this. I have two comments and one
is going to slightly jump back to Chapter 2.

The bats that currently we are very concerned about in California are migratory bats. And I just have to look at this bit of CEQA. And one of the things that CEQA is concerned about is whether a project is going to interfere substantially with the movement of any native resident or migratory fish or wildlife species.

So to jump back to Chapter 3. I guess I actually wish Ed or Ted were here to comment on this because I am not sure that they would sort of say, every site doesn't need to have surveys at this point. Because again I think this gets back to the fact that we do not have a mechanism to set up a statistically appropriate way of surveying for these things.

And in fact we do get project-specific information from acoustic surveys at a site. Solano County has been brought up a couple of times. Solano County, based on the little evidence that is there, is probably, is likely to be a migratory corridor both north and south and east and west for hoary bats and red bats and possibly silver-haireds.

I just talked with Paul Cryan who has
been doing work on migratory hoary bats in the Farallon Islands. In his opinion the evidence shows that California is likely to be one of the places where both male and female hoary bats, potentially a majority of the population potentially in the Western US and Canada, winter in California. So this is really an important thing. And project-specific acoustic monitoring will give us information about pulses of migratory activity of bats.

And I just want to make a comment that we have in the guidelines put in, there was some early concern about the cost of analyzing acoustic data. And you get reams and reams of data if you leave out acoustic monitors. There are ways to filter that data and scan it and look for pulses so you are not trying to identify the species of every single bat call that you're getting.

So it's not that there's not expense but sometimes I wonder if we're talking about exactly the same thing when we're talking about expense in terms of bat surveys. So I just wanted to make that point.

MS. DELFINO: Kim Delfino, Defenders of Wildlife again. That actually does go to a couple
of points I was going to make regarding the bat
survey methods. Defenders of Wildlife strongly
supports the survey methods that are currently in
the guidelines. Bats, as I am sure you have
already heard, they are long-lived, they have a
low reproductive rate. We are in what some people
think is a major migratory route.

Bats, if they are being impacted, will
because of their low reproductive rate are slow to
rebound. So we could have potentially huge
impacts on all bat populations. And for that
reason I think we need to take a precautionary
approach. These guidelines I don't think are
unreasonable in asking for this particular survey
method. I think Fish and Game has already made
the point about justifying why this method is the
right method.

And frankly, I would like to know what
-- I'd like to know what method the opponents
would propose for each project. I think it's good
to have a standardized approach. That's one of
the criticisms that Ed Arnett from Bat
Conservation International made in his testimony
before the House National Resources Committee in
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
under Category 1.

But, you know, with bats it's a hard issue because there isn't a lot of data out there. And again I would argue we'd be more protective than less. Especially given the fact that we're along major migration routes and they are slow to reproduce so the impacts could be quite great. So I think, again, that it's appropriate and I think you have built in some flexibility in Category 1.

PRESIDING MEMBER GEESMAN: How easily identified are those major migration routes?

MS. DELFINO: They are not that easy. I mean, the data out there is not, there is not a lot of data out there. So I don't know if Fish and Game wants to give you any more detailed response than that.

MS. HOGAN: Well again, I mean, up until recently there just hasn't been the tools to even begin to say anything about migratory corridors. The issue of sort of the east/west, potential east/west migration has actually been based on things like museum records and what time of year bats have been found in the Central Valley versus on the Coast.

But there is now beginning to be a
network of detectors for various studies that are actually showing these seasonal movements and pulses and it is just sort of the tantalizing beginning part of that. But again, based now on talking with three different people who have been doing acoustic work, and then also the work that's been done out on the Farallons, there is definitely migration going on in California.

And particularly for hoaries, which are one of the species that are found, have been found across the US and in California as mortality at wind farms. Not just males but males and females winter in California so you could potentially—

Again, this is one of these things where I think the reason why it's important to be precautionary is that my guess is there are going to be a lot of sites where it is not a problem. But at a site where it is a problem you could have a really big impact on bats that breed in Canada. You know, if your wintering females are all in California and they are all funneling through a certain area you could have a really significant impact. So again, you know, the lack of information is crazy-making.

PRESIDING MEMBER GEESMAN: Andy's point,
as I understood it, is that we have a clear research need but that it is inappropriate to saddle project applications with that research need. Instead we should focus our requirements for project applications on identifying what we believe to be potentially adverse impact.

He also I think in invoking Ed and Ted, who are easy to invoke since they are not here, questioned whether this was a mature research technique. And I think strongly inferred that it would be more rational to fund a property structured research study. The problem is there are no resources to fund such a study so I think that is a bit of a straw man.

How do you respond to that? Is this an appropriate obligation to saddle new project applications with?

MS. HOGAN: Well actually I may after I answer this take a break and go see if I can get them on the phone since we're talking about them. They both may be available to call in.

I think there's kind of a two-part answer. One is, I think it is appropriate on a project-specific basis to get this information because the question is, is this particular
project in this particular location in a potential migratory corridor. And again, I am not sure one year is going to tell you that. I mean, the California Bat Working Group guidelines, their recommendations were two years. The National Nocturnal Methods and Metrics document that came out recommends three years.

So it may be that you'll get negative data and you haven't really answered the question. But the fact is that you do get project-specific information. If you get some pulses of activity in the fall you then have some data saying, well maybe we are in a migratory corridor and we need to think how we're going to respond to that.

Then there is the secondary question of, sort of two secondary questions, of how does that relate to post-construction fatality. And that's kind of a separate question and that gets into the sort of research realm where -- again I think this idea of a research fund is a great one. It's not set up yet.

And frankly I was talking with Ed and he said at this point if you did have a research fund that was set up and you were already to go it may 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
think that one year is appropriate to determine
site-specific impacts.

And I would wholeheartedly agree that we
do need additional research. And if there is a
way to set up a fund to do more research then I
would support that but I don't think it
substitutes for the one year pre-permitting survey
work.

And then let's see, one other point to
make. And that is on this issue that keeps being
brought up over Fish and Game's role in surveying,
approving survey protocols. In listening to the
discussion I went back and reread Chapter 3 again
thinking, I must have missed something.

But I have looked throughout the
document, looked at both pages 37 lines 1274
through 1276, then again under page 39 under the
heading, Securing Appropriate Expertise to Develop
Studies. It talks about working in consultation
with the lead agency, Fish and Game, Fish and
Wildlife, local environmental groups and other
agencies. On 37 it talks about, you know,
consulting the CEQA lead agency, Fish and
Wildlife, Fish and Game, biologists with other
expertise.
I find no reference here that somehow Fish and Game has been given this higher role than they already, that they somehow didn't have before. They are a public trustee agency. They are in charge of, constitutionally in charge of our fish and wildlife for the state of California. I don't understand where somehow there is this new objection to a role they have already been playing for many, many years.

And frankly if there's issues about Fish and Game being slow in responding then my -- this may be a little facetious but if I have to respond here. You know, I'm up every year in front of the Legislature asking for more money for the Department of Fish and Game. They're one of those under-funded agencies for the state of California and charged with one of the most broad-reaching responsibilities.

I would ask that the wind energy companies complaining about slow permitting to go and ask for more money from the Department to do the job it's charged to do, rather than saying that they somehow shouldn't be doing the job that they should be doing. So that would just simply be a point I would make on that. Thank you very
much.

PRESIDING MEMBER GEESMAN: Thank you.

Other comments on Chapter 3? Paul.

MR. VERCRUYSSSEN: 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. VERCRUYSSSEN: 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
Casselman site that Andy referenced earlier.

"Interactions between bats and wind turbines are poorly understood."

Which we all have kind of come to that conclusion.

I think pretty much everyone agrees with that.

"Post-construction monitoring has provided most of what little information has been gathered on bat fatalities at wind farms. Pre-construction surveys at wind facilities have been conducted and most commonly employ acoustic detectors to assess local bat species' presence and activity. However, using this information to predict bat fatality in thus risk at a site has proved to be challenging. Estimating the amount of activity is relatively straightforward but estimating abundance requires
differentiation between
multiple passes of a single
bat and multiple bats making a
single pass, which is usually
not possible."

These are all points that get to being able to
differentiate. And I think what the concern of
both Defenders and the Department of Fish and Game
is, you know, trying to determine how to address
this problem. And while we don't dispute that
that's a concern we simply feel that requiring
these acoustic surveys doesn't get you there.

It has not been made clear and we have
asked this previously, what you would do with the
data. How that would how your project moves
forward. Because the data that you take in from
these acoustic surveys hasn't been able to be
correlated with risk at all.

Again, this leads to our concern that at
this point it is really just a research project.
it doesn't mean that you shouldn't be doing it but
it means that it really, the burden shouldn't be
entirely on the wind industry to do that kind of
research. And so it kind of --

Perhaps one of the other things that the
Department of Fish and Game can address is, once you have this data how do you use it? Because that really is not I don't think adequately discussed in these guidelines. And they are a significant cost to these companies.

The other issue that I'll just bring up that actually came up during the previous session a little bit was, it's continually been brought up that the Department of Fish and Game has some added authority from these guidelines. I think I would for the most part agree that the guidelines don't inherently give them some additional authority that they don't already have.

However it is of great concern that these guidelines are on behalf of the Department of Fish and Game causing delays in projects because people are waiting for their finalization and retroactivity is being applied.

Also I would like to say we have been in discussions with other public stakeholders in going to the Legislature for additional funding to the Department of Fish and Game to actually do these project reviews. We have not officially done it but we have had some informal 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
you really have no business imposing a million
dollar expense on me to do bat studies if I want
to repower a project. It's not fair, I don't
think it will withstand legislative or judicial
scrutiny and it should be carefully considered.

The disconnect is between the presence
of creatures and whether the windmills kill them.
Or whether it's a power line that kills them or
another predator that kills them. The study whose
name cannot be spoken is obviously Exhibit A on
that notion. Prosecutor discretion a very
interesting concept.

I will tell you for sure that for every
bird killed by a windmill ten are killed by PG&E's
power lines and there's plenty of discretion being
applied in that regard. There is no high-rise
building in San Francisco that doesn't kill
hundreds of birds and prosecutorial discretion is
allowed there. Your cat probably kills more birds
than my windmills.

So until there is a connection between
the presence of the creatures and a study that
shows that the windmills are killing them in any
significant numbers, at least in Riverside County,
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
probably stipulate to, is a permitting jungle.

We're trying to articulate a set of guidelines
that if local agencies elect to follow them they
should have a reasonable assurance that this will
get through the jungle. And Ms. Delfino and
Mr. Zichella's local chapters won't come in and
harass your project.

MR. NOBLE: And that is a laudable goal.

It has as drafted unintended consequences and they
are fundamentally that it is such a labyrinth to
run that anybody that wants to litigate the EIR
can't lose because you just can't really do
everything that they could allege you should do.
That's number one.

Number two, it's irrational to apply a
statewide standard. The Altamont Pass, which has
trillions of rodents for the raptors to hunt,
versus the desert which has none. People think
maybe there's a migratory path somewhere in the
state, maybe there isn't. They're on the Farallon
Islands, which is 30 miles off the coast perhaps.

You know, let's define the problem
before we solve it, at least as it relates to my
part of the world, and let's not solve a problem
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
to meet the RPS goals and hopefully expand the RPS
goals in the future.

So I think that Kim's -- Kim used the
word precautionary and I think that the point
here, or a lot of the point is these are existing
laws. To be sure that s we expand we don't have
ten more Altamonts. None of us wants to see that
again, in Northern or Southern California,
Mr. Noble.

So some of the challenge is we are
operating with a lack of data and the way that you
avoid things is to get better data. So I think
the reams of data I think will be very helpful.

And maybe we can all come back here in
two or three or five years and say, okay, we don't
need this part. It turns out it's really not a
problem, we don't need this part.

But if the turbines are already up and
running we see from Altamont how hard it is to fix
a problem later if we didn't do the research ahead
of time. I would be ecstatic, as would everyone
at Audubon, if it turns out not to be a problem.

We just don't know enough.

So for Category 1 we have a couple of
specific suggestions. I continue to be very
concerned that the emphasis is on similarity of
habitat. You can have very similar habitat on the
ground and completely different things flying in
the air. We can see that with Altamont and
elsewhere in the state. You can have similar
vegetation but on top of the hill there will be
one type of bird using it at one time of day or
one time of year and in the valley completely
different migratory use or species use.

So it's not enough to look at similarity
of vegetation or similarity of habitat because
that I think to the average person, to the average
permitting agency, is going to imply habitat on
the ground. It really needs to be similar habitat
and migratory use, migratory pathways.

Also I think the more Category 1
projects we have, and again I hope it's a lot and
more and more in the future, the more I think
there will be importance on looking at cumulative
impacts. Because we'll know single project, know
single in-fill, know single repowering may be a
problem when we do increase four or five or ten-
fold the windpower in the state and nationally.
They could become significant impacts
cumulatively. So I think that's very important to
bear in mind as we go through this.

And finally as I said earlier, I think it's important even in Category 1 to give some indication of whether any level of study is recommended or if you're truly saying in Category 1, no amount of study is required. Because it could be read that way now.

I think that one year should still be recommended. I don't think that sets back projects. I don't think it's anywhere near $1 million. I know what biologists cost, they come really cheap. Much cheaper than most of us in this room. I'm sorry for the biologists' sake. I think it can be done for a very reasonable cost in comparison to the cost of one turbine, which is well over $1 million these days.

In Category 2 my comment is similar. I think that two years is a minimal level of study that should be required for projects in Category 2, which is defined as a category. We know there will be significant impacts on wildlife. And because both birds, and I am now starting to learn, bats, vary a great deal from year to year, one year may not be sufficient. There are a number of birds listed specifically where it
probably won't be sufficient but I think there are probably a whole lot more.

And from the presentations that we had at the original AWEA, Audubon, CEC conference on this it is very clear that wind permitting takes several years in any case. And so I think again to demonstrate good faith on the wind industry's part there is no reason not to begin the bird and bat studies very early on and then two years would not create a delay in the project. I think that's a reasonable request until we know enough to know that it is not necessary.

In Category 4 I disagree strongly with the comment earlier that this should be excluded. We think this category is very, very important, just as Category 1 is important to the wind industry. I think we can all agree that there are places where wind development is not appropriate. The FAA and the military would set out certain categories.

I think similarly if you look at the founding purposes for national parks, state parks, wilderness areas, wildlife refuges, some of the other categories mentioned, none of those include energy development as one of the purposes for
their creation. And I think most of us who appreciate those very special and very limited and already overtaxed areas would say that no industrial development, energy or other, belongs in those places.

And Audubon has met with the National Parks Service and State Park Service and I think if you met with Ruth Cole or others they would say very clearly they do not consider it appropriate to the trust resources that they are responsible for. So we do thank you very much for including Category 4 and recommend the other changes I just mentioned.

PRESIDING MEMBER GEESMAN: Thank you.

Peter.

MR. WEINER: I do have to agree with Julia that non-mission uses should not be placed in state parks or national parks. That would include wind projects.

With regard to the issues that have been mentioned so far I would like to distinguish, as I think it is probably possible to do, between birds and bats.

When we talk about birds in these guidelines we are talking about not only CEQA but...
we are talking about the Fully Protected Species Act, we're talking about the Migratory Bird Treaty Act, we're talking about the special protection of raptors under California law, of golden bald eagles under federal law.

So it may be appropriate in some cases that we talk in these guidelines about going beyond CEQA because we're talking, as I discussed earlier, about the relationship of these guidelines to prosecutorial discretion and the fish and wildlife agencies.

When we talk about bats we don't have those laws. And so the guidelines as applied to the bats come much more under CEQA unless we have an endangered species. If we have an endangered species of bat them those apply. But otherwise we're really talking CEQA. And obviously CEQA has constraints against speculation. It also doesn't call for research.

So when we call for research here. And I am strongly convinced that research is needed. Imposing that as a guideline, as a study that must be done for CEQA, is inappropriate because CEQA doesn't require those kinds of studies. CEQA requires full information, full presentation of
the information that currently exists. Not
further studies.

And indeed there is always a tension in
the cases between the need for early consideration
of those impacts before some studies are done
versus waiting until certain things that are
already in process are done that aren't required
by CEQA but that will be done.

So in this case yes, we can require
several years for permitting of wind projects. I
think it's ironic that permitting of a fossil fuel
plant seems to take a lot less time than would be
required by these guidelines. So what are we
promoting here in terms of returns on capital?
Are we promoting fossil fuel or are we promoting
renewable energy?

With regard to the bat studies. Again,
I think to the extent that we cannot set up a
mitigation fund except through legislation
perhaps, perhaps that needs to be done. Because
there seems to be no doubt and everybody seems to
agree that more information is needed. But again,
imposing those on each and every project does not
seem justified by the science. It seems justified
by the need for information but that is not a
justification under CEQA.

Finally just one, small reiteration of
what I have been talking about a little while. On
page 58 lines 2067 and 2068 it says that
repowering -- it's just one sentence.

"Repowering requires pre-
permitting studies using the
same methods as those
described above for new
projects."

I take exception to that and would ask that that
sentence be deleted. The rest of the repowering
and pre-permitting assessment states that
applicable data may be available from the site
from the existing turbines and you should consider
whether recent, credible and applicable pre-
permitting study designs should address the fact
that new turbines have different characteristics
than set forth here.

That's fine, but it doesn't take the
same methods as those described for new projects.
That's over-reaching. Thank you.

PRESIDING MEMBER GEESMAN: Other

comments on Chapter 3? Nancy.

MS. RADER: Again I wanted to respond to
some things I heard, particularly your exchange
with Fred Noble about well gee, couldn't Riverside
County just decide not to use these guidelines.
But then you before or after that explained that
this gets this through the jungle. In other
words, they are going to be immune from lawsuits
if they follow these guidelines.

And that's where we're at. Is that
these guidelines put the weight of the state
behind a particular course of study, 52 weeks for
three years bird counts. So that if a project
wants to take a different approach, an approach
that was just approved by an appeals court in the
Pine Tree case, the county is going to have to
think twice. Because they're going to have to
think, gee, in a court of law now the litigant can
introduce these CEC guidelines to further bolster
their case.

Now hopefully the science will prove out
in the courts again. But what we don't want to do
is require an unnecessary course of study just to
avoid litigation. I mean, it's just wrong. And
like Peter said, it promotes fossil fuel not
renewables.

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.
And here we are, one of the ways we are going to fight global warming is being dragged down by this research requirement that really has no justification because we don't know that the presence of bats means they are going to be killed or in what circumstance. I mean, what would we do if we found out there were migrating bats across San Bernardino County where we have got a huge concentration of wind resources, the second-next to Tehachapi.

Where are we going to go? There is no other resource area like that in the state. Are we going to not develop there because there are bats there? The implication is that we are not going to develop there if there's bats, even though we don't know that we're going to kill bats in sufficient numbers to be significant.

I just don't know where it's going and I don't think it's appropriate to put that kind of burden on an industry that was trying to fight a much larger environmental problem that is going to affect every species on earth.

PRESIDING MEMBER GEESEMAN: Anyone else on Chapter 3?

MS. HOGAN: I'd actually just like to
address Chapter 3 briefly and also kind of to
Nancy's question. I think one of the things in
terms of -- sorry Andy. One of the things in
terms of the little bit of information that we do
have about bats is that so far the evidence is --
and again, it's not deep or wide but the evidence
is that it's migratory behavior, that it's
seasonal and that there are pulses.

So I guess one of the questions that
comes up is, okay, well if you don't want to do
any pre-construction monitoring to see whether
there is something going on are you willing to
agree to operational changes if it turns out these
are predictable, seasonal events that can be
avoided if you change operations.

And I don't know if that's going to be
the case but it's sort of -- And CEQA does require
that you look at whether a project is going to
interfere substantially with the movement of
resident or migratory fish and wildlife. And I
totally understand the frustration that other
impacts are not being addressed but we're not here
to talk about housing construction. And frankly,
you know, I do work on that issue and there are
people trying to work on those issues but this
isn't the process to do that.

So I guess I just have to say that you do get project-specific information and there is a question about what we would do if we find out that there is a migratory pathway. And that leads to the fact that we need to look at some operational mitigation because that probably is going to be the only -- I can't imagine that a turbine is going to be removed unless there were a really dramatic circumstance.

And I'm going to talk about Ed since he's not here and he's in a management meeting so he won't be able to call in soon. I was talking to him the other day and he did want to talk about there keeps being this discussion about well we don't know if pre-construction acoustic monitoring is going to tell us anything about or be able to make a risk assessment about post-construction fatality.

And as he likes to say there is a difference between no correlation or the idea that there is not a correlation based on lack of data, which is what we have now. When people say there is no correlation it is not that we know that 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.
Because we know that there's a lot of variability
in the impact that we see. So a greater number of
sites with maybe lesser effort might be the way to
go.

And this was demonstrated I think best
in Alberta where there hadn't been any problems
with bats for years and there were several wind
farms online where they were searching for bats,
nothing. And then one came online and it killed
many, many bats. I don't know the numbers but I'd
say it's in the thousands of bats in a single
season was the estimated number. So it is not
always predictable. So I think a greater number
of sites is preferable to fewer.

The other point I wanted to make is that
Andy discussed the project that we're doing
cooperatively, the Dillon Project down in the San
Gorgonio area.

That's not entirely just addressing this
simple question of whether there is a link between
preconstruction activity and mortality but it's
more addressing some of the specifics that are in
these guidelines about what level, what amount of
monitoring do you need to conduct at each of these
facilities to start to get a good idea about the
total amount of activity by various species groups
and the variability that exists within an
individual wind site. Because there is a reason
to believe that it does vary from, that it might
vary say between three points at an individual
wind facility. So measuring just one of those
wouldn't provide you a very accurate measure.

So I'll stop there, I guess.

PRESIDING MEMBER GEESMAN: Thank you.

Andy.

MR. LINEHAN: You've heard me talk a lot
about that so I'll talk just a little bit more. I
think what Ted just clarified about the work at
Dillon, he said it better than I could articulate.
But I still think what we're trying to do is test
the methodology and see if it's something that is
useful to apply elsewhere.

So then the question is, what do you do
in the meantime? I think in the meantime we
either do a reduced form of what's been proposed.
That is not one bat per square kilometer -- excuse
me, per square mile, because that could be quite
intense, or we could look at other indicators of
whether there is likely to be significant bat
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 GEESEMAN: 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
fund appropriate research we're interested in participating in that. But to blanketly require the application of a protocol that is clearly still in the research phase is something we wholeheartedly can't support.

PRESIDING MEMBER GEESMAN: Thank you, anything else on Chapter 3?

MR. FLINT: I'd just like to clarify. It seems to me there's some differences of opinion on what is research versus what would be required for perhaps assessing a site for CEQA.

And I just want to point out that we see both things here. First of all there is a need to have some credible information about what's going on at the site to make a CEQA analysis.

Having that sort of assessment with the best available technology is one thing. And clearly something that goes on, that's imposed on all developers at all sites for all kinds of projects to figure out how to assess their impacts.

As to the efficacy of that particular methodology, that still needs to be researched. As to the correlation between pre and post that still needs to be researched.
There are both things going on here, which is why we had made some changes to the guidelines in response to comments we had to reduce the level of post-project monitoring and institute this payment into a research fund.

So I think we've, I just wanted to make sure it got across in that way. That's what I feel is in the document.

MS. WOLFE: Marcia Wolfe, Oak Creek Energy. I think everybody else has kind of summarized most of my bat comments already. But I do have a little bit of additional information here.

We're working on some bat studies in Tehachapi. For over a half year now we've been doing three-times-a-week, mortality, carcass surveys and seasonal, daily monitoring and we haven't found any dead bats.

Yet we are concerned about the extensive requirements. And we're hoping to gear up for this September to do a 13.5 square-mile, study area. But I want you to know it will be very expensive. The cost for the data collection would be about a half million dollars a year. The 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.
The guidelines would require two, Oak Creek to hire two, full-time ornithologists to do the weekly sampling. We felt that is burdensome when seasonal sampling was statistically adequate. A number of points would provide far better data.

The guidelines require on the bird use counts one to 1.5 points per square mile and to stratify those points among the different habitat types.

I'm not a statistician but I've had enough statistics classes and I've designed enough scientific studies to know that if you have 64 hundred square acre site and you only have 10 to 15 points stratified among several different habitat types you will not have nearly the statistically, adequate data that you need from which to draw any type of conclusion.

Statistically whenever you have less than 30 points you have a small, what's considered to be a small number. And any conclusions based on small numbers are suspect.

In general the nationwide sampling standard for point counts are five to ten minutes per the US Forest Service guidelines.

Increasing the sampling time to 30
minutes does not make up for an inadequate number
of points. Furthermore birds are highly mobile,
consequently being able to get statistically,
adequate data can be complicated, maybe impossible
in some cases.

But I'd sure hate to spend $100 million
of my money to design and construct a wind farm
that might end up being in the wrong place based
on conclusions from statistically, inadequate
data.

These are the types of issues that can
result in huge, biological and ecological
mistakes. And it's something that a friend of
mine calls BGOs, blinding glimpses of the obvious.
And we would certainly hope to eliminate these
from the guidelines.

PRESIDING MEMBER GEESMAN: Thank you.

MS. HOGAN: I actually have kind of a
question but I think it will clarify because
there's --

PRESIDING MEMBER GEESMAN: Okay.

MS. HOGAN: -- there's been some cost
talk. And I guess I have a question about what
kind of equipment is it that's costing, did you
say, $50,000? Is this for acoustic?
MS. WOLFE: ANABAT stations, yes.

MS. HOGAN: Is this for acoustic stations?

MS. WOLFE: Yeah, and with solar --

MS. HOGAN: No, no, no. I just have to say, I mean we just bought an AnABAT setup with solar panels, with battery backups, with extra flashcards with two mics, with the ZCAIM and having them altered to deal with a flaw that came from the factory. And the total cost, I mean an over-estimate for the total cost for that was $3,700. And so you're --

MS. WOLFE: Each one, and then you got to have somebody get it up there and climb up on another --

MS. HOGAN: Okay, so I'm just --

ASSOCIATE MEMBER PFANNENSTIEL: Excuse me, if your comments are going to get into the record you have to speak into the mic.

MS. HOGAN: Okay, sorry, I'm just, so I guess because I, so you're saying that for your whole study site that's how much? Okay. So not per station. So, okay, okay.

PRESIDING MEMBER GEESMAN: Carl.

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 GEESEMAN: Thank you.
Anything further on Chapter 3?

MS. CONWAY: Michelle Conway, Oak Creek Energy Systems. Chapter 3, page 39, lines 1341 through 1348. The guidelines still contain a broad generalization with respect to larger sized projects.

Oak Creek has disagreed with this in our previous set of written comments. We see that it's still in the guidelines. We've pointed out that the number of turbines that make up a wind project and the overall size of a wind project may, of course, influence the need for more or less study but they are not the sole indicators.

Because you could have a small project with a small number of turbines in an area with a high number of sensitive bird or bat species. Therefore we requested in previous comments that the guidelines not state that as the number of turbines increase the magnitude of the potential harm to bird and bat populations also increases in every case.

We feel that this is misleading to the public and to agencies to lead them to immediately fear larger projects versus using the appropriate tools contained in the guidelines to put the
project into Category 1, 2, or 3.

We need larger projects in lower bird or bat impact areas. So we would request that the staff please consider our comments again.

And I would just like to reiterate that we agree with FPL's comment that September is too long to wait for an explanation as to why some of these comments haven't been included. Thank you.

PRESIDING MEMBER GEESMAN: Thank you.

MR. VERCRUISSEN: One more brief comment. Paul Vercruyssem again from CEERT. I just want to clarify and I apologize if you're already aware of this. But the question was brought up, what the wind industry would propose as sort of alternatives aside from the research projects.

In the interim between the last formal comment period and the release of this draft CEERT organized a conference call with your staff, Ted Weller, Ed Arnett, Carl Zichella was also on the phone. To basically discuss some of the alternatives that have been thrown out there today. Looking at hibernacula, possibly doing seasonal studies rather than a full year. Which, 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.
And so what I think is missing from the guidelines is an encouragement by this body, say no matter what -- after you've gotten the data that you need to make that assessment, we recommend local agency that you provide opportunities for streamlining for low-impact projects.

And I think the Audubon Society would agree with that. That we should be focussing our efforts on the high-impact projects. So let's not lose sight of the fact that these categories are about effort and research, they are not about impact. And what's missing here is encouragement by this body to get wind production going in California for the lower-impact projects. In particular, re-powers but also in-fill projects.

So I think people are talking about these Categories 1, 2, 3 as high or low-impact and that's not what they are. So I wanted to just bring that out, thanks.

PRESIDING MEMBER GEESSMAN: Julia.

MS. LEVIN: I have two comments. And I'm sorry I'm not sure if they're Chapter 3 or Chapter 4, I didn't track down and see where they were.
And just on Annie's point, I'm not sure whether I agree with that or not. I think that there's a blending of how much we know versus what level of impact is likely.

I think Category 2 is very much about where there is likely to be a more significant impact you need to do more. And Category 1 is if you know enough to know you're not going to have a very significant impact on protected species. I'm not sure there's such a clear distinction there.

My other two comments are on the Scientific Advisory Committee. We agreed with industry that at least in the first draft of the guidelines, while we agreed with the intention of staff and consultants and drafters that it appeared to be very burdensome and more regulatory in nature than I think was the intention.

And so I think the way that it is described now is very helpful. If anything we would be more comfortable with a further elaboration but that's probably not possible at this point. We still do very much think it's an important idea to pursue and encourage you to pursue it in whatever ways you can moving forward.

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
trying to make arrangements with the Department of
Fish and Game. But the original reason for the
Scientific Advisory Committee, to be very frank,
was because Fish and Game wasn't able to fulfill
those functions. Which were it adequately staffed
and funded I think much of what the Scientific
Advisory Committee would be doing could be done by
Fish and Game. But they just simply don't have
the resources and so we have to bring in these
outside experts.

So I would say in the same way that
Sierra Club and Audubon and Defenders and other
wildlife groups have gone to Congress, have gone
to the State Legislature, fought very hard to
renew the production tax credit, to pass the
renewable electricity standard federally.

I would ask the wind industry in
California as a demonstration of your good faith
to make, even if not the actual guidelines
themselves, but to reduce impacts and take
reasonable precautions, help us get that funding
for Fish and Game. It is critical to make all of
this work smoothly. And that is very much related
to the Scientific Advisory Committee.

My last very specific comment is in a
number of places risk zone and direct impacts are limited to the rotor swept area or the turbine area. And there are other direct impacts and there are other risk zones, for lack of a different term, including new transmission lines that need to be built as a result of new wind farms and other direct impacts as well.

And so I think it's important not to ignore the other direct impacts that occur from wind development and not to limit the definitions or to narrow them more than is appropriate. Thank you.

ASSOCIATE MEMBER PFANNENSTIEL: Julia, I have a question. When you spoke to Congress about preferring voluntary guidelines to the mandatory guidelines that they were considering was this based on California or other states having successfully implemented voluntary guidelines?

MS. LEVIN: Honestly, we're not sure any of the states have yet successfully implemented guidelines. We have concerns of different types in every state that's taken on the process.

The reason that we did that was twofold. We feel like we have stated publicly that we support the voluntary guidelines in a number of
And now Audubon along with many conservation groups and industry members are on a federal advisory committee process to redo the federal draft guidelines.

And so we think those processes have begun. And given the lack of good information data that we don't, this isn't like in the technology field with the coal planners where we know if you do A, it will have B result.

We think given all of the uncertainties and need for additional research that voluntary guidelines are more appropriate at this point, assuming that there is good-faith effort to strike a reasonable balance.

We know we want the wind industry, we wind power to expand but we want to protect wildlife and other sensitive resources. But for the time being we think it's more appropriate to have voluntary guidelines until we have much clearer answers.

And then as I said many times we would love to stand up and create exemptions, create a wind-appropriate, habitat-conservation-type-plan, process if it will take permits. We just don't know enough yet for mandatory guidelines or these
categorical exemptions.

ASSOCIATE MEMBER PFANNENSTIEL: Thank you.

PRESIDING MEMBER GEESMAN: By my estimate we've got about an hour and a half left. And unless you all object violently I would suggest we take an hour break and come back at 1:30. We'll see you at 1:30 then.

(Whereupon, the lunch recess was taken.)

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

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

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

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

This is one of the reasons why at one point we proposed an experimental, mitigation fund, not research. But a fund that would conduct
experimental mitigation of some of the types that
are talked about in this discussion.

Because when you look at the recent
reduced impacts with appropriate turbine design
it, if we take all the language out of about half
a page worth it says, we don't know.

When you take a look at turbine layout
it talks about estimates of avoiding avian
mortality by various researchers who never were
able to show any correlation yet. We're trying to
do that for example at Altamont at this point.
But it's not known.

On page 65 there's a particular problem
where it talks about reducing artificial habitat
for prey at the turbine base area. One of the
issues that has arisen at the Altamont Pass wind
resource area is that researchers said that the
creation of artificial rock piles that were
developed when rocks were taken out so you could
level off turbine pads was a problem

But when our companies were prepared to
move them the Fish and Wildlife Service said, well
they can provide needed habitat for Kit fox and
other terrestrial species so don't do it yet.

And there's an ongoing question as to
whether to remove such artificial habitat or move
it instead of remove it. So these kinds of issues
are complex. They are experimental. Some of them
may be more proven such as avoiding power line
impacts which is stated here.

So, but calling out which are proven and
which are experimental and are possibilities I
think would be useful in this document. Because
it's almost always important to say what we know
and not what we don't know.

MS. WOLFE: Marcia Wolfe, Oak Creek
Energy. A little nit, Appendix H seems to be
missing from my copy. I don't know if anybody
else has Appendix H or not. But the reason I
noticed is because it's supposed to be backup data
for the use of reporting mortality per megawatt of
installed capacity per year.

And although I understand the rationale
behind that relative to needing or wanting to be
able to see some metric that makes things
consistent and to eliminate the difficulty and
complexity of attempting to describe the
differences in mortality between turbines of all
different sizes, it may well be in fact the
differences amongst the size turbines that make a
difference relative to mortality. And if you report mortality per megawatt you will mask those differences. You won't be able to see them.

PRESIDING MEMBER GEESMAN: Other comments on Chapter 4? Anybody on the phone?

Okay, let's move to Chapter 5 then.

Comments on Chapter 5?

Comments on any of the appendices?

MS. WOLFE: Oh wait a minute I do have something on five. I just --

PRESIDING MEMBER GEESMAN: Okay.

MS. WOLFE: -- because my comments were not prepared in this order, I'm sorry. I was trying to sort them out. Marcia Wolfe again.

Post-construction, bird-use monitoring is required by the guidelines. And I understand superficially why people want to see that but it isn't going to help much and I'll try to explain why.

We already know for example from Dick's earlier studies in the Tehachapi that mortality of certain birds species is disproportionate to their presence in the base population. For example, you might have, and now these are made up numbers, but 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
carcass searches three times a week for the past year instead of the prescribed once every two weeks proposed in the guidelines.

And we're also doing a series of daily, seasonal surveys for bat carcasses because apparently like small birds they're getting picked up much more quickly than the larger birds.

We're trying to do things that make scientific sense. So cookbook guidelines do not provide that approach. And they're rigidness will prevent us from adapting our study methodologies to those that may be more statistically and scientifically sound for Oak Creek projects sites.

As well they do not allow for building on existing avian data which only increased costs but can preclude appropriate evaluation of sampling results. Thank you.

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

MS. LEVIN: My comment is on Chapter 5. Julia Levin, National Audubon Society. We think that the post-construction monitoring is a critical part of the guidelines at least until we have much better data and a much higher degree of
certainty about the impacts.

I think we all in this room recognize that there are a lot of open questions. And that birds and bats do move from year to year. I was happy to hear that acknowledged. The patterns are not all the same from year to year.

In a perfect world if money were no object the post-construction monitoring would occur for much longer than two years but two years is certainly better than no years. Particularly where we are having to estimate or even guesstimate. I think in a number of cases that will be what occurs.

This is like a lot of areas in the guidelines, something that I hope in two or five or ten years we can all come back and say we only need one year. And in the Category 1 cases maybe we won't need at that point. But we're not there yet.

Maybe it would make industry more comfortable though if the guidelines explicitly acknowledged that over time this requirement, it may appropriate to or, not requirement, sorry I misspoke, that this suggestion could be lowered as 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 GEESEMAN: Other
comments on Chapter 5?

MR. VERCROYSEN: 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
understand that the view from the staff in
requiring the use monitoring is to be able to put
a proper context on what the fatalities numbers
are which is to say that if you had an unusually
high amount of use by a bird species for one year
then unexpectedly high levels of mortality could
be explained by that. And it wouldn't necessarily
mean that there was having, that the site was
having an unexpected level of impact.

That's the argument that's been put
forward as I understand it. And this is in off-
line conversations I've had with your staff since
the last round came out.

In our last round of guidelines or last
round of comments on the guidelines we had asked
that these requirements for use studies which are
the most expensive part of a monitoring regime,
generally speaking, could be useful post-
construction but in very limited circumstances.
Which we hired a biological consultant who helped
to draft our comments and you can refer back to
those. But there are some displacement impacts
that could be, where it could be useful, some
other instances like that.

But given the cost to be incurred we
didn't feel that it was going to be helpful to simply go out and see how the birds were using the landscape. That said, I think it's, I think it could be useful if you did in fact have a higher level of impacts than anticipated if you in subsequent years then maybe did acquire some use monitoring.

But I think as a blanket statement and I certainly, I don't disagree with Julia at all that post-construction monitoring is one of the most crucial ways to determine, to fill a lot of these gaps that we've been talking about all day. But most of that is fatality monitoring that we're going to essentially be proving or disproving the efficacy of our pre-construction estimates.

And to use the use monitoring, post-construction works in certain instances and it could be sort of a later trigger but we don't think that it works as a blanket requirement. And we'll be adding some additional, more technical comments in our written comments.

Obviously I'm not a biologist but I have had a good deal of contact with them on this issue. And so, thank you.

PRESIDING MEMBER GEESMAN: Other
comments from the audience on Chapter 5?

Mr. Stein are you on the line?

MR. STEIN: I am.

PRESIDING MEMBER GEESMAN: Do you have a comment on Chapter 5?

MR. STEIN: I do and I actually have a few comments on three and four. I tried to chime in earlier but something must have been not working.

PRESIDING MEMBER GEESMAN: Okay.

MR. STEIN: On five and I apologize that I missed this because I was a couple of minutes late. I heard earlier that the two years of post-construction monitoring for, acoustic monitoring for bats was no longer required or even recommended. But it does seem that there's still language in the guidelines that says that those kind of studies should accompany all sites.

And there's another couple of places where it says, well, two years of post-construction bat monitoring would be necessary if the agency and the stakeholders think that it would be helpful for contextual purposes.

So I'd like some clarification as to 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-
term monitoring might be required we've made
comments a couple of times that we don't think
certainly after two years that there should be an
open-ended requirement for long-term monitoring.
The criteria when for when that would kick in is
pretty vague. It just seems -- says that if
fatality levels are high, but that's not really
defined.

We suggested that if that was something
that agencies or stakeholders or others would be
interested in that perhaps the guidelines should
recommend that the proponents open their sites up
to allow agencies to conduct longer-term studies.

But it not be a requirement of the
project proponent to do studies for potentially
the life of the project. That comment was not
taken and I haven't had an opportunity to get any
reaction on that.

Protocols for post-construction, avian
use monitoring as Paul just mentioned. We're
concerned that the blanket requirement to do two
full years of avian point counts in addition to
the mortality monitoring ,so we're talking 52
weeks a year for two years is, you know, at a
significant cost. The benefits you get from that
don't justify the costs.

We'd like to explore, we see the value, the potential value depending on the site, of having some use data in conjunction with mortality monitoring. But perhaps there's a lower level of study that can be done maybe for focussed periods during certain seasons or less frequent site visits that can lower the cost of doing two full years of post-construction, avian mortality but still get data that's useful for providing the context for mortality data that you're looking for.

Going back to Chapter 4, where we had made some comments regarding adaptive management where if you're going to require additional compensation in cases where mortality turns out to be higher than expected that the project proponent will be credited if the mortality turns out to be much lower than expected.

And that comment was not taken so I'd like before the hearings why that was the case. If we should be paying more when there's higher than expected than why wouldn't we want to pay less if it's less than expected.

We also in Chapter 4 suggested that in
talking about mitigation lands that we should be required when mitigation lands are appropriate to find lands that have a biological value equal to or higher than the area impacted. That comment was not taken when and the guidelines just require that the mitigation land have a high biological value. However if the area that we're impacting has a low biological area I am not understanding why you necessarily have to find equal mitigation that has a high biological value.

And a couple of minor points. Back in Chapter 3, my apologies for going backwards. In the use count, pre-construction use count which I guess carries over to post-construction since you have to follow the same protocol, it still suggests that we include reference sites in there.

And I think we had all come to the conclusion that reference sites may be appropriate for studies where there's displacement issues but not necessarily for just bird use, avian use through the area. And that seems to remain in the guidelines. And coming up with reference sites is often really difficult because either we don't have control over those sites for the long term or 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-
construction point counts 52 weeks a year to
understand what birds are at risk for flying
through the rotor swept area then any birds that
reside two, three, four, five miles out, you'll
pick up that risk via the point counts.

But to actually go out and have to find
every resident raptor within three miles, we just
don't understand the basis for that requirement
since it doesn't necessarily indicate risk over at
the site. And the point counts are intended to do
just that.

And finally a couple of general comments
to just reiterate what has been said before.
We're concerned that the guidelines don't have any
statement regarding retro how they would be, how
they could potentially be applied retroactively.
So right now without things being explicit in
there we're concerned that they would be applied
retroactively to projects that are already started
down the detailed, pre-construction phase.

And we also made a comment that the term
pre-permitting be changed to pre-construction so
that lead agencies would have the opportunity as
they sometimes do to allow some of the studies
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
but if there was a relevant study we were
convinced I thought at a previous workshop. Isn't
that right, it's not a five year thing. Right,
that's what I thought.

So I just wanted to clarify that point.

And the two year, post-construction monitoring
issue was a considerable compromise. Realizing we
agreed that, you know, longer is better but we
need to get these facilities on line and operating
and not keeping undue costs on the generators.

PRESIDING MEMBER GEESMAN: Nancy.

MS. RADER: Nancy Rader, CalWEA. I just
wanted to point out one of many instances where
CDFG's approval is required to reduce the level of
study. And this instance in Chapter 5 is on page
72, line 2596 where it says, if you want to reduce
the operational, the post-construction,
operational monitoring shorter than two years you
need to get the approval of CDFG and the US Fish
and Wildlife Service.

So, you know, you'll probably wait for a
response for them before, you'll probably wait the
entire two years before you get a response from
them but you'll probably have to do it anyway.

But since we know that they're inclined
to want more information there's, it's not likely that your studies are going to be shortened. That's just one of a number of instances where it says you have to get approval to deviate from the prescribed study.

MR. WEINER: Peter Weiner, one more thing. Kenny Stein mentioned the cost of these studies. And they are significant. And one of the questions is whether the Commission would feel comfortable perhaps outside the guideline process advocating to the Public Utilities Commission that these costs be rate recoverable pursuant to Section 701.1 and 701.3 of the Public Utilities Code.

Those sections, although I do not have them before me, and I hadn't thought about it before I came here today, are, if I recall correctly, authorization for the Commission to pass on costs of renewable energy projects to the public where justified by the environmental benefit. That's outside the market referent price and so on and so forth so far as I can tell in terms of statutory authorization.

And if we are going to impose these 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
Meeting is on the 26th of September so I would anticipate that to be about two weeks before then.

PRESIDING MEMBER GEESMAN: So approximately the 12th of September.

MS. WARD: We have it on our schedule as the 14th.

PRESIDING MEMBER GEESMAN: The 14th of September.

MS. WARD: Yes. That's when the Committee's final draft and decision document are posted online. And we intended address comments not taken. The many changes that did make we didn't feel that we needed to --

PRESIDING MEMBER GEESMAN: Okay. But the ones that you rejected then you would address.

MS. WARD: Yes.

PRESIDING MEMBER GEESMAN: And explain why you rejected it.

MS. WARD: Right.


MR. VERCRUYSSEN: Paul Vercruyssen again from CEERT. I actually had a question for you and perhaps for your staff as well.

The biological consultant which we have been using throughout the past couple of rounds of
commenting I have actually already talked to him
and it is going to very difficult to have fully
developed comments from him by the 22nd.

And I actually had talked to some of the
other public stakeholders, one being Golden Gate
Audubon, that had wanted to be here today but was
unable to be here today. So I'm wondering how
hard and fast that data is? I realize that the
next Commission Business Meeting would be coming
up fairly soon and so there is not a whole lot of
flexibility. So I'm wondering how hard and fast
that date is.

PRESIDING MEMBER GEESMAN: Let me
address it from the back end. I think that you
should regard the September 26 date, which I think
I earlier misstated as September 27. The
September 26 Business Meeting as hard and fast.

MR. VERCRUYSEN: Right.

PRESIDING MEMBER GEESMAN: And the
August 22 deadline is a desirable deadline.
You've heard the staff say that they intend to
release the decision draft on September 14. So I
think the closer you get to September 14 the more
you reduce the likelihood that your comments will
be reflected in that draft. The more that you end
up having to rely on the Commission changing
something in the decision at the Business Meeting
of the 26.

MR. VERCRUYSSEN: Okay.

PRESIDING MEMBER GEESMAN: So it's
really your call.

MR. VERCRUYSSEN: I wonder if actually,
and I apologize, if I could make one final
comment.

PRESIDING MEMBER GEESMAN: Sure.

MR. VERCRUYSSEN: I was actually struck
today listening to some of the discussion earlier
and this morning and thinking about some of the
other work that I do, sometimes with your
Commission and before the Commission in other
places.

There are power plants in the state of
California which quite apart from the global
warming impact emit massive amounts of criteria
pollutants, particularly particulate matter, which
has a hand in the premature death of thousands of
Californians each year.

Through the direction of the laws of the
state of California those impacts can be mitigated
with pollution offsets, which can be purchased
various ways and achieved various ways through the
different air districts.

But that's deaths of human beings that
we're talking about and that's why -- it's one of
the reasons I and I think a lot of the people in
this room work very hard to get a lot of these
projects permitted.

And there is -- This has been said many
times before in many settings. There is no silver
bullet to global warming or any of these problems
and there is no completely benign energy resource
anywhere. This includes solar, this includes
wind, geothermal, fossil fuels obviously.

And I would just urge everyone in this
room. Staff, the Commission, the public
stakeholders, to keep that in mind because it is
something that sometimes when we get bogged down
in the specifics of the scientific data we forget
that there is an alternative scenario out there
that I think everyone in this room seems to be
committed to avoiding. It struck me today that
sometimes we have gotten away from that.

So thank you.

PRESIDING MEMBER GEESMAN: I guess I
would -- Your having said that I want to add what
I think is the complementary view, which I recall quite distinctly from the joint workshop that the Audubon Society and I believe it was the American Wind Energy Association sponsored in Los Angeles now more than a year and a half ago.

And that is that it is belief at the Commission that we very much need to accelerate the development of wind energy in California. And that the example of a litigative and scientific and political quagmire such as the Altamont proved to be is something that stands as a very real dangerous impediment to our objective in accelerating the development of wind energy.

It has been our belief since 2005 that the best way to do that would be to develop in as consensual a way as possible a set of voluntary guidelines that local lead agencies could rely upon in making permitting decisions. That's what we're trying to do. We won't be done until the end of September. Even when we are done it's going to be an imperfect document.

But I think that it has benefited greatly by the input from a variety of different interests, many of whom I suspect over the course 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. VERCRUYSSSEN: 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. VERCRUYSSSEN: 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.

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