

**RECORD OF DECISION**

**Tule Wind Project**

Cooperating Agencies:  
Bureau of Indian Affairs  
Army Corps of Engineers  
Ewiiapaayp Band of Kumeyaay Indians

Environmental Impact Statement 20110347  
Case File Number: CACA-49698

**Tule Wind Project  
Decision to Grant Right-of-Way**

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## List of Acronyms and Abbreviations

Acronym/Abbreviation	Term
ABPP	Avian and Bat Protection Plan
ACEC	Area of Critical Environmental Concern
ACOE	U.S. Army Corps of Engineers
BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
BA	Biological Assessment
BO	Biological Opinion
BMP	Best Management Practice
CDFG	California Department of Fish and Game
CEQ	Council on Environmental Quality
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
CPUC	California Public Utilities Commission
CSLC	California State Lands Commission
DEIS/DEIR	Draft Environmental Impact Statement/Environmental Impact Report
DOE	Department of Energy
DOI	Department of the Interior
ECCMP	Environmental Construction Compliance and Monitoring Program
ECO	East County Substation
EPA	Environmental Protection Agency
EPAct	Energy Policy Act
ESA	Endangered Species Act
ESJ Gen-Tie	Energia Sierra Juarez Generator tie line
FEIS/FEIR	Final Environmental Impact Statement/Environmental Impact Report
FLPMA	Federal Land Policy and Management Act
FR	Federal Register
I-8	Interstate 8
IM	Instruction Memorandum
kV	Kilovolt
LIDAR	Light Detection and Ranging
MFP	Management Framework Plan
MOA	Memorandum of Agreement
MW	Megawatt
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NOA	Notice of Availability
NTP	Notice to Proceed
O&M	Operations and Maintenance
OHV	Off-highway Vehicle
POD	Plan of Development

**List of Acronyms and Abbreviations**

<b>Acronym/Abbreviation</b>	<b>Term</b>
PPA	Power Purchase Agreement
RMP	Resource Management Plan
ROD	Record of Decision
ROW	Right-of-Way
RPS	Renewable Portfolio Standard
RWQCB	Regional Water Quality Control Board
SDG&E	San Diego Gas & Electric
SODAR	Sonic Detection and Ranging
SWPL	Southwest Powerlink
SWRQCB	State Water Resources Quality Control Board
U.S.C.	United States Code
USFWS	United States Fish and Wildlife Service

## Executive Summary

This document constitutes the Record of Decision (ROD) of the United States Department of the Interior (DOI) Bureau of Land Management (BLM) for the Tule Wind Project in southeastern San Diego County (see Figure 1 of this ROD). This ROD approves the construction, operation, maintenance, and decommissioning of a wind energy facility on 12,360 acres of public land. The approved project would produce up to 186 megawatts (MW) of electricity via 62 wind turbines on public lands in the 1.5 to 3.0 MW generating capacity range and would connect to the proposed Boulevard Substation rebuild component of San Diego Gas & Electric's (SDG&E's) East County (ECO) Substation Project.<sup>1</sup> SDG&E's ECO Substation Project would generate electricity that would feed into the existing Southwest Powerlink (SWPL) 500-kilovolt (kV) transmission line. BLM's Preferred Alternative for the Tule Wind Project is Tule Wind Alternative 5, Reduction in Turbines, combined with Tule Wind Alternative 2, Gen-Tie Route 2 Underground with Collector Substation/Operations and Maintenance (O&M) Facility on Rough Acres Ranch (see Figure 2 of this ROD). These alternatives were analyzed in the Final Environmental Impact Statement/Environmental Impact Report (FEIS/FEIR) for the project. A Notice of Availability (NOA) of this document was published by the United States Environmental Protection Agency (EPA) in the Federal Register on October 14, 2011 (76 Federal Register (FR) 63922). It should be noted that the FEIS/FEIR alternatives also describe project components not located on public lands, including certain wind turbines, access routes, the collector substation, and the O&M facility.

This ROD addresses the decision for a right-of-way (ROW) grant under Title V of the Federal Land Policy and Management Act of 1976 (FLPMA). It is the BLM's decision to grant a ROW to the applicant, Tule Wind, LLC, that will allow the construction, operation, maintenance, and decommissioning of the Tule Wind Project on public land as analyzed in the FEIS/FEIR as the BLM's Preferred Alternative (as identified above), and which is also referred to as the Selected Alternative in this ROD (shown in Figure 2 of this ROD). Through this ROD, the BLM makes no decision regarding those portions of the Tule Wind Project that are not located on BLM-managed lands. The EIS/EIR prepared for the Tule Wind Project includes wind turbines on lands that are subject to the review and approval of other jurisdictions, including the Ewiiapaayp Band of Kumeyaay Indians, the Bureau of Indian Affairs (BIA), and California State Lands Commission (CSLC). These other lands were included in the Proposed Action addressed in the FEIS/FEIR. In order for the wind energy facilities to be constructed on these other lands, access roads and an overhead cable collector line would need to be constructed on BLM-managed lands that are not included within this ROD. This ROD, however, does not preclude the ability for a future ROD and ROW grant to be issued for these components. If the Ewiiapaayp Band of Kumeyaay Indians and the BIA or CSLC approves wind energy facilities

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<sup>1</sup> BLM will issue a separate decision for SDG&E's ROW grant application for a 1.5-mile segment of the 138 kV transmission line that crosses public lands, and which is a component of the ECO Substation Project.

within their respective jurisdictions, the BLM will use the analysis contained in the FEIS/FEIR prepared for this project to issue a decision on a subsequent ROW grant.

Under the Selected Alternative, the proposed 138 kV underground gen-tie line would be constructed across 0.77 miles of public land. Part of Alternative Gen-Tie Route 2 Underground with Collector Substation/O&M Facility on Rough Acres Ranch, including the concrete batch plant, is to be located on private lands that are not under the authority of the BLM and is discussed here merely for descriptive purposes. The Selected Alternative would remove 33 turbines (from the 128 of the Proposed Action) from public land including one turbine (S1) adjacent to the In-Ko-Pah Mountains Area of Critical Environmental Concern (ACEC) and 33 turbines on the project site including turbines within the J, K, L, M, N, Q and R strings. The Selected Alternative reduces the risk of golden eagle (*Aquila chrysaetos*) collision with operating turbines in the northwest portion of the project area on public land and reduces impacts to visual resources. The Selected Alternative, which is an action alternative would help realize Federal Energy Policy Goals as well as California's Renewable Portfolio Standard (RPS) program targets to increase renewable energy and reduce greenhouse gas emissions. Based on these considerations, a combination of the Proposed Action and Tule Wind Project Alternatives 2 and 5 was identified as the Selected Alternative.

This decision reflects careful consideration of the information generated from the Tule Wind Project environmental review process, and further reflects resolution of the issues identified through such process. As stated in the FEIS/FEIR in Section A.5.3, the responsible/cooperating agencies may use the EIS/EIR for their permitting processes. Section 3.2 of this ROD identifies the current status of the permitting process by these other agencies.

This ROD applies only to BLM-managed lands, and to the BLM's decisions for the Tule Wind Project and does not include the ECO Substation, Energia Sierra Juarez (ESJ) Gen-Tie, Campo, Manzanita, and Jordan projects addressed in the FEIS/FEIR. Other agencies, including, but not limited to, the BIA; Ewiiapaayp, Manzanita, and Campo Native American Indian tribes; CSLC; and County of San Diego, are responsible for identifying their preferred alternatives and issuing their own decisions and applicable authorizations.

## Decision Rationale

These decisions fulfill legal requirements for managing public lands. Granting the ROW for the Tule Wind Project contributes to the public interest in developing renewable energy to meet Federal and state goals. The stipulations to be included in the grant will ensure that authorization of this project will protect environmental resources and comply with environmental standards. These decisions reflect careful balancing of many competing public interests in managing BLM-managed public lands. These decisions are based on comprehensive environmental analysis and full public disclosure and involvement. The BLM engaged highly qualified technical experts to analyze the environmental effects of the Tule Wind Project. During the scoping process and following the publication of the DEIS/DEIR, members of the public submitted comments that enhanced the BLM's consideration of many environmental issues relevant to this project. The BLM, California Public Utilities Commission (CPUC), U.S. Army Corps of Engineers (ACOE), U.S. Fish and Wildlife Service (USFWS), California Department of Fish and Game (CDFG), County of San Diego, and other responsible agencies used their expertise and existing technology to address the important issues of environmental resource protection. The BLM has

determined that the measures contained in the FEIS/FEIR avoid and/or minimize environmental harm to the maximum extent practicable.

## 1. Decisions

### 1.1 Background

This ROD for the Tule Wind Project approves the construction, operation, maintenance, and decommissioning of a proposed 186 MW wind energy facility on BLM-managed public lands in southeastern San Diego County, California, as analyzed in the Tule Wind Project FEIS/FEIR. This decision approves the BLM Preferred Alternative for public lands as identified in the FEIS/FEIR. The Agency Preferred Alternative is referred to as the “Selected Alternative” in this ROD.

This approval will take the form of a FLPMA ROW grant, issued in conformance with Title V of FLPMA and implementing regulations found at Title 43 Code of Federal Regulations (CFR) Part 2800. The decision contained herein applies only to the BLM-administered public lands within the boundary of the Selected Alternative.

One ROW grant will be issued to Tule Wind, LLC for a term of 30 years with an option to renew in accordance with 43 CFR 2807.22. The ROW grant will allow Tule Wind, LLC the right to use, occupy, and develop 12,360 acres of public lands to construct, operate, maintain, and decommission a wind energy facility with up to 63 wind turbines generating up to 186 MW of electricity on public lands in southeastern San Diego County. The project site is located approximately 60 miles east of downtown San Diego, north of Interstate 8 (I-8) and the town of Boulevard, in San Diego County, California, within Townships 15, 16, and 17 South, Ranges 6 and 7 East. Figures 1 and 2 of this ROD show the location of the project site. The Tule Wind Project would be primarily located in the In-Ko-Pah Mountains near the McCain Valley.

The BLM requires the initiation of project construction within 2 years of the issuance of a ROW grant. In addition, BLM requires that all requisite conditions, stipulations, plan of development (POD), and environmental protection measures are met prior to issuing an official Notice to Proceed (NTP) initiating the construction phase of the grant process. If the approved project does not progress to construction or operation within the allotted time period under the grant, or there is a substantial deviation in location or use, an amended application and additional review under the National Environmental Policy Act (NEPA) may be required.

The ROD conditions the ROW grant on implementation of mitigation measures and monitoring programs as identified in Appendix C to this ROD, Adopted Mitigation Measures, and Appendix D, ECCMP; the Biological Opinion (BO) issued by the USFWS, which is provided in Appendix A to this ROD; National Historic Preservation Act (NHPA) Section 106 Memorandum of Agreement (MOA), which is provided in Appendix B to this ROD; and the issuance of all other necessary local, state, and Federal approvals, authorizations, and permits. In addition, the ROW grant is conditioned upon any amendments to the BO, the MOA, and other necessary approvals, authorization, and permits.

The BLM Preferred Alternative in the FEIS/FEIR describes the installation of wind turbines, as well as other main features of the project that include construction of new and the improvement of existing access roads; construction of the associated transmission lines including overhead and underground collector lines and a 138 kV gen-tie; two meteorological towers; a newly constructed collector substation; an O&M facility; temporary construction laydown/staging

areas; and groundwater wells used for water supply. As shown in Figure 2, Tule Wind Project Selected Alternative, the following project components are located on public lands:

- 62 wind turbines
- 18.81 miles of new access roads
- 11.08 miles of improved access roads
- 0.77 mile of 138 kV gen-tie
- Two meteorological towers

The gen-tie would extend south from the project site across I-8 and would connect to the proposed Boulevard Substation rebuild component of SDG&E's ECO Substation Project. The portion of the 138 kV gen-tie not on public lands will be approved by the County of San Diego. SDG&E's ECO Substation Project is analyzed in Sections D.2 through D.18 of the FEIS/FEIR for the Tule Wind Project.<sup>2</sup> Direct, indirect, and cumulative impacts of the construction, operation, and maintenance of the proposed Boulevard Substation rebuild project are addressed in the FEIS/FEIR. The Proposed Action in the EIS/EIR prepared for the Tule Wind Project includes wind turbines on lands that are subject to review and approval of other jurisdictions, including the Ewiiapaayp Band, the BIA, and CSLC. In order for the wind energy facilities to be constructed on these other lands, access roads and an overhead cable collector line will need to be constructed on BLM-managed lands that are not included within the ROD. This ROD, however, does not preclude the ability for a future ROW grant to be issued for these components as the environmental review was completed as part of the East County Substation, Tule Wind, and Energia Sierra Juarez Gen-Tie Projects EIS/EIR. If the Ewiiapaayp Band and the BIA or CSLC approve wind energy facilities within their respective jurisdictions, the BLM will use the analysis contained in the FEIS/FEIR prepared for this project to issue a decision on a subsequent ROW grant.

Project construction is expected to begin at the end of 2011 and is anticipated to require 12 months to complete. Commercial operation could commence as early as 2013. The sequence of project construction activities is outlined in the POD on file with the BLM and in the BO provided in Appendix A to this ROD.

### **1.1.1 Application/Applicant**

#### **1.1.1.1 BLM ROW Grant Application**

Tule Wind, LLC, is a wholly owned subsidiary of Iberdrola Renewables, Inc. Tule Wind, LLC is proposing to construct and operate the Tule Wind Project on public, state, and tribally

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<sup>2</sup> SDG&E submitted an application to the CPUC for a Permit to Construct the East County Substation Project in August 2009. The CPUC has permitting authority over the ECO Substation Project, which includes the Boulevard Substation Rebuild. The CPUC anticipates making a decision on the ECO Substation Project in early 2012. BLM intends to issue a separate decision for that part of the 138 kV line that crosses BLM-managed public lands and is associated with SDG&E's ECO Substation Project.

managed lands. Tule Wind, LLC was issued a BLM ROW Grant (Serial Number CA-45248) for wind testing and monitoring at the proposed Tule Wind Project site on September 15, 2004. Tule Wind, LLC submitted an amended ROW application and initial POD to the BLM to construct, operate, maintain, and decommission an energy generation facility in southeastern San Diego County on December 21, 2007. In February 2009, Tule Wind, LLC submitted an amended POD, and after review and comment by the BLM, submitted a revised and amended POD in November 2009. On December 1, 2011, Tule Wind, LLC submitted a revised POD to BLM.

### **1.1.1.2 Power Purchase Agreement**

Tule Wind, LLC is currently negotiating a power purchase agreement (PPA) with SDG&E. However, the PPA is not fully executed as the applicant is waiting for the completion of key permitting processes, including the ROD and CPUC's Permit to Construct for the ECO Substation Project.

### **1.1.2 Purpose and Need**

#### **1.1.2.1 Bureau of Land Management Purpose and Need for the Proposed Action**

In accordance with FLPMA (Section 103(c)), public lands are to be managed for multiple use that takes into account the long-term needs of future generations for renewable and non-renewable resources. The Secretary of the Interior is authorized to grant rights-of-way on public lands for systems of generation, transmission, and distribution of electric energy (Section 501(a)(4)). Taking into account the BLM's multiple use mandate, the purpose and need for the proposed action is to respond to a FLPMA ROW application submitted by Tule Wind, LLC to construct, operate, maintain, and decommission a wind energy-generating facility and associated infrastructure on public lands managed by the BLM in compliance with FLPMA, BLM ROW regulations, and other applicable Federal laws and policies.

In conjunction with FLPMA, the BLM's applicable authorities include the following:

- Executive Order 13212, dated May 18, 2001, which mandates that agencies act expediently and in a manner consistent with applicable laws to increase the production and transmission of energy in a safe and environmentally sound manner.
- Section 211 of the Energy Policy Act of 2005 (EPAAct), which established a goal for the DOI (BLM's parent agency) to approved at least 10,000 megawatts of non-hydropower renewable energy power on public lands by 2015.
- Secretarial Order 3285A1, Renewable Energy Development by the DOI, dated February 22, 2010. This Secretarial Order establishes the development of renewable energy as a priority for the DOI and creates a Departmental Task Force on Energy and Climate Change. It also announced a policy goal of identifying and prioritizing specific locations (study areas) best suited for large-scale production of wind energy.

The BLM is deciding whether to deny the proposed ROW, grant the ROW, or grant the ROW with modifications. Modifications may include modifying the proposed use or changing the alignment route or location of the proposed facilities (43 CFR 2805.10(a)(1)).

### 1.1.3 BLM Authority

#### 1.1.3.1 Federal Land Policy and Management Act of 1976

FLPMA establishes policies and procedures for the management of public lands. In Section 102(a)(8), Congress declared that it is the policy of the United States that:

*“ . . . the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use” (43 United States Code (U.S.C.) 1701(a)(8)).*

Title V of FLPMA (43 U.S.C. 1761-1771) authorizes the BLM, acting on behalf of the Secretary of the Interior, to authorize a ROW grant on, over, under, and through the public lands for systems for generation, transmission, and distribution of electric energy. The BLM's implementation of its statutory direction for ROW authorizations is detailed in 43 CFR Part 2800. The BLM Authorized Officer (AO) administers the ROW authorization and ensures compliance with the terms and conditions of the ROW. The AO is any employee of the Department of the Interior to whom the authority to perform the duties described in 43 CFR Part 2800 has been delegated. This authority is derived from the authority of the Secretary of the Interior, and may be revoked at any time. The authority to approve all actions pertaining to the granting and management of Title V ROWs on public lands is delegated to the respective BLM State Directors (BLM Manual 1203, Appendix 1, p.33). In California, the authority of the BLM State Director to approve actions pertaining to the granting and management of Title V ROWs has been further delegated to the Field Managers.

In respect to this specific ROW grant, this authority has been delegated to the Field Manager of the El Centro Field Office, who will be responsible for managing the ROW grant for the Tule Wind Project.

#### 1.1.3.2 National Environmental Policy Act

Section 102(c) of NEPA (42 U.S.C. 4321 et seq.) and the Council on Environmental Quality (CEQ) and DOI implementing regulations (40 CFR Parts 1500–1508 and 43 CFR 46) provide for the integration of NEPA directives into agency planning to ensure appropriate consideration of NEPA's policies and to eliminate delay.

When taking actions such as approving ROW grants, the BLM must comply with the applicable requirements of NEPA and the CEQ's NEPA regulations. Compliance with the NEPA process is intended to assist Federal officials in making decisions about a project that are based on an understanding of the environmental consequences of the decision, and identifying actions that protect, restore, and enhance the environment. The DEIS/DEIR, FEIS/FEIR and this ROD document the BLM's compliance with the requirements of NEPA for the Tule Wind Project.

#### 1.1.3.3 BLM Eastern San Diego County Resource Management Plan

In furtherance of its authority under FLPMA, the BLM manages land in eastern San Diego County pursuant to the *Eastern San Diego County Resource Management Plan (RMP) (2008)*. The Eastern San Diego County RMP and associated ROD guide the development and management of the Eastern San Diego County Planning Area, an area spanning an eastern escarpment of Southern California's Peninsular Ranges and including more than 100,000 acres of public land managed by the BLM. In 2008, the BLM revised the RMP for public lands in eastern San Diego County, in part to respond to the established national goals and directives regarding renewable energy development on public lands. Among other issues, the revisions made to the Eastern San Diego County RMP addressed the environmental and public concerns associated with wind energy development in the McCain Valley area. The BLM RMP also designated certain lands within the planning area as available for geothermal leasing and wind energy development, including public lands within the McCain Valley.

The RMP also addresses conflicts among various recreational users accessing BLM lands, provides direction for future site-specific development including renewable energy projects, and provides for plan monitoring to determine the effectiveness of BLM land management strategies. The RMP further indicates that future policy decisions and land management strategies shall be compatible with the multiple-use mission of the BLM (the multiple-use mission includes recreational use and responsible development within BLM-managed lands while maintaining environmental quality of the land).

#### **1.1.3.4 Other Guidance and Regulations**

The BLM processes ROW grant applications for wind development in accordance with 43 CFR 2804.25 and BLM's Instruction Memorandum (IM) 2009-043, Wind Energy Development Policy. The IM ensures BLM-wide consistency in the processing of ROW applications and the management of authorizations for wind energy site testing and development on the public lands. Applications for a wind energy ROW grant may be submitted for one of the following three types of wind energy projects:

1. A site-specific grant for individual meteorological towers and instrumentation facilities with a term that is limited to 3 years
2. A project area grant for a larger site testing and monitoring area, with a term of 3 years that may be renewed consistent with 43 CFR 2807.22 and with the provisions of the IM beyond the initial term of the grant
3. A development grant with a term that is not limited by the regulations, but will generally be for a term of 30 years.

The ROW application under consideration by the BLM that is the subject of this ROD was a Type III application.

In conjunction with the FLPMA, other authorities and policies also include:

- Energy Policy Act (119 Statutes 594, 600), Section 211, which states "It is the sense of the Congress that the Secretary of the Interior should, before the end of the 10-year period beginning on the date of enactment of this Act, seek to have approved non-hydropower

renewable energy projects located on public lands with a generation capacity of at least 10,000 megawatts of electricity.”

- Executive Order 13212 (May 18, 2001), which mandates that agencies act expediently and in a manner consistent with applicable laws to increase the “production and transmission of energy in a safe and environmentally sound manner.”
- Secretarial Order 3285 (March 11, 2009), which “establishes the development of renewable energy as a priority for the Department of the Interior.”
- IM 2011-59, National Environmental Policy Act Compliance for Utility-Scale Renewable Energy Right-of-Way Authorizations (February 7, 2011), which reiterates and clarifies existing BLM NEPA policy to assist offices that are analyzing externally-generated, utility-scale renewable energy ROW applications. It includes examples and guidance applicable to such applications that supplement information in the BLM’s NEPA Handbook (H-1790-1) that reflect that utility-scale renewable energy projects are distinct from many other types of land and realty actions due to their size and potential for significant resource conflicts, as well as the priority that has been placed on them by the DOI.

## **1.2 Information Developed Since the FEIS/FEIR and Adequacy of NEPA Analysis**

Since the preparation and publication of the FEIS/FEIR, no new information has become available: There have been no modifications to the Selected Alternative, and no additional NEPA analysis is required.

## **1.3 Decisions Being Made**

### **1.3.1 Right-of-Way Grant**

Under Federal law, the BLM is responsible for processing requests for ROW grant applications to determine whether and to what extent to authorize requests such as renewable energy projects and other appurtenant facilities on land it manages (43 U.S.C. 1761(a), 1764(a)). Because the project is a privately initiated venture and would be sited in part on lands managed by the BLM, the applicant applied for a ROW grant from the BLM pursuant to Federal law and regulations. The BLM concludes that the acreage approved by the ROW grant is the acreage the Tule Wind Project will occupy and that is necessary for constructing, operating, maintaining, and decommissioning the authorized facilities on public lands. In addition, the BLM has included grant conditions—based on the FEIS/FEIR, the BO, the MOA, the Bald and Golden Eagle Protection Act, and other applicable Federal rules and regulations (any and all of which may be amended)—to protect public health and safety, prevent unnecessary damage to the environment, and ensure that the project will not result in unnecessary or undue degradation of public lands. On approval of the ROW grant, the applicant will be authorized to construct and operate the Tule Wind Project on 12,360 acres of public land to provide up to 186 MW of wind energy if the requirements specified in this ROD are met. The ROD requires the applicant to secure all necessary local, state, and Federal permits, authorizations, and approvals. Upon receipt of the NTP, and by remaining consistent with the ROW grant, the applicant will be able to construct and operate the Tule Wind Project on the proposed public land site. The BLM also has the discretion to work with the grant holder to determine a logical sequence of construction activities to assist with meeting development financing constraints.

### 1.3.2 Temporary Construction Closures

In 2008, the BLM prepared the Eastern San Diego County RMP that addresses the management of approximately 102,869 acres of BLM-managed lands in eastern San Diego County. The Tule Wind Project is within the McCain Valley Recreation Management Zone, which is designated a Limited Use Off-Highway Vehicle (OHV) Management Area. "Limited Use" areas are defined as areas in which OHV use is "restricted at certain times, in certain areas, and/or to certain vehicular use." The routes within the project area are designated as motorized or non-motorized routes. Within the McCain Valley Recreation Management Zone is the designated Lark Canyon OHV area, an area limited to motorcycle use on designated trails.

Access to recreation areas, including the Lark Canyon OHV Area, Lark Canyon Campground, Cottonwood Campground, Carrizo Overlook, and Sacatone Overlook will be reduced during construction, and in some instances, access roads off McCain Valley Road to these areas will be temporarily closed (resulting in an inability to access these areas and facilities by car) during the period of time construction is authorized. Specific routes and times will be announced once a more detailed construction schedule is completed. As detailed in the mitigation measures, Tule Wind, LLC will be required to prepare a Construction Notification Plan and provide 30 days' notice of any access restriction and/or anticipated closures of wilderness and recreation areas. The public will be informed of closures through mailers, newspaper advertisements, public venue notices, and/or a public liaison person and toll-free information hotline. The only exceptions to these temporary closures are the BLM or its assigns, the grant holder or its assigns, and emergency response personnel.

### 1.3.3 What is Not Being Approved

In March 2011, after release of the Draft Environmental Impact Statement/Environmental Impact Report (DEIS/DEIR) for public review and based on its analysis, the applicant developed and submitted for the BLM's consideration a modified project layout. The modified project layout is included as the Proposed Action in the FEIR/FEIS as it reduced environmental effects compared to what was analyzed in the DEIS/DEIR due to a reduced number of turbines (from 134 to 128), the reduced length of the 138 kV transmission line (from 9.7 miles to 9.2 miles), and an overall reduction in improved access roads (from 27.6 miles to 23.4 miles). The overall land requirement on public, private, Federal, state, and tribal lands was reduced from 250.3 to 236.1 acres (a reduction of 14.2 acres). Further, the modified project layout included biological and cultural resources survey information regarding a part of the area of potential effect that had not been previously surveyed due to access constraints.

As discussed in FEIS/FEIR Section C, Alternatives, five alternatives and two no action alternatives plus the Proposed Action (described in FEIS/FEIR Section B.4, Tule Wind Project) were developed for full consideration in the FEIS/FEIR. The five alternative configuration and design alternatives considered include:

- Tule Wind Alternative 1, Gen-Tie Route 2 with Collector Substation/Operations and Maintenance (O&M) Facility on Rough Acres Ranch
- Tule Wind Alternative 2, Gen-Tie Route 2 Underground with Collector Substation/O&M Facility on Rough Acres Ranch

- Tule Wind Alternative 3, Gen-Tie Route 3 with Collector Substation/O&M Facility on Rough Acres Ranch
- Tule Wind Alternative 4, Gen-Tie Route 3 Underground with Collector Substation/O&M Facility on Rough Acres Ranch
- Tule Wind Alternative 5, Reduction in Turbines.

As discussed in FEIS/FEIR Section C.5, Alternatives Eliminated from Full EIR/EIS Evaluation, other alternative sites, technologies and methods were considered but eliminated from detailed analysis in the FEIS/FEIR. Other alternatives considered included energy efficiency and distributed generation such as rooftop solar panels, alternative turbine design, and alternative fuels. After consideration of the impact analysis in the FEIS/FEIR and comments from the public, Federal and state agencies, and local groups and individuals, the BLM identified the Preferred Alternative. The Selected Alternative is the BLM Preferred Alternative, as identified in the FEIS/FEIR. This ROD addresses the project components of the BLM Preferred Alternative that are located on public lands. The rationale for this decision is discussed in Section 3.1 of this ROD.

#### **1.4 ROW Requirements**

The BLM uses SF 2800-14 (ROW Lease/Grant) as the instrument to authorize the ROW grant for the project; it includes the POD and all other terms, conditions, stipulations, and measures required as part of the grant authorization. Consistent with BLM policy, the Tule Wind ROW grant will include a diligent development and a performance bonding requirement for installation of facilities consistent with the approved POD. Construction of the initial phase of development must commence within 12 months after issuance of the NTP but no later than 24 months after the effective date of the issuance of the ROW grant. The holder shall complete construction within the timeframes approved in the POD, but no later than 24 months after start of construction or as otherwise approved by the BLM.

Prior to the termination of the ROW authorization, a final decommissioning plan will be developed in compliance with the standards and requirements for closing a site and will be circulated for approval by interested agencies. The ROW grant could potentially be renewed by Tule Wind, LLC; however, according to CFR 43 2805.15, the BLM retains the right to determine whether the ROW grant is renewable. If the applicant chooses to renew the ROW, the applicant is required to submit an application; upon review, BLM will make a decision based on compliance history and applicable Federal laws and regulations (43 CFR 2807.22(a)).

Decommissioning activities are anticipated to have similar types of construction-related activities and therefore, all procedures, management plans, and BMPs developed for the construction phase of the project would be applied to the decommissioning phase of the project.

According to BLM policy (Instructional Memorandum 2009-043, as it may be amended), a bond is required for all development (ROW) grants to ensure compliance with the terms and conditions of the ROW authorization and the requirements of applicable regulatory requirements. A minimum bond amount, considering salvage values of turbines and towers, is required for all wind energy development projects on public lands. The bond will be periodically reviewed (at least every 5 years) by the BLM authorized officer to ensure adequacy of the bond.

#### **1.5 Future Changes to the Approved Project**

At various times throughout the project, the need for extra workspace or additional access roads may be identified. Similarly, changes to the project requirements (e.g., mitigation measures, specifications, etc.) may be needed to facilitate construction or provide more effective protection of resources. The BLM and grant holder will work together to find solutions when adjustments are necessary for specific field situations to avoid conflicts with adopted mitigation measures or specifications.

The BLM Compliance Project Manager and Compliance Monitors will ensure that any deviation from the procedures identified under the monitoring program is consistent with NEPA and FLPMA requirements. No project adjustment will be approved if it creates new significant impacts or substantially modifies the use or project footprint. Adjustments will be limited to minor project changes that will not trigger other permit requirements or create new or greater impacts and that clearly and strictly comply with the intent of the adopted mitigation measures, as they may be amended over time. A proposed project change that has the potential for creating significant environmental effects or represents a substantial change to the location or use of the Selected Alternative will be evaluated to determine whether an amended application and/or supplemental NEPA analysis is required. In some cases, an adjustment may also require approval by other jurisdictional agencies.

## 1.6 Summary of Conclusions

The Selected Alternative for the Tule Wind Project is the action alternative that provides the most public benefit and avoids the greatest potential impact on biological, cultural, and hydrological resources for the following reasons:

- As a result of Alternative Gen-Tie Route 2 Underground with Collector Substation/O&M Facility on Rough Acres Ranch (Tule Wind Alternative 2), permanent impacts are reduced because 1) the alternate sites for the O&M, collector substation, and temporary batch plant facilities on Rough Acres Ranch have been previously disturbed, 2) access requirements are reduced, 3) the 138 kV transmission line length is reduced, and 4) visual impacts due to undergrounding of 138 kV transmission line are reduced.
- As a result of the Reduction in Turbines Alternative (Tule Wind Alternative 5), the risk of golden eagle collision with operating turbines in the northwest portion of the project on public land is reduced.
- Visual impacts due to fewer overall wind turbines on public lands are likewise reduced.
- As a result of consultation with tribal governments and representatives and the MOA, many cultural resources in the area are avoided by the Selected Alternative, or the impacts are substantially mitigated.
- Based on the terms and conditions in the BO dated September 2, 2011, and the ongoing consultation with the USFWS during project construction and operations, many biological resources in the area are avoided by the Selected Alternative, or the impacts are substantially mitigated.

Additionally, the Tule Wind Project is expected to provide climate, employment, and energy security benefits to California and the nation. The project takes a major step toward meeting state and Federal climate change goals. It will provide clean electricity for homes and businesses, and bring much-needed jobs to the area. The nearest cities to the proposed project

have high unemployment rates: 13.7% in the City of El Cajon and 26.3% in the City of El Centro (FEIS/FEIR, p. D.16-8). The project is expected to create 325 jobs during peak construction, as well as 12 permanent, full-time jobs during its operation (FEIS/FEIR, p. D.16-16).

## **2. Mitigation and Monitoring**

### **2.1 Required Mitigation**

The Tule Wind Project includes the following measures, terms, and conditions:

- Terms and Conditions in the USFWS BO, provided in Appendix A to this ROD as may be amended
- Terms and Conditions in the MOA, provided in Appendix B to this ROD as may be amended
- Adopted Avoidance, Minimization, and Mitigation Measures provided in FEIS/FEIR Chapter D, Environmental Analysis, as amended by this ROD (provided in Appendix C to this ROD), and as may be further amended over time
- The project's Environmental and Construction Compliance Monitoring Plan (ECCMP) is provided in Appendix D to this ROD. The ECCMP includes verifying implementation and compliance with project mitigation measures, including preparation and implementation of plans such as, but not limited to, the Avian and Bat Protection Plan (ABPP) and the Fire Protection Plan. In addition, Tule Wind, LLC will be required to prepare a Habitat Restoration Plan prior to issuance of an NTP. The ECCMP includes preparation of over 35 plans. The BLM will use the process described in the ECCMP to ensure that the appropriate plans are completed prior to NTP issuance for actions affecting a particular resource.

For compliance purposes, the complete language of these measures, terms, and conditions is provided in the ECCMP for the Tule Wind Project as stipulated in the ROW grant. These measures, terms, and conditions are determined to be in the public interest pursuant to 43 CFR 2805.10(a)(1), since they ensure the project will be constructed, operated, maintained, and decommissioned in conformity with the decisions issued by the BLM. In the event of any inconsistency between measures incorporated in plans and permits approved by other permitting agencies and those contained in the ROD, the mitigation measures and/or conditions with the highest degree of environmental requirements to avoid and minimize potential environmental impacts shall be deemed to prevail and to reflect the intent of BLM.

### **2.2 Monitoring and Enforcement**

The Council on Environmental Quality (CEQ) regulations provide that a monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation (40 CFR 1505.2(c)). Agencies may provide for monitoring to assure that their decisions are carried out and mitigation and other conditions established in the FEIS/FEIR or during its review and committed to as part of the decision shall be implemented by the lead agency or other appropriate consenting agency (40 CFR 1505.2(c), 1505.3). The lead agency shall:

- Include appropriate conditions in grants, permits or other approvals;
- Condition funding of actions on mitigation;
- Upon request, inform cooperating or commenting agencies on the progress in carrying out mitigation measures they have proposed and that were adopted by the agency making the decision; and
- Upon request, make available to the public the results of relevant monitoring.

As the Federal Lead Agency for the Tule Wind Project under NEPA, the BLM is responsible for ensuring compliance with all adopted FEIS/FEIR mitigation measures for project components of the Tule Wind Project located on public lands. The complete language of all the measures is provided in the ECCMP for the Tule Wind Project, which is found in Appendix D to this ROD. The overall objective of the ECCMP is to conduct inspections of construction activities on public lands and to evaluate and document compliance or noncompliance with the project measures and conditions applicable to public lands during project construction. The BLM also has incorporated this mitigation into the ROW as terms and conditions of the grant. Failure on the part of Tule Wind, LLC, as the grant holder, to adhere to these terms and conditions could result in various administrative actions up to and including termination of the ROW grant and the removal of facilities and rehabilitation of all public land disturbances.

### 2.3 Mitigation Measures Not Adopted

Consistent with 40 CFR 1505.2(c), the ROD is to state whether all practicable means to avoid or minimize environmental harm from the Tule Wind Project have been adopted, and if not, why not. The purpose of the joint EIS/EIR was to evaluate the environmental impacts of three projects, including the Tule Wind, ECO Substation, and ESJ Gen-tie projects. As such, some of the proposed mitigation measures identified in the EIS/EIR are not applicable to the Tule Wind Project, which is the subject of this ROD. Mitigation measures that are not under the compliance enforcement authority of the BLM are not considered to be BLM-required mitigation. As such, there may be mitigation measures identified in the FEIS/FEIR that are not adopted by the BLM because they are not within its compliance authority (see Section 2.4 of the ROD). In addition, the FEIS/FEIR identifies some mitigation measures within the jurisdiction of the BLM, but which the BLM is modifying, clarifying, or not adopting. The rationale of why these measures are not being adopted (either in part or in full) is provided following each measure.

**MM BIO-7g Conduct protocol surveys for Quino checkerspot butterfly within 1 year prior to project construction activities in occupied habitat.** Tule Wind, LLC shall conduct pre-construction protocol surveys for Quino checkerspot butterfly within 1 year prior to construction activities, or as required by U.S. Fish and Wildlife Service, in any area known to support the species. Surveys shall be conducted by a qualified, permitted biologist in accordance with the most currently accepted protocol survey method. Results shall be reported to the U.S. Fish and Wildlife Service within 45 days of the completion of the survey.

**Rationale** Conservation Measure #5 of the approved BO requires that if construction within occupied Quino habitat has not started by May 2012, additional USFWS-protocol Quino surveys will be conducted in the flight season prior to construction. The approved BO assumes that these Conservation Measures will be implemented by the

project applicant (see BO p.16). Neither the Eastern San Diego County (ESDC) RMP or the approved BO require protocol surveys be conducted for the Quino within 1 year prior to project construction. The USFWS has determined in its BO that protocol surveys will occur during the flight season prior to construction as opposed to "within 1 year prior to construction") per the MM BIO 7g. The project applicant is required to comply with the BO's reasonable and prudent measures (RPM), terms and conditions, and the Conservation Measures of the BO, which have superseded to a certain extent the requirements of MM BIO 7g. BLM does not believe it is practicable for the project applicant to conduct protocol surveys for Quino 1 year prior to construction. This would be over and beyond those required by the FWS in its BO. Completing surveys as outlined in the BO will determine whether Quino are present prior to construction activities. The intent of both the BO and MM BIO 7g is to determine whether Quino are present prior to construction and by completing protocol Quino surveys in the flight season prior to construction will ensure the intent of MM BIO 7g is met as identified in the FEIS/FEIR.

**MM BIO-10f Authorize construction of portions of the project based on the results of behavioral and population studies of local golden eagles.** Construction of the Tule Wind project would be authorized in two portions:

1. Construction of the first portion of the project would occur at those turbine locations deemed to present less risk to the eagle populations and would not include turbines on the northwest ridgeline.
2. Construction of the second portion of the project would occur at those turbine locations that show reduced risk to the eagle population following analysis of detailed behavior studies of known eagles in the vicinity of the Tule Wind project. Pending the outcome of eagle behavior studies, all, none or part of the second portion of the project would be authorized and will include the following turbine strings: J1 through J15; K1 through K12; L1 through L11; M1 and M2; N1 through N8; P1 through P5; Q1 and Q2.

Construction of turbines in the second portion of the project will only be authorized following detailed behavioral telemetry studies and continued nest monitoring of known eagles in the vicinity of the Tule Wind Project (considered to be within approximately 10 miles of the project). Behavior studies will be used to determine eagle usage and forage areas, and authorization for construction at each turbine location in the second portion will be at the discretion of the BLM or the appropriate land management entity. The final criteria determining the risk each location presents to eagles will be determined by the BLM or the appropriate land management agency, in consultation with the required resource agencies, tribes and other relevant permitting entities. Criteria will be established related to the proportion of the observed golden eagle use areas (based on the telemetry data) within proposed turbine strings to determine the risk of these turbines on individual eagles in the vicinity. Criteria will also be established related to past and current nest occupancy and productivity (based on past and continued nest monitoring data) for the monitored nests in the project vicinity to determine the risk of the construction of turbines on the

eagle population. Turbine locations exceeding the acceptable risk levels to golden eagles based on these final criteria will not be authorized for construction.

**Rationale** In the ABPP, the proposed wind energy project consists of two phases. Phase 1 consists of the valley turbines, and Phase 2 consists of the ridge turbines. The ridge turbines are proposed to be located on BLM, tribal, and CSLC lands. The Selected Alternative, as it applies to the BLM in this ROD, does not include placement of turbines on the ridgeline. The applicant will be required to conform to the terms and conditions of the completed ABPP as it applies to the decision being made in this ROD. The ridge turbines of the Proposed Action that are identified as Phase 2 in the ABPP, are not applicable as this ROD approves only those turbines on BLM managed lands within the valley. As such, only that part of MM BIO 10f that addresses construction of the valley turbines is applicable to this ROD and will be required by the ROW grant. To the extent the ridge turbines on public lands are further considered by the BLM, MM BIO 10f remains potentially applicable. If the BLM further considers ridge turbines on BLM-managed public lands, it would issue a new decision, and would determine appropriate mitigation at that time.

#### 2.4 Mitigation Measures Identified in the FEIS/FEIR Not Applicable to the BLM

The FEIS/FEIR identified mitigation measures for effects on non-BLM lands. The BLM will not adopt the following mitigation measures because they are not applicable to the effects of the BLM action:

**MM VIS-3h Screen substations and ancillary facilities.** Tule Wind, LLC shall provide a Screening Plan for screening vegetation, walls, and fences that reduce visibility of ancillary facilities and helps the facility blend in with the landscape. The use of berms to facilitate project screening may also be incorporated into the Plan. Tule Wind, LLC shall submit the Plan to the BLM for review and approval at least 90 days before installing the landscape screening. If the BLM notifies Tule Wind, LLC that revisions to the Plan are needed before the Plan can be approved, within 30 days of receiving that notification, Tule Wind, LLC shall prepare and submit for review and approval a revised Plan. The Plan shall include but not necessarily be limited to:

- An 11"x 17" color simulation of the proposed landscaping at 5 years
- A plan view to scale, depicting the project and the location of screening elements
- A detailed list of any plants to be used; their size and age at planting; the expected time to maturity, and the expected height at 5 years and at maturity
- Tule Wind, LLC to complete installation of the screening before the start of project operation
- Tule Wind, LLC shall notify the BLM within 7 days after completing installation of the screening that the screening components are ready for inspection.

**Rationale** Under the Selected Alternative, the collector substation and O&M facility will be located on County land and any mitigation will therefore be required by the County.

**MM VIS-1 Reduce potential view blockage and visual contrasts of structures.**

Transmission line structures will not be installed directly in front of residences or in direct line of sight from a residence, where feasible. Tule Wind, LLC will consult with affected property owners on structure siting to reduce land use and visual impacts.

**Rationale** There are no residences located on BLM-managed lands.

**MM LU-3 Revise project elements to minimize land use conflicts.** At least 90 days prior to completing final transmission line design for the approved route, the project applicant shall notify landowners of parcels through which the alignment would pass regarding the specific location of the ROW, individual towers, staging areas, and access roads associated with the project that would occur on the subject property. The notified parties shall be provided at least 30 days in which to identify conflicts with subject properties, and the project applicant would then either identify potential reroutes of the alignment or work with property owners to obtain easements or permission to place project components on private property. All easements and/or permission must be obtained prior to approval of the Major Use Permit for the 138 kV transmission line. Tule Wind, LLC shall provide a written report to the County of San Diego providing evidence of the notice to landowners and copies of any responses to the notice within 30 days of the notice closing date for responses. In addition, granted easements for the 138 kV transmission line must be formally recorded by the County of San Diego prior to MUP approval.

**Rationale** If the project is approved, the BLM will issue a ROW grant to Tule Wind, LLC allowing them to construct project components approved under the Selected Alternative on public lands. This is strictly a County mitigation measure.

**MM HAZ-3 Soil testing for lead contamination.** Soil samples shall be collected and tested from all excavation sites within 500 feet of any area identified as a current or historical shooting range to determine the presence of lead and extent of any contamination. The sampling and testing shall be conducted by a California licensed professional and sent to a California Certified Laboratory. A report documenting the areas proposed for sampling and the process used for sampling and testing shall be submitted to the project's lead agency for review and approval at least 60 days prior to excavation. Results of the laboratory testing and recommended resolutions for handling and excavating any materials found to exceed regulatory requirements shall be submitted to the project's lead agency 30 days prior to excavation.

In addition, a Soil/Lead Contamination Handling Plan shall be prepared to address appropriate procedures in the event that lead contamination is discovered as a result of soil testing. This plan shall contain provisions for a lead-awareness program for workers, as well as guidelines for the identification, removal, transport, and disposal of lead-impacted materials. This plan shall also emphasize that all activities within, or in close proximity to, contaminated areas must follow applicable environmental and hazardous waste laws and regulations. This plan shall be submitted to the project's lead agency 30 days prior to excavation.

Documentation of any confirmed or suspected contamination identified during testing or excavation shall be made in the form of a report identifying the location and potential contamination, as well as the process used for sampling. Results of laboratory testing and recommended resolutions for handling and excavating materials found to exceed regulatory requirements shall be submitted to BLM, San Diego County, CSLC, BIA, and/or the Ewiiapaay Band of Kumeyaay Indians, depending on the jurisdiction where the construction activities are completed, for review and approval.

**Rationale** This mitigation measure is not applicable as informal shooting ranges were not identified within public lands as part of the environmental review completed in the EIS/EIR.

**MM HYD-6 Horizontal Directional Drill Contingency Plan.** If horizontal directional drilling is to be used during construction Tule Wind, LLC shall prepare a Horizontal Directional Drill Contingency Plan to address procedures for containing an inadvertent release of drilling fluid (frac-out). The plan shall contain specific measures for monitoring frac-outs, for containing drilling mud, and for notifying agency personnel. The plan shall also discuss spoil stockpile management, hazardous materials storage and spill clean-up, site-specific erosion and sediment control, and housekeeping procedures, as described in the SWPPP. The plan shall be submitted to BLM, San Diego County, CSLC, BIA, and/or the Ewiiapaay Band of Kumeyaay Indians depending on the jurisdiction where the construction activities are being completed 60 days prior to construction.

Tule Wind, LLC shall obtain the required permits prior to conducting work associated with horizontal directional drilling activities. Required permits may include U.S. Army Corps of Engineers Clean Water Act Section 404, Regional Water Quality Control Board Clean Water Act 401, and CDFG Streambed Alteration Agreement Section 1602. Tule Wind, LLC shall implement all pre- and post-construction conditions identified in the permits issued for the horizontal directional drilling.

**Rationale** The mitigation measure is not applicable as horizontal directional drilling is not proposed as part of the proposed Tule Wind construction activities.

## 2.5 Statement of All Practicable Mitigation Adopted

As required in the BLM *NEPA Handbook H-1790-1* and 40 CFR 1505.2(c), all practicable means to avoid or minimize the environmental harm from the alternative selected have been adopted by this ROD. The FEIS/FEIR identifies some mitigation measures that BLM is modifying, clarifying, or not adopting. See Appendix C to this ROD for modified mitigation measures and reason for modification and Section 2.3 for measures not adopted and the rationale for not adopting these measures. Additional mitigation may be necessary to fully mitigate potential effects of the project according to state laws (including the California Environmental Quality Act (CEQA)), rules, policy, or regulations.

## 2.6 Coordination with Other BLM Monitoring Activities

In 2009, the BLM and the CPUC formalized a Memorandum of Understanding (MOU) for the joint environmental review of the ECO Substation and Tule Wind Projects. The purpose of the MOU was to set forth the understanding between BLM and CPUC pertaining to conditions and procedures to be followed in preparing and completing a joint EIS/EIR, including the environment and technical information collection, analysis and reporting necessary to fully comply with the NEPA and CEQA regulations and guidelines pertaining thereto.

### **3. Management Considerations**

#### **3.1 Decision Rationale**

This decision approves a ROW grant for the Tule Wind Project in accordance with Alternative 5, Reduction in Turbines, combined with Alternative 2, Gen-Tie Route 2 Underground with Collector Substation/O&M Facility on Rough Acre Ranch (the Selected Alternative), as analyzed in the FEIS/FEIR. The BLM's decision to authorize this activity is based on the rationale described throughout the ROD and as detailed in the following sections.

##### **3.1.1 Respond to Purpose and Need**

The BLM's purpose and need for the Tule Wind Project is to respond to the applicant's externally generated application under Title V of FLPMA for a ROW grant to construct, operate, maintain, and decommission an energy generating facility and associated infrastructure on public lands in compliance with FLPMA, BLM ROW regulations, and other applicable Federal laws. Specifically, the BLM has decided to approve a ROW grant to the applicant for the Selected Alternative.

The construction, operation, maintenance, and decommissioning activities associated with the Selected Alternative, either singularly or with mitigation, are in conformance with the following land use plans and policies:

- BLM Eastern San Diego County RMP of 2008
- BLM McCain Valley Wildlife Habitat Management Plan of 1984
- BLM policy and guidance for issuing ROW grants.
- The Selected Alternative meets the BLM purpose and need for the Tule Wind Project.

##### **3.1.2 Achieve Goals and Objectives**

Selection of the Selected Alternative would accomplish the objectives of the purpose and need, including meeting power demand, as well as Federal and state objectives for renewable energy development. The project complies with Eastern San Diego County RMP objectives for the designation of lands available for wind energy development. Additionally, the BLM consulted extensively with affected Native American tribes and other responsible parties to identify project modifications that would minimize impacts to natural and cultural resources. The Selected Alternative provides the best balance between maximizing renewable energy capacity while

reducing adverse impacts as compared to other action alternatives as it relates to BLM-managed lands.

### 3.1.3 Status of Required Actions

The following Federal statutes require that specific actions be completed prior to issuing an ROD and project approval. Specifically, the project proponent must secure a biological opinion pursuant to the Endangered Species Act (ESA), concurrence from the USFWS and an appropriate Avian Protection Plan under the Bald and Golden Eagle Protection Act, a memorandum of understanding under the National Historic Preservation Act, and appropriate permits under the Clean Water Act.

#### 3.1.3.1 Endangered Species Act of 1973

Section 7 of the ESA (16 U.S.C. 1531 et seq.) requires Federal agencies to consult with USFWS to ensure that the actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of a threatened or endangered terrestrial species or result in the destruction or adverse modification of critical habitat for these species. Under ESA Section 7(b)(3), USFWS provides a written statement (a Biological Opinion, or BO) setting forth the agency's opinion, and a summary of the information on which the opinion is based detailing how the proposed action affects the species or its critical habitat for the entirety of the Proposed Action. If jeopardy or adverse modification is found, the agency suggests reasonable and prudent alternatives that can be taken in implementing the agency action.

On December 10, 2009, the applicant submitted information to the USFWS about endangered and threatened species near the project site and, thereby, initiated early, informal consultation on the project. Between February 2010 and August 2010 USFWS, BLM, CDFG, and the applicant participated in numerous meetings and workshops. The early coordination efforts among these agencies resulted in the development of mitigation measures to avoid, minimize, and offset impacts to the Quino checkerspot butterfly (*Euphydryas editha quino*). On September 7, 2010, the BLM formally initiated consultation through the preparation and submittal of a Biological Assessment (BA) of potential effects to the Federally endangered Quino checkerspot butterfly in accordance with Section 7 of the ESA. In addition, the BLM requested concurrence with a not likely to adversely affect determination for the Federally endangered Peninsular bighorn sheep (*Ovis canadensis nelson*). The USFWS issued a BO for the Tule Wind Project on September 2, 2011. The BO is provided in Appendix A to this ROD.

The BO concludes that with implementation of the stated conservation measures, impacts of the project would be effectively minimized and offset and are not likely to jeopardize the continued existence of the Quino checkerspot butterfly. In addition, the BO concurred with the BLM's determination that the project is not likely to adversely affect the Federally endangered Peninsular bighorn sheep.

The BLM's issuance of a ROW grant will require Tule Wind, LLC to comply with the BO and any amendment thereto. Similarly, the grant contains a standard stipulation that requires compliance with the BO, as amended.

#### 3.1.3.2 The Bald and Golden Eagle Protection Act

The Bald and Golden Eagle Protection Act of 1940 (16 U.S.C. 668) protects bald and golden eagles by prohibiting the taking, possession, and commerce of such birds and establishes civil penalties for violation of this act. Under the Act, “take” includes “disturb,” which means “to agitate or bother a bald eagle or a golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior” (50 CFR 22.3).

On April 18, 2011, the applicant submitted a first draft of the Tule Wind Project ABPP to the USFWS. A draft was supplied to CDFG, CPUC, and BLM in May 2011. USFWS, BLM, and the applicant participated in numerous consultations and exchanged multiple working drafts of the ABPP between August and September 2011. This early coordination resulted in the development of an adaptive management approach to avoid and minimize take of migratory birds, bats, and eagles within the project area. On August 26, 2010, the BLM formally initiated consultation with the USFWS through the preparation and submittal of a memo from California BLM’s Acting State Director seeking input with respect to *Eagle Act Consultation for Renewable Energy Projects*. The USFWS understood the preferred alternative and through close consultations between USFWS and BLM, the USFWS was aware of BLM’s anticipated selection of it; this is reflected in the ABPP as Phase I - Valley Turbines. Therefore, the Selected Alternative was fully evaluated as part of the ABPP. On October 4, 2011, the USFWS issued a letter of concurrence addressing the adequacy of the ABPP and endorsing the Tule Wind Project ABPP as appropriate in its adaptive management approach (Phase I – Valley Turbines and Phase II – Ridge Turbines).

The ABPP includes an Adaptive Management Plan that identifies the framework for implementing adaptive management criteria for the operation of the proposed project. If non-eagle avian fatalities are recorded at the project site, Tule Wind, LLC will assess the species involved and follow the adaptive management approach outlined in ABPP Section 6.2 and Figure 6-1 of the ABPP.

Further, this ROD does not preclude the ability for a future ROW grant to be issued for the access roads and overhead collector line components as the environmental review was completed as part of the East County Substation, Tule Wind, and Energia Sierra Juarez Gen-Tie Projects EIS/EIR. A subsequent ROW grant may be issued by the BLM at a later date for construction of access roads and an overhead cable collector line in the event wind energy facilities are approved by the Ewiiapaayp Band, the BIA, and CSLC within their respective jurisdictions and after coordination with USFWS.

If the BLM considers additional development in this area in the future, it will take into account any new information. This information may include, but will not be limited to information gathered as part of the adaptive management plan outlined in the ABPP, as well as any information generated by research done on wind development on neighboring lands.

### **3.1.3.3 The National Historic Preservation Act**

Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470) requires Federal agencies to take into account the effects that their approvals and Federally funded activities and

programs have on historic properties. "Historic properties" are those properties that are included in, or eligible for, the National Register of Historic Places (36 CFR 800.16(l)(1)). The BLM initiated consultation with Indian tribes for the Tule Wind Project under NHPA Section 106, and the requisite process has been completed. In accordance with 36 CFR 800.6, an MOA has been executed to address impacts to cultural resources caused by the Tule Wind Project. As a result, the Selected Alternative would result in impacts less than or similar to the other alternatives related to cultural resources. The executed MOA is provided in Appendix B to this ROD.

#### **3.1.3.4 Clean Air Act, as Amended in 1990**

Title 40 CFR 51 (Subpart W - Determining Conformity of General Federal Actions to State or Federal Implementation Plans) and Title 40 CFR 93 (Subpart B - Determining Conformity of General Federal Actions to State or Federal Implementation Plans) require Federal actions to comply with the requirements of the 1990 amendments to the Clean Air Act (CAA) (42 U.S.C. 7401 et seq.). The Tule Wind Project will be in conformance with the requirements of the CAA based on the project mitigation, terms, conditions, and stipulations related to emission controls and reductions during project construction, operation and maintenance, and decommissioning phases.

#### **3.1.3.5 Clean Water Act**

The Clean Water Act (CWA) (33 U.S.C. 1251-1376) provides guidance for the restoration and maintenance of the chemical, physical, and biological integrity of the nation's waters. Section 401 requires an applicant for a Federal license or permit that allows activities resulting in a discharge to navigable waters to obtain a state certification that the discharge complies with other provisions of the CWA (33 U.S.C. 1341). The Regional Water Quality Control Boards (RWQCBs) administer the certification program in California. Section 402 establishes a permitting system for the discharge of any pollutant (except dredge or fill material) from a point source into navigable waters (33 U.S.C. 1342). Section 404 establishes a permit program administered by the ACOE regulating the discharge of dredged or fill material into the navigable waters, including wetlands (33 U.S.C. 1344). The CWA also contains the requirements under which the RWQCBs set water quality standards for all contaminants in the waters of the U.S.

In the State of California, CDFG must be notified prior to beginning any activity that would obstruct or divert the natural flow of, use material from, or deposit or dispose of material into a river, stream, or lake, whether permanent, intermittent, or ephemeral waterbodies under Section 1602 of the California Fish and Game Code. The final proposal that is mutually agreed upon by CDFG and the applicant is the Streambed Alteration Agreement and the conditions of a Streambed Alteration Agreement and a CWA Section 404 permit often overlap.

As discussed in the FEIS/FEIR, numerous dry washes, swales, and wetland features occur in the proposed project area and the construction of project components on public lands have the potential to impact water resources under the jurisdiction of the ACOE, RWQCB, and CDFG. Because construction activities associated with the Selected Alternative would impact ACOE-, RWQCB-, and CDFG-jurisdictional resources, the project applicant will be required to obtain several of the necessary permits discussed above prior to issuance of an NTP, including a CWA Section 404 permit from ACOE, Section 401 certification from the RWQCB, and a Streambed Alteration Agreement from CDFG. The project applicant will ensure that permits from resource

agencies having jurisdiction over jurisdictional resources are obtained prior to issuance of the NTP that would result in direct impacts to jurisdictional resources. The permits obtained from resource agencies will identify the required mitigation to ensure no-net-loss.

### 3.1.4 Statement of No Unnecessary or Undue Degradation

Congress declared that the public lands be managed for multiple use and sustained yield and in a manner to protect certain land values, provide food and habitat for species, and provide for outdoor recreation and human occupancy and use (43 U.S.C. 1701(a)(7), (8)). Multiple use management means that public land resources are to be managed to best meet the present and future needs of the American public, taking into consideration the long term needs of future generations without permanent impairment of the lands (43 U.S.C. 1702(c)). BLM manages public land through land use planning, acquisition, and disposition, and through regulation of use, occupancy, and development of the public lands (Subchapters II and III, respectively, 43 U.S.C. 1711 to 1722, and 1731–1748).

FLPMA specifically provides that in managing the use, occupancy, and development of the public lands, the Secretary shall take any action necessary to prevent unnecessary or undue degradation of the lands (43 U.S.C. 1732(b)). The process for siting and evaluating the Tule Wind Project has included extensive efforts on the part of BLM, the applicant, Ewiiapaayp Band of Kumeyaay Indians, BIA, other agencies, and public commenters in order to identify a project that accomplishes the purpose and need and other project objectives while preventing any unnecessary or undue degradation of the lands. These efforts have included:

- Siting of the proposed facility in a location which is identified as suitable for wind energy development in the Eastern San Diego County RMP (following NEPA review).
- Modification of the proposed boundaries of the facility to minimize impacts to biological, cultural, and other resources.
- Evaluation of project location alternatives that could meet the purpose and need for the proposed project on BLM-managed lands, but result in the avoidance and/or minimization of impacts.
- The development of mitigation measures, including compensation requirements for the displacement of Quino checkerspot butterfly habitat, to further avoid or minimize impacts.

In addition, BLM ROW regulations at 43 CFR 2805.11(a)(1) to (5) require determinations for the following:

*BLM will limit the grant to those lands which BLM determines:*

1. *Will be occupied with authorized facilities;*
2. *Are necessary for constructing, operating, maintaining, and terminating the authorized facilities;*
3. *Are necessary to protect the public health and safety;*

programs have on historic properties. "Historic properties" are those properties that are included in, or eligible for, the National Register of Historic Places (36 CFR 800.16(l)(1)). The BLM initiated consultation with Indian tribes for the Tule Wind Project under NHPA Section 106, and the requisite process has been completed. In accordance with 36 CFR 800.6, an MOA has been executed to address impacts to cultural resources caused by the Tule Wind Project. As a result, the Selected Alternative would result in impacts less than or similar to the other alternatives related to cultural resources. The executed MOA is provided in Appendix B to this ROD.

#### **3.1.3.4 Clean Air Act, as Amended in 1990**

Title 40 CFR 51 (Subpart W - Determining Conformity of General Federal Actions to State or Federal Implementation Plans) and Title 40 CFR 93 (Subpart B - Determining Conformity of General Federal Actions to State or Federal Implementation Plans) require Federal actions to comply with the requirements of the 1990 amendments to the Clean Air Act (CAA) (42 U.S.C 7401 et seq.). The Tule Wind Project will be in conformance with the requirements of the CAA based on the project mitigation, terms, conditions, and stipulations related to emission controls and reductions during project construction, operation and maintenance, and decommissioning phases.

#### **3.1.3.5 Clean Water Act**

The Clean Water Act (CWA) (33 U.S.C. 1251-1376) provides guidance for the restoration and maintenance of the chemical, physical, and biological integrity of the nation's waters. Section 401 requires an applicant for a Federal license or permit that allows activities resulting in a discharge to navigable waters to obtain a state certification that the discharge complies with other provisions of the CWA (33 U.S.C. 1341). The Regional Water Quality Control Boards (RWQCBs) administer the certification program in California. Section 402 establishes a permitting system for the discharge of any pollutant (except dredge or fill material) from a point source into navigable waters (33 U.S.C. 1342). Section 404 establishes a permit program administered by the ACOE regulating the discharge of dredged or fill material into the navigable waters, including wetlands (33 U.S.C. 1344). The CWA also contains the requirements under which the RWQCBs set water quality standards for all contaminants in the waters of the U.S.

In the State of California, CDFG must be notified prior to beginning any activity that would obstruct or divert the natural flow of, use material from, or deposit or dispose of material into a river, stream, or lake, whether permanent, intermittent, or ephemeral waterbodies under Section 1602 of the California Fish and Game Code. The final proposal that is mutually agreed upon by CDFG and the applicant is the Streambed Alteration Agreement and the conditions of a Streambed Alteration Agreement and a CWA Section 404 permit often overlap.

As discussed in the FEIS/FEIR, numerous dry washes, swales, and wetland features occur in the proposed project area and the construction of project components on public lands have the potential to impact water resources under the jurisdiction of the ACOE, RWQCB, and CDFG. Because construction activities associated with the Selected Alternative would impact ACOE-, RWQCB-, and CDFG-jurisdictional resources, the project applicant will be required to obtain several of the necessary permits discussed above prior to issuance of an NTP, including a CWA Section 404 permit from ACOE, Section 401 certification from the RWQCB, and a Streambed Alteration Agreement from CDFG. The project applicant will ensure that permits from resource

agencies having jurisdiction over jurisdictional resources are obtained prior to issuance of the NTP that would result in direct impacts to jurisdictional resources. The permits obtained from resource agencies will identify the required mitigation to ensure no-net-loss.

### 3.1.4 Statement of No Unnecessary or Undue Degradation

Congress declared that the public lands be managed for multiple use and sustained yield and in a manner to protect certain land values, provide food and habitat for species, and provide for outdoor recreation and human occupancy and use (43 U.S.C. 1701(a)(7), (8)). Multiple use management means that public land resources are to be managed to best meet the present and future needs of the American public, taking into consideration the long term needs of future generations without permanent impairment of the lands (43 U.S.C. 1702(c)). BLM manages public land through land use planning, acquisition, and disposition, and through regulation of use, occupancy, and development of the public lands (Subchapters II and III, respectively, 43 U.S.C. 1711 to 1722, and 1731–1748).

FLPMA specifically provides that in managing the use, occupancy, and development of the public lands, the Secretary shall take any action necessary to prevent unnecessary or undue degradation of the lands (43 U.S.C. 1732(b)). The process for siting and evaluating the Tule Wind Project has included extensive efforts on the part of BLM, the applicant, Ewiiapaayp Band of Kumeyaay Indians, BIA, other agencies, and public commenters in order to identify a project that accomplishes the purpose and need and other project objectives while preventing any unnecessary or undue degradation of the lands. These efforts have included:

- Siting of the proposed facility in a location which is identified as suitable for wind energy development in the Eastern San Diego County RMP (following NEPA review).
- Modification of the proposed boundaries of the facility to minimize impacts to biological, cultural, and other resources.
- Evaluation of project location alternatives that could meet the purpose and need for the proposed project on BLM-managed lands, but result in the avoidance and/or minimization of impacts.
- The development of mitigation measures, including compensation requirements for the displacement of Quino checkerspot butterfly habitat, to further avoid or minimize impacts.

In addition, BLM ROW regulations at 43 CFR 2805.11(a)(1) to (5) require determinations for the following:

*BLM will limit the grant to those lands which BLM determines:*

1. *Will be occupied with authorized facilities;*
2. *Are necessary for constructing, operating, maintaining, and terminating the authorized facilities;*
3. *Are necessary to protect the public health and safety;*

4. *Will not unnecessarily damage the environment; and*
5. *Will not result in unnecessary or undue degradation.*

The lands described in Section 3.1.4 of this ROD are the minimum necessary to accommodate the project. All lands that were originally included under the Selected Alternative that were determined not necessary for construction or operation and maintenance of the proposed facilities were eliminated from the project boundary. All temporary disturbances associated with underground utilities will be restored immediately to minimize erosion in accordance with approved restoration plans. Public health and safety will not be compromised by construction of the project as work areas will be posted and public access to those areas controlled to prevent possible injury to the public. During operation and maintenance of the Tule Wind Project, site security will be maintained with perimeter control fencing around operation and maintenance facilities.

The Selected Alternative will achieve the beneficial effects from renewable energy production, including socioeconomic benefits of increases in employment and fiscal resources, and displacement of greenhouse gas and air pollutant emissions, which would otherwise be generated through fossil-fueled power plants. Based on the comparative analysis of the ability of each alternative to meet the purpose and need, and the environmental impacts that would be associated with each alternative as discussed in the FEIS/FEIR and as summarized previously, the Selected Alternative was identified by the BLM as an alternative that does not unnecessarily damage the environment or create unnecessary or undue degradation of public lands.

The Project meets the requirements of applicable ROW regulations inasmuch as it includes terms, conditions and stipulations that are in the public interest; prevents surface disturbance unless and until an NTP is secured; is issued for a period of 30 years, subject to potential renewal and periodic review; and contains diligence and bonding requirements to further protect public land resources. This approval provides that public land will be occupied only with authorized facilities and only to the extent necessary to construct, operate and maintain, and decommission the project. BLM conditions of approval provide for public health and safety and protect the environment and public lands at issue. The conditions of approval include compliance with this ROD, the FEIS/FEIR, the BO, the ABPP, and the MOA, as any or all of these may be amended. All of these Federal requirements provide the basis for BLM's determination that the Tule Wind Project will not unnecessarily or unduly degrade these public lands.

### **3.1.5 Statement of Technical and Financial Capability**

FLPMA and its implementing regulations provide the BLM the authority to require a project application to include information on an applicant's technical and financial capability to construct, operate, and maintain the wind energy facilities applied for (43 CFR 2804.12(a)(5)). This technical capability can be demonstrated by international or domestic experience with wind energy projects or other types of electric energy-related projects on either Federal or non-Federal lands. Financial capability can be demonstrated by the disclosure of the availability of sufficient capitalization to carry out the proposed development.

Tule Wind, LLC's statement of technical and financial capability is provided in the POD and the application for a ROW. Tule Wind, LLC is a private enterprise that is a wholly owned

subsidiary of Iberdrola Renewables, Inc. In turn, Iberdrola Renewables, Inc., Portland, Oregon, is the U.S division of parent company Iberdrola, S.A. Bilbao, Spain. Iberdrola, S.A. is an international company in the renewable energy sector, with its main emphasis on wind power. The company (which employs over 33,000 people in more than 40 countries) covers all important business sectors from project development and technology to construction, as well as facility operation and investments in utilities. The applicant has provided information on the availability of sufficient capitalization to carry out development, including the preliminary study phase of the project, as well as site testing, construction, and monitoring activities. Based on information provided by the applicant during the ROW grant and environmental review processes, the BLM has determined that it has the technical and financial capability required to construct, operate and maintain, and decommission the approved facility.

### **3.1.6 Adequacy of NEPA Analysis**

Since the preparation and publication of the FEIS/FEIR, there have been no modifications to proposed project features or new project features or components that might require additional analysis through preparation of a supplemental EIS/EIR. This conclusion is in accordance with agency guidance set forth in the BLM NEPA Handbook (H-1790-1) in Section 5.3. The Handbook addresses regulations issued by the CEQ at 40 CFR 1502.9(c), which call for agencies to prepare supplements to either a DEIS or FEIS if: (i) the agency makes substantial changes in the proposed action that are relevant to environmental concerns, or (ii) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. Moreover, the BLM has determined that a supplemental analysis is not required based on the following findings from the BLM NEPA Handbook:

- No substantial changes have been made to the proposed action that are relevant to environmental concerns (40 CFR 1502.9(c)(1)(i))
- No new alternative has been added that is outside the spectrum of alternatives already analyzed (see Question 29b, CEQ, Forty Most Asked Questions Concerning CEQ's NEPA Regulations, March 23, 1981)
- There are no significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its effects (40 CFR 1502.9(c)(1)(ii)).

In light of the analysis herein and because no substantial changes have been made to the Selected Alternative that are relevant to environmental concerns and no new information substantially changes the analysis and effects identified in the FEIS/FEIR (40 CFR 1502.9(c)), no Determination of NEPA Adequacy is provided in this ROD and supplemental environmental analysis is not required.

## **3.2 Relationship to Agencies, Plans, Programs, and Policies including Consultation**

### **3.2.1 Endangered Species Act Section 7**

The BLM's authorization of the requested ROW grant for the Tule Wind Project, including the resulting consultation and coordination with the USFWS, complies with ESA Section 7 regarding potential take of the Quino checkerspot butterfly.

As discussed in Section 3.1.3, the USFWS has jurisdiction over threatened and endangered species listed under the ESA. Formal consultation with the USFWS under ESA Section 7 concluded with the September 2, 2011, issuance of a BO for the Tule Wind Project related to potential impacts to the Federally threatened Quino checkerspot butterfly and its designated critical habitat. Implementation of the discretionary conservation measures identified in the BO would reduce potential adverse impacts to the species. Implementation of terms and conditions to minimize take is mandatory and a condition of approval of this ROD. The BO is provided in Appendix A to this ROD.

### **3.2.2 National Historic Preservation Act - Memorandum of Agreement**

The BLM's authorization of the requested ROW grant for the Tule Wind Project, including the resulting consultation, coordination, development and agreement memorialized in the MOA (provided in Appendix B to this ROD), complies with NHPA Section 106 of the NHPA regarding potential impacts related to cultural resources.

Under NHPA Section 106, the BLM consults with Indian tribes as part of its responsibilities to identify, evaluate, and resolve adverse effects on cultural resources affected by BLM undertakings. In accordance with 36 CFR 800.14(b), programmatic agreements are used for the resolution of adverse effects and for when effects on historic properties (resources eligible for or listed in the National Register of Historic Places) cannot be fully determined prior to approval of an undertaking.

Based on the ongoing consultation with Tribal governments and representatives and the MOA, many cultural resources in the area are avoided by the Selected Alternative and unavoidable impacts are substantially mitigated. As a result, the Selected Alternative would result in impacts less than or similar to the other build alternatives related to cultural resources.

### **3.2.3 National Historic Preservation Act – Government-to-Government Consultation**

The BLM conducted government-to-government consultation with a number of Tribal governments. The BLM invited tribes to consult on the proposed Tule Wind Project during the earliest stages of project planning. Tribal consultation was initiated by the BLM by letter for the Tule Wind Project on December 19, 2008. Tribal consultation was initiated by letter by the BLM for the ECO Substation Project on December 9, 2009. This letter also determined that Tule Wind and the ECO Substation projects were connected actions that would undergo Section 106 review concurrently. Additional letters were sent by the BLM for both projects on April 1, 2010, and September 20, 2010. A Section 106 Consulting Party Meeting was held on March 1, 2011, to discuss separating the Tule Wind and ECO Substation projects for the purposes of Section 106 review.

Additional letters specifically sent regarding the Tule Wind Project were sent on February 3, 2011, March 17, 2011, and July 14, 2011 that addressed progress on both the Section 106 and NEPA processes. Follow-up phone calls were made and site visits were also conducted with interested tribes. Formal Government-to Government meetings have been held with several tribes including the Campo Band of Mission Indians, the Manzanita Band of Kumeyaay Indians, and the Ewiiapaay on multiple occasions.

The consultation and discussions revealed concerns about the importance and sensitivity of cultural resources on and near the Tule Wind Project site, concerns about cumulative effects to cultural resources, and, further, that the tribal governments attach significance to the broader cultural landscape. As a result of the Native American consultation process, many important cultural resources were identified in the project study area, and subsequently avoided in the Selected Alternative.

As described in Section 3.2.2, the BLM also consulted with Native American tribes and interested tribal members on the development and execution of an MOA dated November 16, 2011, for the Tule Wind Project, in accordance with 36 CFR 800.14(b). The project MOA includes a Historic Properties Treatment Plan (HPTP) and a Long-Term Management Plan. The MOA also includes stipulations for the creation of Environmentally Sensitive Areas to protect archaeological sites during construction, and provisions for inadvertent discoveries and monitoring during construction. The MOA will implement actions identified in mitigation measures (see Appendix B to this ROD). Based on the ongoing consultation with tribal governments and representatives and the MOA, many cultural resources in the area are avoided by the Selected Alternative and unavoidable impacts are substantially mitigated. As a result, the Selected Alternative would result in impacts less than or similar to the other build alternatives related to cultural resources. The executed MOA is provided in Appendix B to this ROD. See FEIS/FEIR Section I.4.3, Native American Tribes, for a detailed description of the government-to-government consultation conducted by BLM.

#### **3.2.4 Bald and Golden Eagle Protection Act**

This act provides for the protection of bald and golden eagles by prohibiting, except under certain specified conditions, disturbance or harm to these species. To comply with the act and in accordance with BLM's IM 2010-156, the applicant has developed an ABPP and will be required to conduct golden eagle nesting surveys, nest site monitoring, and implement adaptive management programs. The ABPP identifies steps the applicant will take to ensure eagle impacts are mitigated to the extent possible, including but not limited to ongoing surveys, impact monitoring, and facility design.

#### **3.2.5 Clean Water Act**

The ACOE has jurisdiction to protect the aquatic ecosystem, including water quality and wetland resources under Section 404 of the CWA. Implementing regulations by the ACOE are found at 33 CFR 320 through 330. Guidelines for implementation are referred to as the Section 404(b)(1) Guidelines and were developed by the EPA in conjunction with the ACOE (40 CFR 230). Under that authority, ACOE regulates the discharge of dredged or fill material into waters of the United States, including wetlands, by reviewing proposals to determine whether they may impact such resources and, thereby, are subject to Section 404's permit requirement. The ACOE may grant authorization under either an individual permit or a nationwide permit to address operations that may affect the ephemeral washes on the project site. Throughout the environmental review process for the Tule Wind Project, the BLM has provided information to the ACOE to assist the agency in making a determination regarding its jurisdiction and need for a Section 404 permit. ACOE determined that the Tule Wind Project would impact approximately 0.6 acre of ACOE non-wetland waters subject to its Section 404 jurisdiction (no ACOE jurisdictional wetlands occur in the Tule Wind Project area). All plans and compensatory lands associated with the 404

permit process will be made available prior to construction of the applicable project phase that would impact resources regulated under the 404 permit. No impacts to waters will result until habitat mitigation has been obtained by Tule Wind, LLC. In addition, Tule Wind, LLC conducted a site visit with resource agencies, including ACOE, to discuss the approach to jurisdictional waters in 2010. Tule Wind, LLC submitted the Section 404 permit application to ACOE on August 12, 2011, and is working closely with ACOE. Tule Wind, LLC will be responsible for complying with all permit conditions identified in the 404 permit.

### **3.2.6 Clean Air Act Section 309**

In accordance with BLM's IM 2012-003, BLM included the EPA in the EIS process for the Tule Wind Project. EPA received the Notice of Intent (NOI) in December 2009 and provided written comments on the Proposed Action and the EIS/EIR preparation during the scoping process, as well as written comments during the review period for the DEIS/DEIR that occurred December 2010 through March 2011. In March 2010, a comprehensive Scoping Report was published summarizing concerns received from various agencies and the public. Comments received during the scoping process were addressed in the DEIS/DEIR. In addition, BLM prepared response to EPA's DEIS/DEIR public review comments that are included in Volume 3 of the FEIS/FEIR (response to comment letter A5). See FEIS/FEIR Section I, Public Participation, for a detailed description of the public participation process.

### **3.2.7 United States Department of Defense**

BLM coordinates with the Department of Defense prior to approval of rights-of-way for renewable energy, utility, and communication facilities to ensure that these facilities would not interfere with military training routes. The Department of Defense has identified the project site as a "Green" area, with no anticipated impact to air defense and Homeland Security radars and mitigation will be implemented to ensure that wind turbines would not result in adverse hazards to air navigation during construction and operation (see Appendix C, Adopted Mitigation Measures, Mitigation Measure PS-1d).

### **3.2.8 Coordination with other Federal, Tribal, State, Regional, and Local Agencies**

Section 5.5 lists other Federal, state, regional, and local agencies with which the BLM and/or the applicant have consulted as part of project planning, scoping, and public review of the DEIS/DEIR. The applicant may have to obtain permits or other authorizations from other agencies or comply with requirements of other agencies that did not provide written input during the NEPA process. Those agencies include, but may not be limited to CDFG, State Water Resources Control Board (SWRCB)/RWQCB, and the County of San Diego.

#### **3.2.8.1 California Department of Fish and Game**

The CDFG protects fish and aquatic habitats within the State of California through regulation of modifications to streambeds under Section 1602 of the California Fish and Game Code. CDFG regulates activities that could divert, obstruct, or change the natural flow or the bed, channel, or bank of any river, stream, or lake in California that the agency has designated as one that is used by or provides benefit to a fish or wildlife resource. The agency also evaluates potential impacts to vegetation and wildlife resulting from disturbances to waterways during its permitting process.

The BLM and the applicant provided information to CDFG to assist the agency in its determination of the impacts to streambeds, and its identification of permit and mitigation requirements. The applicant anticipates filing a Streambed Alteration Agreement with CDFG in November 2011. Compliance with the requirements of this Agreement was identified in the FEIS/FEIR and will be adopted (see Appendix C to this ROD).

### **3.2.8.2 California Department of Parks and Recreation**

The California Department of Parks and Recreation (DPR) helps to preserve the State's biodiversity, protect valued natural and cultural resources, and create opportunities for quality outdoor recreation. Although the Tule Wind Project would not be located on DPR lands, wind turbines would be visible from Anza-Borrego Desert State Park and affect the recreational experience of park users. Therefore, in order to assess potential visual effects to the State Park, the BLM and applicant provided information to DPR and provided additional analysis in the FEIS/FEIR to fully characterize project effects to existing views. As discussed in the FEIS/FEIR, construction and operation of the Tule Wind Project (as viewed from Anza-Borrego Desert State Park) would result in strong visual contrast with the surrounding natural landscape.

### **3.2.8.3 State Water Resources Control Board/Regional Water Quality Control Board**

The SWRCB works in coordination with the nine RWQCBs to preserve, protect, enhance, and restore water quality. The RWQCBs have authority to protect surface water and groundwater under their jurisdiction. Throughout the NEPA process, the BLM and the applicant have invited the SWRCB and the Colorado River Basin RWQCB to participate in public scoping and workshops and have provided information to assist the agency in evaluating the potential impacts and permitting requirements of the project. The ACOE determined that the project site supports non-wetland waters of the U.S.; therefore, a CWA Section 401 Water Quality Certification from the SWRCB/RWQCB will be required. Tule Wind, LLC submitted the permit application to SWRCB on August 15, 2011, and the permit is in process.

### **3.2.8.4 County of San Diego**

The County of San Diego has jurisdiction to issue building permits to project structures that would be constructed on privately owned land. Building permits issued by the County are ministerial. The County also has jurisdiction to issue discretionary approvals for major use, easements, ROWs, and or encroachment permits where County facilities are concerned. For the Tule Wind Project, the County of San Diego will issue a Major Use Permit to construct project facilities on County lands. It is anticipated that the decision hearing for the issuance of the Major Use Permit to construct project facilities on County lands will occur in the first quarter of 2012.

### **3.2.8.5 Other Responsible and Cooperating Agencies**

Other responsible and cooperating agencies, including BIA, the Ewiiapaayp Tribe, and CSLC may use the FEIS/FEIR to make final decisions for the lands under their respective jurisdictions separate and apart from this ROD.

The BIA and Ewiiapaayp Band of Kumeyaay Indians were cooperating agencies under this joint EIS/EIR to enable them to use the document as a basis for decisions related to

the lands over which they have jurisdiction. The FEIS/FEIR also identified a purpose and need for the Ewiiapaayp Band of Kumeyaay Indians. The BIA has expressed concerns that the Selected Alternative does not meet the specific purpose and need of the tribe.

### 3.3 Land Use Plan Conformance

Approval of the Proposed Action is in conformance with the Eastern San Diego County RMP, the applicable land use plan for public lands on which project facilities (i.e., turbines, access roads, etc.) would operate. The FEIS/FEIR analyzed components of the Proposed Action located on public lands for consistency with the relevant policies of the RMP and determined that project components were consistent with the identified policies. In addition, in the Eastern San Diego County RMP, the BLM designated public lands within the McCain Valley area as available for wind energy development. As a wind energy development, the Proposed Action is consistent with the applicable land use authorization for public lands on which components of the project considered in this ROD would be located. Therefore, approval of components of the Proposed Action located on public lands would be in conformance with the applicable land use plan.

While not considered in this ROD, components of the Proposed Action on County of San Diego jurisdictional lands would be consistent with nearly all policies of the County of San Diego General Plan. As discussed in the FEIS/FEIR, components of the Proposed Action were determined to be consistent with the relevant policies of applicable land use plans with the exception of several policies established in the Boulevard Subregional Planning Area Community Plan (a subsection of the County of San Diego General Plan). As discussed in the FEIS/FEIR, the identified inconsistencies are with policies that specifically oppose the development of wind energy facilities in the Boulevard planning area.

## 4. Alternatives (40 CFR 1505.2(b))

The Selected Alternative was chosen from among the Tule Wind Project as proposed by the applicant (Proposed Action) and twelve alternatives, including seven alternative location/configurations and five design alternatives. In addition, other energy alternatives, including energy efficiency and distributed generation such as rooftop solar panels, alternative turbine design, and alternative fuels, were evaluated. Five of the twelve Tule Wind Project alternatives were carried forward for detailed review; the remaining alternatives were considered but eliminated from detailed analysis. Several scoping comments requested that the proposed project consider distributed generation as well as nuclear energy. The DEIS/DEIR analyzed the following configuration and design alternatives for the Tule Wind Project in addition to the Proposed Action and the No Action Alternatives:

- Tule Wind Alternative 1, Gen-Tie Route 2 with Collector Substation/Operations and Maintenance (O&M) Facility on Rough Acres Ranch
- Tule Wind Alternative 2, Gen-Tie Route 2 Underground with Collector Substation/O&M Facility on Rough Acres Ranch
- Tule Wind Alternative 3, Gen-Tie Route 3 with Collector Substation/O&M Facility on Rough Acres Ranch
- Tule Wind Alternative 4, Gen-Tie Route 3 Underground with Collector Substation/O&M Facility on Rough Acres Ranch

- Tule Wind Alternative 5, Reduction in Turbines.

The conclusions of the environmental analysis for the Tule Wind Project alternatives result in the Tule Reduction in Turbines Alternative (Alternative 5) combined with Alternative Gen-Tie Route 2 Underground with Collector Substation/O&M Facility on Rough Acres Ranch (Alternative 2) to be the BLM-preferred alternative. This Selected Alternative reduces the number of proposed turbines from 128 to 62 turbines on public land (removing 32 turbines from the western ridgeline on BLM-managed lands, as well as 1 turbine adjacent to the In-Ko-Pah Mountains ACEC); places the proposed 138 kV transmission line underground; moves the O&M facility, collector substation, and temporary 5-acre concrete batch plant from its proposed location on BLM jurisdictional lands to Rough Acres Ranch (private land); and constructs the overhead collector line east of Lost Valley Rock within the Proposed Action 138 kV alignment that is vacated as a result of the O&M facility and collector substation location shift to previously disturbed sites on Rough Acres Ranch.

The Selected Alternative reduces indirect effects of the project by removing project components from private land holdings adjacent to the In-Ko-Pah Mountains ACEC and, as compared to the Proposed Action, reduces the risk of golden eagle collision with operating turbines in the northwest portion of the project area on BLM-managed lands. In addition, the Selected Alternative reduces permanent impacts because the alternate sites for the O&M, collector substation, and temporary batch plant facilities on Rough Acres Ranch have been previously disturbed, have reduced access requirements, and reduce impacts due to a reduced 138 kV transmission line length (and thus an overall reduced ROW requirement). While this alternative would increase short-term construction impacts due to increased trenching for undergrounding the 138 kV transmission line, it would reduce long-term visual impacts.

#### **4.1 Alternatives Fully Analyzed**

The Proposed Action and seven alternatives were fully analyzed in the FEIS/FEIR. These consisted of six action alternatives (the Proposed Action and Tule Wind Alternatives 1 through 5) and two No Action Alternatives (No Project Alternative 1 and No Project Alternative 3 – No Tule Wind Project). The Tule Wind Alternatives 1 through 5 include the following alternatives:

- Tule Wind Alternative 1, Gen-Tie Route 2 with Collector Substation/O&M Facility on Rough Acres Ranch
- Tule Wind Alternative 2, Gen-Tie Route 2 Underground with Collector Substation/O&M Facility on Rough Acres Ranch
- Tule Wind Alternative 3, Gen-Tie Route 3 with Collector Substation/O&M Facility on Rough Acres Ranch
- Tule Wind Alternative 4, Gen-Tie Route 3 Underground with Collector Substation/O&M Facility on Rough Acres Ranch
- Tule Wind Alternative 5, Reduction in Turbines.

With the exception of the No Action Alternatives, each of the fully analyzed alternatives would develop renewable energy on public lands and would therefore contribute to the BLM's goal for increased renewable energy development on public lands as established by the Energy Policy

Act of 2005. The Proposed Action is described in detail below and the five fully analyzed action alternatives are summarized in Section 4.1.2.

#### **4.1.1 Proposed Action**

The Proposed Action would be an approximate 201 MW commercial wind energy generating facility within an approximately 12,360-acre proposed ROW area. Within this area, approximately 532 acres would be disturbed. The proposed site is located in southeastern San Diego County, approximately 60 miles east of downtown San Diego and north of Interstate 8 (I-8) and the unincorporated community of Boulevard, California (see Figure 1 of this ROD). The Proposed Action consists of up to 128 wind turbines in the 1.5 to 3.0 MW range that would be located on lands administered by the BLM, BIA, Ewiiapaayp Band of Kumeyaay Indians, CSLC, and County of San Diego. In addition to wind turbines and associated generator step-up transformers, major project components would include: a 34.5 kV overhead and underground collector cable system linking each turbine to the next and the wind turbines to the collector substation; a 5-acre collector substation site and a 5-acre O&M building site (the O&M building would be approximately 5,000 square feet and would include a permanent water well and septic tank/leach field); a 138 kV overhead transmission line from the collector substation to the rebuilt SDG&E Boulevard Substation; three permanent MET towers and one SODAR unit or one LIDAR unit; 36.8 miles (194,092.8 linear feet) of newly constructed access roads and 23.4 miles (123,763.2 linear feet) of widened and improved existing access roads; one temporary 5-acre concrete batch plant; and up to three temporary use water wells for construction; and nineteen 2-acre temporary laydown and staging areas.

#### **4.1.2 Tule Wind Alternatives 1 through 5**

With the exception of Tule Alternative 5, each of the fully analyzed alternatives would be an approximate 201 MW wind energy generating facility consisting of 128 wind turbines in the same layout as the Proposed Action. Tule Wind Alternative 5 would construct 34 fewer wind turbines on public lands and would therefore be an approximately 186 MW facility consisting of 62 turbines on public lands (65 turbines in total). All of the alternatives would transmit power through the rebuilt Boulevard Substation and would require similar infrastructure (i.e., on-site wells, transmission lines, road access, etc.) as the Proposed Action; however, the specific location and alignment of several key project components would differ. Alternatives 1 through 4 would shift the location of the collection substation, O&M facility, and 5-acre temporary concrete batch plant from public lands to private County of San Diego jurisdictional lands on Rough Acres Ranch. Due to the shift in collector substation location, the 138 kV transmission line would follow a different alignment than was previously identified for the Proposed Action. The Alternative 1 and 2 transmission line would follow Alternative Gen-Tie Route 2 and the Alternative 3 and 4 transmission line would follow Alternative Gen-Tie Route 3 (Alternatives 1 and 3 include an overhead 138 kV transmission line and Alternatives 2 and 4 include an underground 138 kV transmission line). Lastly, each of these alternatives would reroute the proposed overhead collector line from west of Lost Valley Rock to east of Lost Valley Rock to reduce impacts to cultural resources. The location of the collector substation, O&M facility, and temporary concrete batch plant (as well as the alignment of the 138 kV transmission line) associated with Tule Wind Alternative 5 would be the same as previously identified for the Proposed Action.

The purpose of consideration of the fully analyzed alternatives is to minimize or avoid impacts of the Proposed Action. Permanent impacts would be reduced by moving the O&M facility, collector substation, and temporary batch plant facilities (Alternatives 1, 2, 3, 4) onto Rough Acres Ranch, an area that has been previously disturbed. Also, the relocation of these facilities would reduce the permanent and temporary impacts attributed to access requirements. Further, undergrounding the 138 kV transmission line (Alternatives 2 and 4) and reducing the overall number of wind turbines (Alternative 5) would reduce long-term visual impacts. In addition, based on existing data removing proposed turbines from the western portion of the project area (Alternative 5) would reduce impacts to golden eagles. Additionally, the ABPP that received a letter of concurrence from USFWS includes an adaptive management program to be implemented in a manner that assures net-zero loss of golden eagles on a population-level basis. Monitoring of bird mortality and nest productivity will be used to trigger specific turbine operations.

#### **4.1.3 No Project Alternative 1 – No ECO, Tule, or ESJ Projects**

With the No Project Alternative 1, the Tule Wind Project (and the ECO Substation and ESJ Gen-Tie Projects) would not be approved, and no ROW grants would be issued to the Tule Wind Project (and ECO Substation Project) applicants.

#### **4.1.4 No Project Alternative 3 – No Tule Wind Project**

Under this alternative the Tule Wind Project would not be approved and a ROW grant would not be issued to the applicant.

### **4.2 Alternatives Not Fully Analyzed**

Alternative sites, technologies, and methods were considered as alternatives to the Proposed Action but not carried forward for detailed analysis. Such alternatives are identified, and the rationale for elimination from detailed analysis is discussed in FEIS/FEIR Section C, Alternatives, and briefly summarized below.

#### **4.2.1 Alternative Sites**

The four Site Alternatives identified below would not avoid or substantially reduce the adverse impacts of the project or meet the project objectives or would not satisfy the purpose and need for the project. Accordingly, the following site alternatives were not analyzed in complete detail in the FEIS/FEIR:

- Closer to Demand Areas, Near Existing Transmission Facilities
- Tule Alternative Gen-Tie Route 1 from Proposed Collector Station to Boulevard Substation (Route Runs West of Proposed Route and Partially Uses Ribbonwood Road)
- Tule Alternative O&M Facility Location 1—Private Property West of McCain Valley Road
- Tule Alternative O&M Facility Location 2—Rough Acres Ranch West of McCain Valley Road.

#### **4.2.2 Alternative Wind Turbine Design**

The BLM typically does not analyze alternative technologies when a ROW application is submitted for a specific technology because such an alternative does not respond to the BLM's purpose and need to consider an application for the authorized use of public lands for a specific renewable energy technology. If, through discussions with the applicant, the BLM determines that the applicant has flexibility with respect to the proposed technology or is uncertain about a specific technology, it may be appropriate to fully analyze an alternative for a different technology. However, this was not the case and alternative wind turbine design was not analyzed in complete detail in the FEIS/FEIR.

#### **4.2.3 Undergrounding the Proposed 138 kV Transmission Line Alternative**

The Undergrounding the Proposed 138 kV Transmission Line Alternative would install the proposed 138 kV transmission line underground along the same transmission route as in the Proposed Action. All other elements of the project would remain as described in Section 4.1.1 of this ROD. While this alternative would partially avoid some of the unavoidable adverse visual effects of the Proposed Action, based on existing topography and preliminary slope analysis, portions of the route exceed the maximum allowable slope of 12% for underground transmission lines. Additionally, this alternative would cause substantial construction-related impacts due to the rugged terrain between the proposed substation and Rough Acres Ranch. Therefore, due to the rugged terrain along this route, and the increase in construction-related impacts, it was eliminated from further consideration in the FEIS/FEIR as a reasonable alternative.

#### **4.2.4 Alternative Methods of Generating Electricity**

The following alternative methods of generating or conserving electricity were considered as potential alternatives to the Proposed Action:

- Distributed Generation—Rooftop Solar Panels and Other Alternative Fuel Supplies  
Description
- Nuclear Energy.

While distributed generation, including rooftop solar, would result in a significant net reduction in project impacts as compared with the Proposed Action and would contribute directly to meeting state and Federal renewable energy resource goals, this alternative would not meet BLM's purpose and need to respond to the FLPMA ROW application submitted by Tule Wind, LLC to construct, operate, maintain, and decommission a wind energy-generating facility and associated infrastructure on public lands managed by the BLM in compliance with FLPMA. The BLM is compelled to evaluate utility-scale renewable energy development rather than distributed generation by the applicable Federal orders and mandates. The Energy Policy Act of 2005 (Public Law [P.L.] 109-58) requires the Secretary of the Interior to seek to approve non-hydropower renewable energy projects on public lands, with a generation capacity of at least 10,000 MW of electricity by 2015; this level of renewable energy generation cannot be achieved on that timetable through distributed generation systems. Secretarial Order 3285A1 requires the BLM and other Interior agencies to undertake multiple actions to facilitate large-scale wind energy production. Accordingly, the BLM's purpose and need for DOI action is focused on the siting and management of utility-scale renewable energy development on public lands. Furthermore, BLM has no authority or influence over the installation of distributed generation

systems, other than on its own facilities, which the BLM is evaluating at individual sites through other initiatives.

The nuclear energy alternative would not contribute to meeting renewable energy resource goals established by the Federal government and would not meet BLM's purpose and need to respond to the FLPMA ROW application submitted by Tule Wind, LLC to construct, operate, maintain, and decommission a wind energy-generating facility and associated infrastructure on public lands managed by the BLM in compliance with FLPMA. Additionally, the nuclear energy alternative does not meet feasibility criteria as permitting of new nuclear facilities in California is not currently allowable by law. Therefore, it was determined that this alternative does not meet the alternatives screening criteria and it was eliminated from further consideration as a reasonable alternative in the FEIS/FEIR.

#### **4.3 Environmentally Preferable Alternative**

The environmentally preferable alternative would be the No Tule Wind Project Alternative, which would result in denial of the project. All environmental consequences associated with the construction, operation, maintenance, and decommissioning of the Proposed Action would be eliminated and existing environmental conditions would be unaffected. There would be no new renewable energy source in the southeastern portion of San Diego County, and the BLM would not develop renewable energy on the affected Federal lands to comply with the Energy Policy Act of 2005, which is a national priority. However, this alternative would not allow the development of renewable energy, which is a national priority.

#### **4.4 Agency Preferred Alternative / Selected Alternative**

BLM's Preferred/Selected Alternative for the Tule Wind Project is the Tule Wind Alternative 5, Reduction in Turbines, combined with Tule Wind Alternative 2, Gen-Tie Route 2 Underground with Collector Substation/O&M Facility on Rough Acres Ranch. Under this Selected Alternative, Tule Wind, LLC would construct, operate, maintain, and decommission a wind energy facility that would produce up to 186 MW of electricity via 62 wind turbines on BLM-managed lands in the 1.5 to 3.0 MW generating capacity range. This Selected Alternative would connect, via a 138 kV gen-tie that would be undergrounded from the collector substation and O&M facility location on Rough Acres Ranch, to the proposed Boulevard Substation rebuild component of SDG&E's ECO Substation Project (see Figure 2 of this ROD).

### **5. Public Involvement**

#### **5.1 Scoping**

The BLM solicited internal and external input on the issues, impacts, and potential alternatives to be addressed for the proposed action, as well as the extent to which those issues and impacts would be analyzed in the EIS/EIR document. This process is called "scoping" (40 CFR 1501.7). Internal input was provided by BLM and cooperating agency staff, as an interdisciplinary process, to help define issues, alternatives, and data needs. External scoping involved notification and opportunities for feedback from other agencies, organizations, tribes, local governments, and the public. Formal public scoping begins following publication of an NOI to prepare an EIS for a proposed action.

The NOI for the Tule Wind Project was published in the Federal Register on December 29, 2009 (74 FR 68860–68861). BLM issued a press release regarding the NOI on December 29, 2009. Copies of the NOI were made available at the BLM’s California Desert District (CDD) office in Moreno Valley and at the BLM’s California State Office in Sacramento. Publication of the NOI began a 45-day public comment period, which ended on February 12, 2010. BLM also provided a website (<http://www.blm.gov/ca/st/en/fo/cdd.html>) with information about the project that described the various methods of providing input on the project, including an email address where comments could be sent electronically ([catulewind@blm.gov](mailto:catulewind@blm.gov)). Sixty comment letters were received within the 45-day comment period.

On January 27 and 28, 2010, the BLM held Scoping Meetings at the Jacumba Highland Center and Boulevard Volunteer Fire Department to gather comments from the public regarding the scope of the EIS/EIR, as well as project alternatives and possible mitigation. Prior to the meetings, a Notice of Public Scoping Meeting was mailed to Federal, state, regional, and local agencies, elected officials of areas affected by the proposed project, and the general public. Approximately 70 and 100 attendees (respectively) were documented by signing in on a voluntary sign-in sheet at the meetings. Of those in attendance, a total of 37 members of the public spoke.

In March 2010, a scoping report was released summarizing concerns raised during the public scoping meetings and summarizing comments received on the project during the scoping period. In addition to comments received at the public scoping meetings, BLM received 60 comment letters: 24 from Federal, state, and local agencies and organizations; 35 from individuals; and 1 from the Campo Band of Mission Indians. Six general categories of comments were received:

- Comments related to the project description
- Human environment issues, including the following key issues:
  - Visual and aesthetic impacts of the wind turbine towers and associated aboveground transmission lines
  - Increased risk of wildfire hazards due to the introduction of industrial wind turbines, new transmission lines, substations, and transformers
  - Direct and indirect impacts on the recreational uses and to wilderness and environmentally sensitive areas in the project vicinity
  - Increased public access resulting in increased fire danger, invasive species distribution, vandalism, and disruption of habitat in remote natural resource areas
  - Conflict with the rural community character and the designated recreational and wilderness land uses in the project area
  - Construction and operations noise due to: (1) helicopter noise during construction and maintenance activities, (2) operation of the proposed wind turbines, (3) emergency generators, and (4) noise and vibration effects of required blasting
  - Potential health effects associated with electric and magnetic fields (EMFs) and potential public safety concerns due to the use of hazardous materials during construction and operation and the potential collapse of turbines
- Natural environment issues, or how the project would affect biological resources in the area
- Indirect and cumulative impacts, including those of other proposed energy projects in the region, in addition to all past, present, and reasonably foreseeable projects or actions within the geographic range of the project area

- EIS/EIR administrative and permitting issues.

## 5.2 Draft EIS Public Comment Period

The EPA published a Notice of Availability (NOA) for public and agency review and comment of the Tule Wind Project DEIS/DEIR on December 23, 2010, in the Federal Register (75 FR 80807). The NOA was also published in several regional newspapers including the *San Diego Union Tribune* (on December 24, 2010) and *Back Country Messenger* (in the January 2011 monthly edition). The original 54-day comment period was extended from February 16, 2011, to March 4, 2011. Approximately 240 comment letters were received during this period. A number of the comments received on the DEIS/DEIR discussed the similar issues or environmental concerns as those raised during the scoping process, including, among others, issues related to the project description, project alternatives, human environment issues, natural environment issues, and cumulative impacts of the project. Additional human environment issues raised during DEIS/DEIR review included low frequency noise, shadow flicker, dirty electricity, health concern associated primarily with the operation of the wind turbines as well as loss of property values. Additional natural environment issues raised during the public comment period included biological resources, particularly with regard to the golden eagle and condors, bats, Quino checkerspot butterfly, big horn sheep, and wildlife corridors. Comments were also raised regarding water quantity and quality, visual impacts, and climate change. Further, commenters raised concerns regarding sacred cultural, historic, religious, and archaeological Kumeyaay ancestral sites within the project area and the Section 106 consultation process. All public comments on the DEIS/DEIR were considered and addressed in the FEIS/FEIR. Responses to comments are provided in Volume 3 of the FEIS/FEIR. Recurring comments on the DEIS/DEIR are addressed through common responses that are provided in Section 2.0 of Volume 3 of the FEIS/FEIR.

## 6. Errata

The purpose of these errata is to correct factual inaccuracies or typographical errors in the FEIS/FEIR for the Tule Wind Project. The revised POD will govern in the event of any factual discrepancies between it and the FEIS/FEIR. To the extent that the clarifications below affect the project description, the POD will incorporate these clarifications. To the extent that such clarifications affect a mitigation measure, Appendix C to this ROD contains the final language.

### Errata Items

Section D.3, Figures D.3-19C through D.3-19H, were omitted from the FEIS/FEIR. These figures are incorporated in Section D.3 on the CPUC FEIS/FEIR website:  
[http://www.cpuc.ca.gov/environment/info/dudek/ecosub/Final\\_EIR/D.3\\_Visual\\_Resources.pdf](http://www.cpuc.ca.gov/environment/info/dudek/ecosub/Final_EIR/D.3_Visual_Resources.pdf).

The Draft MOA included as Appendix 10 to the FEIS/FEIR was updated post-publication. The Final MOA is included as Appendix B to this ROD. The Draft MOA is included on the CPUC FEIS/FEIR website as Appendix 10: [http://www.cpuc.ca.gov/environment/info/dudek/ecosub/Final\\_EIR/Appx10\\_DraftMOAs.pdf](http://www.cpuc.ca.gov/environment/info/dudek/ecosub/Final_EIR/Appx10_DraftMOAs.pdf).

Section I, Public Participation (page I-10, Section I.3.3, After Final EIR/EIS Completion), the statement: "For NEPA, following a 30-day Protest Period and concurrent 30-day Governor's

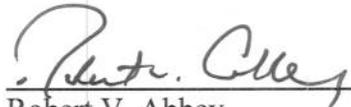
Review...” is in error. On October 25, 2011, the BLM clarified the Tule Wind Project public process in a news release. The Tule Wind Project does not amend BLM’s Eastern San Diego County RMP, and the plan has already designated the area as suitable for wind development. Therefore, a 30-day protest period and concurrent 30-day Governor’s Consistency Review upon release of the FEIS/FEIR is not appropriate. The news release was published on the CPUC website: <http://www.cpuc.ca.gov/environment/info/dudek/ECOSUB/BLMNewsRelease.pdf>.

## 7. Final Agency Action

### 7.1 Right-of-Way Authorization

It is my decision to approve a wind energy right-of-way lease/grant to Tule Wind, LLC, subject to the terms, conditions, stipulations, plan of development, and environmental protection measures developed by the Department of the Interior and reflected in this Record of Decision. It is my further decision to temporarily close routes within the project area subject to limited exceptions. Specific routes and times will be announced by the BLM Authorized Officer once a more detailed construction schedule is completed. These decisions are effective on the date this Record of Decision is signed.

Approved by:

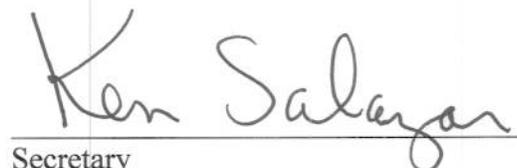
  
 \_\_\_\_\_  
 Robert V. Abbey  
 Director  
 Bureau of Land Management

12-19-11  
 Date

### 7.2 Secretarial Approval

I hereby approve these decisions. My approval of these decisions constitutes the final decision of the DOI and, in accordance with the regulations at 43 CFR 4.410(a)(3), is not subject to appeal under departmental regulations at 43 CFR 4. Any challenge to these decisions, including the BLM Authorized Officer’s issuance of the ROW as approved by this decision, must be brought in the Federal district court.

Approved by:

  
 \_\_\_\_\_  
 Secretary  
 U.S. Department of the Interior

12-19-11  
 Date

**ROD Figures**

## Appendices