

# **RECORD OF DECISION**

## **Alta East Wind Project and Amendment to the California Desert Conservation Area Plan**

Lead Agency:

*United States Department of the Interior  
Bureau of Land Management*

Environmental Impact Statement DES 12-18  
Case File Number: CACA 052537

### **Alta East Wind Project Decision to Grant Right-of-Way and Amend California Desert Conservation Area Plan**

*United States Department of the Interior, Bureau of Land Management  
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# 1.0 Introduction

This Record of Decision (ROD) explains the decisions of the Department of the Interior (DOI) and Bureau of Land Management (BLM) to authorize wind energy development on the identified BLM-managed public lands and approve associated amendments to the *California Desert Conservation Area Plan 1980* (1980, as amended) (CDCA Plan). Specifically, this ROD makes the following decisions:

- First, it approves the issuance of a Federal Land Policy and Management Act (FLPMA) Title V ROW grant to Alta Windpower Development, LLC (Applicant) to construct, operate, maintain, and decommission the Alta East Wind Project (AEWP). The project configuration authorized by this ROD (referred to here as the Revised Project) includes 51 wind turbine generators (WTGs) and related infrastructure capable of generating up to 153-megawatts (MWs), and is based on a revised Plan of Development (POD) submitted by the Applicant on April 10, 2013. The AEWP's 51 WTGs will be located on 2,592 acres of land - 1,999 acres of BLM-managed public lands and 593 acres of land under the jurisdiction of Kern County, California (County) – with 42 turbines on BLM-managed lands and 9 turbines on lands under the County's jurisdiction. The 42 turbines on BLM-managed lands would be capable of generating up to 126 MWs.
- Second, it amends the CDCA Plan to identify the 1,999 acres of public land within the AEWP facility's footprint as suitable for wind energy development (see Figure 1 in Appendix A of this ROD).

The analysis of potential effects of the Proposed Action and alternatives on the human environment was documented in the proposed Plan Amendment/Final EIS (PA/FEIS) for the AEWP, which was prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's NEPA regulations (40 CFR Parts 1500–1508), DOI's NEPA regulations (43 CFR Part 46), and other applicable authorities.

While the Revised Project was not among the alternatives specifically identified and analyzed in the PA/FEIS, which analyzed project configurations between 87 and 106 WTGs, the 51 WTGs and related infrastructure that make up the Revised Project are a subset of the 106 WTGs and related facilities analyzed as part of the Proposed Action, and thus the impacts of the Revised Project are reduced in magnitude and scope relative to the Proposed Action. As result, and as explained below, the impacts of the Revised Project are within the range of impacts analyzed in the PA/FEIS. Furthermore, the DOI and the BLM have determined that the new configuration does not constitute a substantial change to the Proposed Action or new information or circumstances relevant to environmental concerns requiring supplementation under 40 C.F.R. 1502.9(c).

In making the decisions described in this ROD, the BLM and the Department considered the following:

- The energy produced by the AEWP could displace up to 126,358 metric tons of carbon dioxide equivalent emissions per year (MTCO<sub>2e</sub>/year) that may otherwise be emitted by power plants currently generating electricity for the California system; this displacement of fossil fuel use would occur if the intermittent wind energy produced by the AEWP were fully integrated into the region-wide electrical grid and used to offset generation from higher polluting power plants.<sup>1</sup>

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<sup>1</sup> This number was derived from the annual volume of metric tons of MTCO<sub>2e</sub>/year displaced per WTG (approximately 2,477.6 tons per WTG) as described in PA/FEIS Section 4.3, *Climate Change and Greenhouse Gases* (p.4.3-4).

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- There are several existing, permitted, and proposed wind energy and transmission projects near the Project area, including: the Alta–Oak Creek Mojave Wind Project, Alta Infill I, and Alta Infill II, the Rising Tree Wind Project, the Avalon Wind Project, the Catalina Renewable Energy Project, and SCE’s Tehachapi Renewable Transmission Line Project (TRTP).
  - Based on consultations with the BLM, the United States Fish and Wildlife Service’s (USFWS) conclusions that:
    - The AEWP is not located within and will not affect critical habitat of the California condor or desert tortoise, and the USFWS has not designated critical habitat for the Bakersfield cactus (USFWS 2013; see Appendix 2 of this ROD);
    - Because of the comprehensive condor avoidance and minimization plan that the Applicant will implement as part of the AEWP, that over the 30 year life of the Project, “Project activities are reasonably likely to result in the death of no more than one condor as a result of being struck by a turbine blade,” and therefore the BLM’s issuance of a ROW grant for the AEWP is not likely to jeopardize the continued existence of the California condor; and
    - Because of the measures to avoid and reduce impacts to desert tortoise and the Bakersfield cactus, the AEWP is not likely to jeopardize the continued existence of those species.
  - The AEWP’s Eagle Conservation Plan (ECP) and Avian Protection Plan (APP) will avoid, minimize, and monitor the project’s impacts to eagles and migratory birds. The Applicant’s decision to apply for an eagle take permit responds to a recommendation from the USFWS, which is based on modeling showing that even after implementing the avoidance and minimization measures there is still a potential fatality risk associated with golden eagles over the life of the project. The ECP and APP include monitoring of eagle and raptor nests in the vicinity of the AEWP site. See Section 4.8 for more information about the avoidance or minimization of effects on golden eagles.
  - The project has been designed to avoid direct physical impacts to identified archaeological and cultural resources and measures are required by this ROD to monitor those resources.
  - The project’s impacts to views from the Pacific Crest Trail are minimized through compensatory mitigation requiring funds for acquisition of property along the trail corridor.
  - The stipulations and mitigation measures adopted by this ROD to ensure compliance with all applicable laws, regulations, standards, guidelines, and policies will mitigate the impacts to environmental resources to the maximum extent practicable, including: special-status plant species, Joshua tree woodland, California condor, golden eagle, desert tortoise, Swainson’s hawk, Mohave ground squirrel, American badger, desert kit fox, and burrowing owl.

After a careful review of the totality of this information and responding to the comments and concerns identified by members of the public and in consultation with tribal leaders, the DOI and the BLM find that the issuance of the AEWP’s ROW grant and associated CDCA Plan Amendment are consistent with the requirements and obligations under FLPMA in that the resource tradeoffs identified above and in the PA/FEIS reflect the BLM’s multiple use mandate, and meet the BLM’s purpose and need for the proposed action as outlined in Chapter 1, Section 1.1, of the PA/FEIS.

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## **1.1 Background**

The Applicant is a subsidiary of the Terra-Gen Power, LLC. The Applicant filed a ROW grant application with the BLM to construct, operate, maintain and decommission the Project (Case File Number CACA #52537) on May 10, 2010. As part of the ROW grant application process, the Applicant submitted a Plan of Development (POD) for the project to the BLM on February 15, 2011. After publication of the Notice of Intent on July 15, 2011, the Applicant modified the AEWP by reducing the total acreage from 3,200 acres to 2,592 acres. As proposed in the PA/FEIS, the AEWP was an up to 318 MW wind energy generation facility located on a 2,592-acre site comprised of 568 acres of private land under the jurisdiction of the County and 2,024 acres of public lands managed by the BLM (See Section 2.0). On April 10, 2013 the Applicant submitted a revised POD to the BLM, which presented the Revised Project and further reduced the Project's footprint based on additional engineering refinements and information developed during consultation with the USFWS. As explained above, the Revised Project configuration consists of up to 51 WTGs with a nameplate capacity rating of approximately 153 MWs. Under all build scenarios, AEWP components would include WTGs, a substation, operation and maintenance facilities, transmission line, and temporary construction lay down areas.

## **1.2 Kern County Environmental Impact Report**

Initially, the BLM and the County determined it was appropriate to prepare a joint document to satisfy their respective obligations under NEPA and the California Environmental Quality Act (CEQA). As a result, a joint Draft Plan Amendment and Environmental Impact Statement/Environmental Impact Report (EIS/EIR) was prepared for the AEWP. The BLM and County continued to develop a joint document after publication of the Draft EIS/EIR and through the applicable public comment processes. However, after the conclusion of the public comment and initial revisions to the joint document the County, moved its EIR forward for Planning Commission consideration on December 13, 2012, at which time the Planning Commission recommended approval of the project and certification of the EIR. The County Board of Supervisors subsequently approved the project and certified the EIR on January 22, 2013. Following the Board of Supervisors certification, the BLM made additional changes to the EIS portion of the document relevant to its analysis of the Project. The BLM did not publish its PA/FEIS until February 15, 2013, in order to comply with the NEPA requirements and provide for the Plan Amendment protest period. As a result, the final NEPA and CEQA documents are no longer contained in one joint document but rather are separate documents available from the respective agencies. The BLM and the County will ensure that all the mitigation required by both environmental review processes, the BO (ROD Appendix 2), and this ROD will be implemented during the development of the Project.

## **2.0 Overview of Alternatives**

In the PA/FEIS, the BLM evaluated four action alternatives describing the construction, operation, maintenance and decommissioning of the AEWP and associated plan amendment: one No Action alternative; and two no project/CDCA Plan amendment alternatives, each of which is summarized below. Alternative C, the Reduced Project North alternative, was identified as the BLM's preferred alternative in the PA/FEIS. This section also summarizes that Revised Project approved by this ROD.

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**Alternative A: Proposed Action.** The Proposed Action consists of up to 106 WTGs and associated facilities and infrastructure necessary to generate up to 318 MWs of wind energy on 2,592 acres of which 2,024 acres are BLM-administered land and 568 acres are privately owned and under the jurisdiction of the County. The total ground disturbance for the wind energy development area (on both public and private land) would cover less acreage, as only a portion of the wind energy development area would be temporarily or permanently disturbed. Approximately 658 total acres would be temporarily disturbed and 94 total acres permanently disturbed under the Proposed Action. This alternative also includes a collector substation, operation and maintenance facility, temporary portable concrete batch plant, meteorological towers, and a 12.8-mile transmission line. This alternative would require a CDCA Plan Amendment (See Section 10.1, below, regarding the CDCA Plan amendment and conformance with the CDCA Plan).

**Alternative B: Revised Site Layout.** This alternative consists of a revised site layout that retains the same number of WTGs as the Proposed Action, but would relocate a number of WTGs locations and reroute access roads. All other features associated with Alternative B would remain unchanged compared to the Proposed Action. When compared to the features of the Proposed Action, Alternative B would slightly increase the total acreage of both temporary and permanent ground disturbance. This Alternative would decrease access road mileage, but would increase the amount of underground electric infrastructure. This alternative would require a CDCA Plan Amendment.

**Alternative C: Reduced Project North.** Under this alternative, all WTGs and ancillary facilities would remain identical to that of the Proposed Action. However, this alternative would eliminate the northern-most central parcel in the Proposed Action, which is north of State Route 58; eliminating 9 WTGs from the layout. This alternative would result in a proportional reduction in potential biological impacts as a result of the reduced level of construction and permanent habitat loss, the reduced number of WTGs, the avoidance of some Joshua tree woodland habitat, and the reduction of impacts to the Pacific Crest Trail. The 9 WTGs eliminated would also be from the parcel closest to three active golden eagle nests and eight inactive nests. The remaining 97 WTGs would be capable of generating up to 291 MWs. The Alternative C facility footprint would comprise 2,272 acres (1,705 of which are BLM-managed public lands). As with the Proposed Action, the area of disturbance associated with Alternative C is significantly less than the overall project footprint. This alternative would require a CDCA Plan Amendment.

**Alternative D: Reduced Project Southwest.** This alternative would eliminate the southwestern-most parcel to reduce the potential to impact to livestock grazing on an active allotment. This alternative would result in a total of 87 WTGs capable of generating up to 267 MWs. Alternative D contains 2,039 acres (1,472 of which are BLM-managed public lands). As with the Proposed Action, the area of disturbance associated with Alternative D is significantly less than the overall project footprint. This alternative would require a CDCA Plan Amendment.

**Alternative E: No Action/No Project.** Under this alternative, the BLM would not approve those AEWP-related activities occurring on BLM administered lands. As such, the BLM would not issue a ROW grant or amend the CDCA Plan. As a result, no wind energy project components would be constructed on the specified BLM lands, and the BLM would continue to manage these lands consistent with the existing land use plans and designations. Because there would be no wind project approved for the site under this alternative, no new structures or facilities would be constructed or operated there and no new ground

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disturbance would occur. As a result there would be no direct, indirect, or cumulative impacts associated with the AEWP.

**Alternative F: No Project/Approval of a Land Use Plan Amendment to Identify the Area as Unsuitable for Wind Energy Development.** Under this alternative, the BLM would not approve those AEWP-related activities occurring on BLM administered lands, and the BLM would amend the CDCA Plan to exclude the AEWP site from future wind energy development. As a result, no wind energy project would be constructed within the BLM lands portion of the site, and the BLM would continue to manage these lands consistent with the existing land use designation in the CDCA Plan. Because the CDCA Plan would be amended to find the site unsuitable for future wind energy development, it is expected that the site would continue to remain in its existing condition, with no new structures or facilities constructed or operated within BLM-managed lands. There would be no direct, indirect, or cumulative impacts associated with the AEWP.

**Alternative G: No Project/Approval of a Land Use Plan Amendment to Identify the Area as Suitable for Wind Energy Development.** Under this alternative, the BLM would not approve AEWP-related activities occurring on BLM administered lands, but the BLM would amend the CDCA Plan to find the public lands portion of the Project site suitable for wind energy development. Because of the CDCA Plan amendment under this alternative, it is possible that BLM lands within the Project site would be developed with the same or a different wind technology. Different wind technologies require different amounts of grading; however, it is expected that all wind technologies would require grading and maintenance, and therefore impacts like those described for the AEWP might occur at a later time in connection with some future application; however, because the timing of such application is unknown such impacts are speculative for purposes of the analysis in the PA/FEIS.

**Revised Project:** While the Revised Project is not one of the Alternatives specifically identified in the PA/FEIS, its impacts are within the spectrum of impacts analyzed in the PA/FEIS. The Revised Project eliminates 55 WTGs considered under the Proposed Action based on engineering refinements and information developed during consultation with the USFWS in order to further reduce the Project's effects on condors, eagles, and other biological resources. Similar to Alternative C, the Revised Project would eliminate all of the WTGs proposed on the northern-most central parcel under the Proposed Action, which is north of State Route 58. Additional WTGs would be eliminated from the parcels located just south of State Route 58 as well as from the southeastern portion of the site. The 51 total WTGs that make up the Revised Project would be capable of generating up to 153 MWs. The 42 turbines on BLM-managed lands would be capable of generating up to 126 MWs. Within the 1,999-acre ROW area, construction would temporarily disturb approximately 348 acres and permanently disturb approximately 59 acres with WTGs and associated facilities (including a substation, operations and maintenance facility, and access roads). The AEWP also would temporarily disturb approximately 169 acres and permanently disturb approximately 22 acres of land under the jurisdiction of the County and outside of the BLM's ROW grant boundary.<sup>2</sup> The Revised Project, like the Proposed Action, includes a collector substation, operation and maintenance facility, temporary portable concrete batch plant, meteorological towers, and an

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<sup>2</sup> The Revised Project identifies the typical temporary disturbance area per WTG as 2.5 acres while the PA/FEIS used 1.5 acres per WTG (PA/FEIS p.2.17). The larger temporary disturbance area reflected in the revised POD at each WTG is within the scope of the surveys and analysis presented in the PA/FEIS at those location, and therefore the increased disturbance is within the scope of the PA/FEIS' analysis.

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approximately 5.5 miles long transmission line. Under the Revised Project, all of the transmission line is located on private lands under jurisdiction of the County. As with the other alternatives, the Revised Project would require a CDCA Plan Amendment. Because the Revised Project is a reduced WTG configuration of the Proposed Action (i.e., its WTGs sites represent a subset of those analyzed under the Proposed Action), it would not result in impacts outside the spectrum of impacts analyzed in the PA/FEIS. Because of the overall reduction in the number of WTGs, the Revised Project is a reduced scope and reduced impact version of the Proposed Action and Alternative C, and its impacts are either the same or reduced proportionally relative to the impacts of the Proposed Action. Therefore, the impacts associated with the construction, operation and maintenance, and decommissioning of the Revised Project were disclosed and analyzed in the PA/FEIS. The BLM has determined based on these considerations that the Revised Project does not constitute a “substantial change in the [P]roposed [A]ction...relevant to environmental concerns” or significant new information bearing on the Proposed Action or its alternatives. (40 CFR 1502.9(c)(1),(2)) and that the analysis in the PA/FEIS does not need to be supplemented.

**Alternatives Not Carried Forward for Analysis:** Alternative sites, technologies, and transmission line layouts were considered as alternatives to the AEWP (Section 2.8 of the PA/FEIS) but were not carried forward for detailed analysis based on one or more of the following reasons: they did not respond to the BLM’s purpose and need, would be technically or economically infeasible, or had greater environmental impacts than the project alternatives. Potential alternative sites considered were on private land within Kern County. Additionally, the BLM considered alternative types of energy projects included solar, geothermal, biomass, and distributed generation, among others. Finally, the BLM also considered conservation and demand-side management as a potential alternative to the Project. The BLM eliminated these alternatives from detailed analysis based on one or more of the following reasons: it would not respond to the BLM’s purpose and need; would be technically or economically infeasible; would be inconsistent with the basic policy objectives for the management of the area; implementation of the alternative would be remote or speculative; it would be substantially similar in design to an alternative that is analyzed; and/or, it would have substantially similar effects to an alternative that is analyzed.

## 2.1 Environmentally Preferred Alternative

In accordance with 40 CFR 1505.2(b), the BLM has identified Alternative E, the No Action/No Project Alternative, as the environmentally preferred alternative in that it would cause the least damage to the biological and physical environment in the project area because it would not create a disturbance in the near term. Of the action alternatives under consideration here, the environmentally preferred alternative is the Revised Project due to smaller area of disturbance and reduced number of turbines compared to the other action alternatives, causing it to result in fewer environmental impacts than any of the other alternatives.

The selection of the Revised Project will best assist the BLM in addressing its various management and policy objectives. The Revised Project would generate up to 126 MWs of electricity annually on BLM-administered lands and is expected to provide climate, employment, and energy security benefits to California and the nation. It will provide clean electricity for homes and businesses, and bring much-needed jobs to the area. With an unemployment rate of 15.5 percent in the County (PA/FEIS, p. 3.13-2), employment of workers for project construction would have a beneficial effect in helping to reduce unemployment. The project is expected to create approximately 262 jobs during the construction period

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and 15 permanent, full-time and part-time jobs during its operation (POD, April 10, 2013). Given its smaller footprint, the BLM has determined that the Revised Project would result in fewer environmental impacts than Alternative A, B, C or D.

## 3.0 Decision

The decision is hereby made to approve the Revised Project and associated Plan Amendment, which is referred to as the Selected Alternative in this ROD. Specifically, the ROD authorizes the issuance of a FLPMA ROW grant, issued in conformance with Title V of FLPMA (42 USCA §1761 et seq.) and its implementing regulations (43 CFR §2801 et seq.), to the Applicant for the AEW. In order to issue the ROW, this ROD also approves an amendment to the CDCA Plan finding the BLM-managed lands within the project footprint suitable for wind energy development.

The ROW grant authorization will grant the Applicant the right to use, occupy, and develop the described public lands in order to construct, operate, maintain, and decommission a wind energy generating facility. The total facility will consist of 51 WTGs with a capacity of up to 153 MWs on 2,592 acres of land – 1,999 acres of which are BLM-managed public lands and 593 acres are under the jurisdiction of the County. Of the 51 total turbines, 42 will be on BLM-managed lands with a generating capacity of up to 126 MWs. Within the ROW grant area, the Project would only temporarily disturb 348 acres and permanently disturb 59 acres of BLM-managed lands. The decisions contained herein apply only to the BLM-administered public lands within the overall project boundary of the Selected Alternative. It does not apply to private lands or other lands outside of the BLM's jurisdiction. Other agencies, including, but not limited to, the County, are responsible for issuing their own decisions and applicable authorizations for the AEW.

The AEW site is located within the western Mojave Desert, partially within the foothills of the Tehachapi Mountains, three miles northwest of the unincorporated Community of Mojave and 11 miles east of the City of Tehachapi in southeastern Kern County. The AEW site is located within portions of Sections 26, 27, 28, 32, 33, 34, and 35 of Township 32S, Range 35E; Section 34 of Township 12N13W; Section 3 of Township 11N13W; and Section 31 of Township 12N12W. Figure 1 and Figure 2, provided in Appendix 1 of this ROD, show the location of the project site.

It is estimated that the total project construction period will take 9 to 12 months. The ROW grant will be issued to the Applicant for a term of 30 years with an option to renew in accordance with 43 CFR 2807.22. The BLM requires the initiation of project construction within two years of the issuance of a ROW grant. In addition, initiation of construction will be conditioned on final approval by BLM. This approval will take the form of an official Notice to Proceed (NTP) for each phase or partial phase of construction. If the approved project does not progress to construction or operation or is proposed to be changed to the extent that it appears to the BLM to be a new project proposal on the approved project site, that proposal will be subject to additional review under NEPA. The ROW is conditioned on the terms and conditions in the grant, implementation of various mitigation measures and monitoring programs as identified in: the PA/FEIS; the BO issued by the USFWS, which is provided in Appendix 2 of this ROD; and the issuance of and compliance with all other necessary local, state, and federal approvals, authorizations, and permits.

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## 4.0 Management Considerations in Selecting the Preferred Alternative

The selection of the Revised Project reflects the BLM’s careful balancing of many competing interests in managing public lands in accordance with the multiple use mandate and other obligations under FLPMA and other applicable legal authorities. The decisions made in this ROD are based on consideration of: (i) the information generated during the analytical and consultation processes required by the NEPA, National Historic Preservation Act (NHPA), Endangered Species Act (ESA), and DOI tribal consultation policies; (ii) the analysis presented in the PA/FEIS; (iii) the potential for resource conflicts associated with the proposed wind energy and transmission line development project in the County; (iv) the reasonable alternatives to the proposed AEWP that were identified and their associated impacts; and (v) the practicable means to avoid, minimize, or mitigate those impacts.

Specifically, they reflect a careful balancing of the importance of:

- (i) The AEWP to California achieving its renewable portfolio standard (RPS) and greenhouse gas (GHG) reduction objectives, diversifying the nation’s energy supply, achieving energy independence, creating jobs, and implementing the Energy Policy Act (EPAct) “sense of Congress” direction to authorize the production of 10,000 MWs of non-hydropower renewable energy on public lands by 2015, against
- (ii) Preserving the environmental, biological, and cultural resources found on those lands that would be affected by the construction, operation, maintenance and decommissioning of the AEWP.

This balancing is consistent with the BLM’s mandate to manage the public lands for multiple uses, as required by FLPMA, and it is based on full public disclosure and involvement, government-to-government consultations with affected Indian Tribes, and comprehensive analyses prepared by highly qualified technical experts regarding the potential effects of the project and its alternatives, as reflected in the AEWP’s PA/FEIS and BO.

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

FLPMA establishes policies and procedures for the management of public lands. In Section 1701(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 USC 1701(a)(8)).”

Section 202 (43 USC 1712) and the regulations implementing Section 202 (43 CFR subparts 1601 and 1610) provide a process and direction to guide the development, amendment, and revision of land use plans for the BLM-managed public lands. Section 601 (43 USC 1781) provides additional direction regarding the BLM management of the lands within the CDCA.

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Finally, Title V of FLPMA (43 USC 1761-1771) and the BLM's ROW regulations (43 CFR Part 2800) authorize the BLM, acting on behalf of the Secretary of the Interior, to issue a ROW grant on, over, under, and through the public lands for systems for generation, transmission, and distribution of electric energy. The BLM Authorized Officer (AO) administers the ROW authorization and ensures compliance with the terms and conditions of the ROW lease. This authority is derived from the authority of the Secretary of the Interior, and may be revoked at any time. With respect to this ROW grant, this authority has been delegated to the Field Manager of the Ridgecrest Field Office, who will be responsible for managing the ROW grant for the AEWP.

Consistent with the requirements of FLPMA, the AEWP ROW grant includes terms and conditions, including compliance with the BO and mitigation measures identified in the FEIS, as well as compliance with other applicable Federal rules and regulations, that are designed to protect public health and safety, prevent unnecessary damage to the environment, and ensure that the AEWP will not result in unnecessary or undue degradation of public lands.

## **4.2 California Desert Conservation Area Plan**

In furtherance of its authority under the FLPMA, the BLM manages public lands in the California Desert District pursuant to the CDCA Plan. The Plan, while recognizing the potential compatibility of wind generation facilities on public lands, requires that all sites associated with power generation or transmission not specifically identified in the CDCA Plan for a specific project site be considered through the Plan Amendment process. Because the CDCA Plan has not previously identified the AEWP site for power generation, the Plan must be further amended to allow a wind energy generation project on that site. The planning criteria for considering an amendment to the CDCA Plan are discussed in Section 11 below.

## **4.3 National Environmental Policy Act**

Section 102(c) of NEPA (42 USC 4321 et seq.) and the CEQ and DOI implementing regulations (40 CFR Parts 1500–1508 and 43 CFR Part 46, respectively) provide for the integration of the NEPA process into agency planning to ensure appropriate consideration of NEPA's policies and to eliminate delay. When taking actions such as approving CDCA Plan amendments and ROW grants, the BLM complies with the applicable requirements of NEPA, the CEQ's NEPA regulations, and the agency's own regulations and policies for implementing NEPA. 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 Draft PA/EIS/EIR, PA/FEIS, and this ROD document the BLM's compliance with those requirements.

The BLM engaged highly qualified technical experts to analyze the environmental effects of the AEWP and alternatives. During the scoping process and following the publication of the Draft PA/EIS/EIR, members of the public submitted comments that enhanced the BLM's consideration of many environmental issues relevant to the AEWP. The BLM, USFWS, California Department of Fish and Wildlife (CDFW), the County, and other agencies and interested Tribes used their expertise and best available information to address important resource issues.

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The PA/FEIS (Chapter 4) presents an analysis of the environmental consequences that would result from each of the seven alternatives described above, including their effectiveness in meeting the BLM's purpose and need for the proposed action, which includes compliance with the applicable legal requirements, the policy and legal directives encouraging renewable energy development on BLM-administered public lands, and basic policy objectives for the management of the CDCA. As explained above, while not specifically analyzed in the PA/FEIS, the Revised Project is comprised of a subset of the WTGs and related facilities analyzed as part of the Proposed Action, which means its impacts are reduced in magnitude and scope relative to the Proposed Action, and therefore are within the spectrum of impacts analyzed in the PA/FEIS.

## 4.4 Governor's Consistency Review

FLPMA requires the Secretary of the Interior "to the extent consistent with the laws governing the administration of the public lands to coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located..." 43 USC §1712(c)(9). It further directs the Secretary to "assure that consideration is given to those State, local and tribal plans that are germane in the development of land use plans for public lands" and "assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans." Regulations implementing FLPMA, 43 CFR §1610.3-2(e), generally require a 60-day period for Governor's consistency review; however, by agreement, this review period has been expedited. The purpose of the review is to identify inconsistencies of the proposed PA with State and local plans, programs, and policies. On February 15, 2013, the BLM initiated the period of Governor's Consistency Review for the PA/FEIS in accordance 43 CFR 1610.3-2(e). The Governor's Office of Planning and Research provided a formal response to the BLM, dated March 18, 2013, that did not identify any inconsistencies between the proposed PA and any State or local plans, programs or policies.

## 4.5 NHPA Section 106 Compliance

Pursuant to Section 106 of the NHPA and the implementing regulations, the BLM consulted with the California State Historic Preservation Officer (SHPO), the Advisory Council on Historic Preservation (ACHP),<sup>3</sup> interested tribal members, other consulting parties, and Federally recognized Tribes. Section 106 of the NHPA requires Federal agencies to take into account the potential effects of a proposed undertaking on historic properties eligible for or listed in the National Register of Historic Places (NRHP). The steps in the NHPA Section 106 process are described in Section 5.2.3 of the PA/FEIS.

Of the 23 cultural resources located within the AEWP area, the BLM determined that only one site (S-29) was eligible for listing on the NRHP or the California Register of Historical Resources (CRHR). Site S-29 will be protected and avoided entirely. Initially, the BLM determined pursuant to 36 CFR 800.4(d), that no historic properties will be affected by the AEWP. On April 16, 2013, the BLM sent a letter notifying the SHPO of this determination and that avoidance of S-29 would be made a stipulation of the ROW

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<sup>3</sup> On April 16, 2013 the BLM sent a letter to the ACHP inviting them to participate in the Section 106 process for the Project. The ACHP responded on April 18, 2013 and declined to participate.

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grant. On April 22, 2013, the SHPO responded by proposing a conditional no adverse affect determination upon a stipulation in the ROW grant that the applicant completely avoid site S-29 and provide professional archaeological monitoring during any ground disturbing activities within 100 meters (350 feet) of known site boundaries. The BLM confirmed in a letter to the SHPO on May 1, 2013, that this would be made a condition of the ROW grant, and modified its initial determination to reflect that the Project would have no adverse effects on historic pursuant to 800.5(b). The BLM will continue working with SHPO on subsequent measures that may be required to ensure no adverse impacts to eligible resources, per mitigation measures listed in Sections 4.4 (Cultural Resources) and 4.10 (Paleontological Resources) of the PA/FEIS, and listed in Appendix 3 of this ROD. Concurrence by the SHPO with the BLM's no adverse effect determination concluded the Section 106 process.

## **4.6 Government-to-Government Consultation with Tribes**

As described in detail in Section 5.2.3 of the PA/FEIS, the BLM conducted government-to-government consultation with Federally recognized and other Native American Tribal groups in accordance with several authorities including, but not limited to, NEPA, the NHPA, the American Indian Religious Freedom Act, Executive Order 13175, and Executive Order 13007. As explained below, the BLM has engaged in extensive outreach in connection with the AEWP and has only received limited, and in some cases no, concerns and questions about the Project all of which have been addressed. As explained above, the BLM has determined that no historic properties will be affected by the Project.

Initial consultation outreach was conducted by the BLM in August 2008. Formal invitation letters were submitted to the Kern Valley Indian Council, the Tubatulabals of the Kern Valley, the Nuui Cunni Interpretative Center, and the Monache Inter-Tribal Council. The communities were invited to apprise the BLM of any comments or concerns regarding the proposed project, which was referred to at that time as the Sun Creek Project. No comments were received by the BLM at that time from these communities.

A second letter was sent to these Tribal organizations in October 2009 informing them that the Applicant had submitted a Type II application to the BLM requesting authorization to erect two meteorological towers within the current Area of Potential Effect (APE). An invitation was extended in the letter requesting notification as to whether any cultural resources or Traditional Cultural Properties important to them would be affected by the AEWP. No comments were received by the BLM at that time from these communities.

A third set of invitation letters was provided to these Tribal organizations in February 2011. The focus of this letter was to alert the Tribal communities of the specific details of the proposed AEWP and request notification as to whether any cultural resources or Traditional Cultural Properties important to them would be affected by the AEWP. No comments were received by the BLM at that time from these communities.

The BLM reaffirmed its commitment to government-to-government consultation in the July 15, 2011 Notice of Intent (76 Fed. Reg. 41817) and provided other public notices about the project to provide reasonable notice of and seek input about how potential project-related changes could affect the use of sacred sites or their physical integrity. Individual government-to-government meetings with Indian Tribes provided a separate forum for Tribes to share information and concerns openly and candidly in an

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individual context, apart from other consulting parties and about other issues not necessarily related to the Section 106 process.

Another round of Tribal consultation letters were submitted on October 24, 2012, to five Tribes in the surrounding region: Bishop Paiute, Big Pine Paiute, Ft. Independence Paiute, Lone Pine Paiute-Shoshone, and Timbisha Shoshone. These Tribes were apprised of the project's details and were invited to provide BLM with any comments or concerns regarding whether any cultural resources or Traditional Cultural Properties important to them would be affected by the AEWP. The BLM continued government-to-government consultation in a face to face meeting with the Timbisha Shoshone Tribe on April 9, 2013, and also made follow-up phone calls to the Tribes on April 12, 2013. No comments have been received by the BLM from these communities.

In summary, the BLM has received no follow-up responses to consultation and outreach efforts with Tribes and Tribal communities about the AEWP, nor has BLM received any information about areas of Tribal cultural significance within the Project area.

## **4.7 Endangered Species Act—Section 7 Compliance**

The USFWS has jurisdiction over threatened and endangered species listed under the Endangered Species Act of 1973, as amended (16 USC 1531 et seq.) (ESA). The BLM complied with its obligations under ESA Section 7 by consulting with the USFWS regarding the potential effects of the project on the Mojave desert tortoise, California condor, and the Bakersfield cactus. The USFWS BO concludes that:

- The AEWP is not located within and will not affect critical habitat of the California condor or desert tortoise, and the USFWS has not designated critical habitat for the Bakersfield cactus (USFWS 2013; see Appendix 2 of this ROD);
- Because of the comprehensive condor avoidance and minimization plan that the Applicant will implement as part of the AEWP, over the 30 year life of the Project, “Project activities are reasonably likely to result in the death of no more than one condor as a result of being struck by a turbine blade,” and therefore the BLM’s issuance of a ROW grant for the AEWP is not likely to jeopardize the continued existence of the California condor; and
- Because of the measures to avoid and reduce impacts to desert tortoise and the Bakersfield cactus, the AEWP is not likely to jeopardize the continued existence of those species.

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

The Bald and Golden Eagle Protection Act of 1940 (16 USC 668) (BGEPA) protects bald and golden eagles and their nests by prohibiting the take, possession, and commerce of such birds without a permit; it also establishes criminal and civil penalties for violations. In this context, “take” includes “disturb,” which means “to agitate or bother a bald 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). USFWS may authorize the take of eagles for activities that are otherwise lawful, but that result in disturbance or mortality

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where such take is unavoidable even though advanced conservation practices are being implemented (50 CFR 22.26). Consistent with BLM guidance and policy, the BLM will require compliance with BGEPA as a condition of the ROW grant for the AEWP.

The Final EIS anticipated that construction and operation of the AEWP could adversely affect golden eagles and their foraging habitat, even after implementation of the avoidance and minimization efforts as described in the Project's ECP (see, e.g., FEIS, pp. 4.21-19, -22, -26, -27). Mitigation measures identified in the Final EIS would require biological monitoring during construction activities, worker environmental awareness training, restoration of temporarily impacted areas, compensation for permanently impacted habitat at a minimum 1:1 ratio, minimization of impact areas, and control of fugitive dust as well as golden eagle-specific preconstruction nest surveys and no-activity buffers of 0.25 mile around any active nests with a direct line of sight to the work area and 660 feet (or otherwise set in consultation with CDFW and/or USFWS) if the work area is not within direct view of the nest (FEIS, p. 4.21-9). The project applicant's draft ECP for the AEWP, entitled *Conservation Plan for the Avoidance and Minimization of Potential Impacts to Golden Eagles*, was prepared in consultation with BLM and USFWS. The draft ECP outlines conservation measures to avoid and minimize impacts on golden eagles toward meeting the requirements of BGEPA (see FEIS, p. 4.21-9). The draft ECP was provided for public and agency review as Final EIS Appendix D. On May 10, 2013, the Applicant requested concurrence that the draft ECP is in substantial conformance with the USFWS' ECP guidance and that the USFWS is ready to evaluate the Applicant's programmatic take permit request. On May 16, 2013, USFWS responded confirming the company's efforts to satisfy the applicable requirements, implement the ECP, and assist the USFWS in its processing of the Applicant's permit application.

Since the USFWS has determined that the AEWP cannot significantly reduce the potential for causing take even with implementation of the ECP, it recommended that the Applicant obtain take authorization under BGEPA. The Applicant submitted an application for an eagle take permit on March 4, 2013 (50 CFR 22.26(d)). USFWS will evaluate the application before determining whether to issue a permit (50 CFR 22.26(e)-(g)). If the USFWS issues a take permit, it will impose enforceable monitoring, annual reporting, site access, and notification obligations to safeguard local or regional eagle populations in addition to the mitigation measures and other requirements of the BLM's ROW grant (50 CFR 22.26(c)). Upon issuance of an eagle take permit, compliance with its terms and conditions will become a condition of the AEWP's ROW grant. To the extent that the terms and conditions of the AEWP ROW grant and any subsequently issued eagle take permit are inconsistent with any requirements of the Project's ECP or ROW grant, the terms of such permit would control. At the time such permit is issued, the BLM will determine if any additional modifications to this ROD or the ROW grant are required.

This ROD allows construction and operation of the AEWP to proceed before an eagle take permit is issued, subject to this ROD's requirements that the conservation practices described in the draft ECP be implemented. As stated by the FWS in their May 16, 2013 letter, "it is not possible to absolve individuals, companies or agencies from liability, should unintended take occur." Therefore, any take of eagles caused by the Project, prior to the issuance of an eagle take permit, constitutes a violation of BGEPA that the FWS intends to refer to the Department of Justice for enforcement. (16 USC 668a, 668b). Additionally, in the event of a take of a golden eagle prior to the issuance of a take permit by USFWS, the ROW grant will require the Applicant to implement limitations and other measures deemed necessary by the BLM on the operation of nearby WTGs during hours when eagles are active on site, which measures may include real-

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time curtailment of those specific WTGs determined to pose a risk to onsite eagles. Such limitations would apply until a take permit is issued, at which time the terms and conditions of that permit would control. The Applicant has been advised that the requirements of this ROD and any additional limitations or other measures deemed necessary by the BLM do not constitute an authorization to take eagles or a defense against BGEPA enforcement.

## 5.0 Protests on the Proposed Land Use Plan Amendment

Pursuant to the BLM's land use planning regulations in 43 CFR 1610.5-2, any person who participated in the land use planning process for the AEWPP and who has an interest that is or may be adversely affected by the planning decision may protest approval of the proposed Plan Amendment contained in the PA/FEIS within 30 days from date the EPA publishes the Notice of Availability (NOA) in the Federal Register. Detailed information on protests may be found on the BLM Washington Office website: [http://www.blm.gov/pgdata/content/wo/en/prog/planning/planning\\_overview/protest\\_resolution.html](http://www.blm.gov/pgdata/content/wo/en/prog/planning/planning_overview/protest_resolution.html).

The EPA published an NOA of the PA/FEIS in Volume 78, page 11171-02 of the Federal Register on February 15, 2013. Publication of this NOA initiated a 30-day protest period, which closed on March 18, 2013. The BLM timely received one protest from Lozeau Drury LLP on behalf of Kern County (CA) Residents Tony Guerra, Jose Rocha, Ranny Taylor, and Laborers International Union of North America, Local Union 220 (LIUNA). The protest letter incorporated by reference a separate comment that the same group had submitted on the PA/FEIS. As explained below, no comment period had been provided on the PA/FEIS; accordingly, comments on the FEIS were untimely. Only those comments relevant to the BLM's plan amendment decision in LIUNA's letters were considered as part of the plan amendment protest process.

Protest issues included NEPA adequacy, consistency with the CDCA Plan and local plans, cumulative impacts analysis, deferral of mitigation plans, and protection of raptors and other birds. The BLM analyzed all valid protest issues and determined that the proposed plan amendment and accompanying NEPA analysis complied with applicable laws, regulations, and BLM policies. Accordingly, there is no basis for changing the proposed planning decision and the protest has been denied as explained in the Director's separate Protest Resolution Report for the Proposed Plan Amendment.

## 6.0 Notice of Clarifications of the PA/FEIS

Minor corrections to and clarifications of the PA/FEIS are provided in Appendix 6. These minor revisions have been made as a result of and in response to additional input received on the document (see Section 9.3 of this ROD) and additional internal BLM review. None of the minor corrections and clarifying statements affects the adequacy of the underlying FLPMA or NEPA analysis in the PA/FEIS.

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## 7.0 Mitigation Measures

As required in the BLM *NEPA Handbook H-1790-1* and consistent with 40 CFR 1505.2(c), all practicable means to avoid or minimize environmental harm from the AEWPs are adopted by this ROD. The ROW grant authorizations are subject to the following measures, terms, and conditions:

- Terms and Conditions in the USFWS BO, provided in Appendix 2 of this ROD, as such may be amended over time.
- Avoidance, Minimization, and Mitigation Measures provided in PA/FEIS Chapter 4, *Environmental Consequences*, as amended in Appendix 6 of this ROD, and provided in their final form in Appendix 3 of this ROD.
- The Environmental Construction and Compliance Monitoring Program provided in Appendix 4 of this ROD.
- Since publication of the PA/FEIS, Mitigation Measure 4.18-5, Evaluate and Implement PCT Route Enhancement, has been revised based on a visibility analysis conducted by the BLM to identify specific compensatory land acquisition funds for impacts to views from the Pacific Crest Trail. The revisions are reflected in Appendix 6 of this ROD.
- The measures proposed in the April 22, 2013, letter from the California SHPO to the BLM, which require that archeological site CA-KER-9217 be completely avoided and that archeological monitoring occur in connection with any ground disturbing activities within 350 feet (100 meters) of that site's known boundary.

These measures, terms, and conditions are determined to be in the public interest pursuant to 43 CFR 2805.10(a)(1). Additional mitigation may be necessary to fully mitigate potential effects of the project according to Federal laws not administered by the BLM and State laws (including CEQA), rules, policy, or regulations. Those additional measures, to the extent they exist, will be identified by the applicable agency. The applicant will be required to comply with any such requirements based on the ROW grant's general requirement that the Project comply with all applicable federal and state laws and approvals.

## 8.0 Monitoring and Enforcement

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 should do so in important cases. Mitigation and other conditions established in the PA/FEIS or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency.

The Environmental and Construction Compliance Monitoring Program (ECCMP) for the AEWPs is provided in Appendix 4 of this ROD. As the Federal lead agency for the AEWPs under NEPA, the BLM is responsible for ensuring compliance with all adopted mitigation measures for the project in the PA/FEIS. The BLM has incorporated this mitigation into the ROW grant as terms and conditions. Failure on the part of Applicant, as the grant holder, to adhere to these terms and conditions could result in various

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administrative actions, up to and including a termination of the ROW grant and requirement to remove the facilities and rehabilitate disturbances.

In addition to ensuring compliance with the applicable requirements during project implementation, the ECCMP also contains procedures for the BLM Compliance Project Manager and Compliance Monitors to ensure that any adjustments to Project requirements that may be required in the future as a result of currently unknown conditions will be made consistent with NEPA and any other applicable legal requirements. A proposed project change that has the potential for creating significant environmental effects will be evaluated to determine whether supplemental NEPA analysis is required. In some cases, an adjustment may also require approval by jurisdictional agencies, or additional consultation as applicable. The procedures for requesting a modification are outlined in Section 8, Variances, of the ECCMP.

## **9.0 Public Involvement**

### **9.1 Scoping**

The BLM published a Notice of Intent (NOI) to prepare a PA/EIS/EIR for the AEW in the Federal Register on July 15, 2011 (76 FR 41817). The BLM and the County held a publicly noticed scoping meeting on August 4, 2011, in Mojave, CA. The BLM also established a website that described the Project, the process, and various methods for providing public input, including the phone number where the BLM's Project Manager for the project could be reached, physical addresses where project documents could be reviewed, and an e-mail address where comments could be sent electronically. Results of scoping were discussed in the Draft PA/EIS and are detailed in the scoping report available as part of this project record and on the BLM website.

### **9.2 Public Comments on the Draft PA/EIS**

The U.S. Environmental Protection Agency (EPA) published a Notice of Availability (NOA) of the Draft PA/EIS/EIR for the AEW on June 29, 2012 (77 Fed. Reg. 38823). The BLM and the County held two joint public meetings in Mojave on August 1, 2012. The comment period ended on September 26, 2012. Nineteen comment letters were received and provided in Chapter 7 of the PA/FEIS. Responses to all letters were provided in Chapter 7 of the PA/FEIS, and all comments received from agencies, members of the public, and internal BLM review were considered and incorporated as appropriate into the PA/FEIS. Input received resulted in the addition of clarifying text and did not significantly change proposed land use plan decisions. One commenter submitted timely comments on the PA/DEIS that were inadvertently omitted from the PA/FEIS. Responses to this PA/DEIS comment letter are included in Appendix 7 of this ROD. The BLM determined after reviewing the inadvertently omitted comment letter that no changes were required to the PA/FEIS or proposed plan amendment as result of those comments.

### **9.3 Distribution of the Proposed PA/FEIS**

The EPA published a NOA of the PA/FEIS in Volume 78, page 11171-02 of the Federal Register on February 15, 2013. Publication of this NOA initiated a 30-day protest period, which closed on March 18,

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2013. The BLM received three letters regarding the PA/FEIS following the EPA's publication of the NOA only one of which constituted a valid protest (*see* Section 5.0 above):

- Kern County, Roads Department, dated March 12, 2013;
- EPA, dated March 18, 2013; and
- Lozeau Drury LLP on behalf of Tony Guerra, Jose Rocha, Ranny Taylor, and Laborers International Union of North America, Local Union 220, dated March 18, 2013 (The Lozeau Drury LLP letter was part of a formal plan amendment protest).

The letters received after publication of the NOA for the PA/FEIS were considered untimely comments as there was no comment period provided for the PA/FEIS. The BLM nevertheless considered these letters and determined that they did not require any in changes in the design, location, or timing of the project in a way that would cause significant effects to the human environment outside of the range of effects analyzed in the PA/FEIS. Similarly, none of the letters identified new significant circumstances or information relevant to environmental concerns that bear on the project and its effects. To the contrary, revisions to the PA/FEIS made on the basis of the BLM's consideration of comments received (see Appendix 6 of this ROD) did not result in new or different effects relative to the range of effects previously analyzed. As explained above, those portions of the Lozeau Drury LLP PA/FEIS comment letter that related to the proposed plan amendment were addressed as part of the plan amendment protest process.

## 9.4 Availability of the Record of Decision

Electronic copies of this ROD with the approved Plan Amendment are available on the Internet at <http://www.blm.gov/ca/st/en/fo/cdd.html>. Paper and electronic copies may be viewed at the following locations:

California State Office  
2800 Cottage Way, Suite W-1623  
Sacramento, California 95825

Ridgecrest Field Office  
300 South Richmond Road  
Ridgecrest, California 93555

California Desert District  
22835 Calle San Juan De Los Lagos  
Moreno Valley, California 92553

## 10.0 Consideration of Other BLM Plans and Policies

### 10.1 Conformance with the CDCA Plan

As explained above, in furtherance of its authority under the FLPMA, the BLM manages public lands in the California Desert District, including the AEWPs site, pursuant to the CDCA Plan. The CDCA Plan is a comprehensive, long-range plan that was adopted in 1980; it since has been amended many times. The CDCA is a 25-million-acre area that contains over 12 million acres of BLM-administered public lands in the California Desert, which includes the Mojave Desert, the Sonoran Desert, and a small part of the

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Great Basin Desert. By contrast, the site of the Selected Alternative includes approximately 1,705 acres of BLM-administered land in the CDCA.

The CDCA Plan, while recognizing the potential compatibility of wind generation facilities on public lands, requires that all sites associated with power generation or transmission not specifically identified in the CDCA Plan be considered through the Plan Amendment process. Because the CDCA Plan has not previously identified the AEWP site for power generation, the BLM had to consider an amendment to the CDCA Plan in connection with its review of the Project.

The AEWP site is classified as Multiple-Use Class (MUC) M (Moderate Use) and Unclassified in the CDCA Plan. The MUC M classification allows for a wide variety of present and future uses such as mining, livestock grazing, recreation, energy, and utility development. Based on CDCA Plan Table 1, Multiple Use Class Guidelines, and CDCA Plan Chapter 3, Energy Production and Utility Corridors Element, wind energy generation facilities are allowed in the MUC M designation contingent on the CDCA Plan amendment process and NEPA requirements being met. The AEWP's PA/FEIS satisfies the Plan's requirement that NEPA's requirements be met before a wind energy facility is authorized on Class M lands. Further, for the reasons set forth below, this ROD's decision to approve the proposed CDCA Plan Amendment to identify the site of the Selected Alternative for wind energy generation is in conformance with the applicable CDCA Plan requirements and satisfies the planning criteria applicable to a proposed plan amendment.

### 10.1.1 Required CDCA Plan Determinations

As discussed in CDCA Plan, Chapter 7, the BLM must make certain determinations in amending the CDCA Plan. The required determinations and how they were made for the CDCA Plan Amendment for the AEWP are provided below.

**Required Determination:** *Determine if the request has been properly submitted and if any law or regulation prohibits granting the requested amendment.*

The Applicant's request for a ROW grant was properly submitted; the PA/FEIS was the mechanism for evaluating and disclosing environmental impacts associated with that application. No law or regulation prohibits granting the proposed CDCA Plan Amendment.

**Required Determination:** *Determine if alternative locations within the CDCA are available which would meet the applicant's needs without requiring a change in the Plan's classification, or an amendment to any Plan element.*

The Selected Alternative does not require a change in the MUC classification for any portion of the AEWP site within the CDCA, and therefore this determination is not applicable.

**Required Determination:** *Determine the environmental effects of granting and/or implementing the applicant's request.*

The PA/FEIS evaluated the environmental effects of approving the CDCA Plan Amendment and the ROW grant application for the AEWP.

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**Required Determination:** Consider the economic and social impacts of granting and/or implementing the applicant's request.

The PA/FEIS evaluated the economic and social impacts of the Plan Amendment and the ROW grant in Section 4.13, *Social and Economic Issues*.

**Required Determination:** Provide opportunities for and consideration of public comment on the proposed amendment, including input from the public and from Federal, state, and local government agencies.

Opportunities for and consideration of public comment on the proposed amendment, including input from the public and from Federal, state, and local government agencies that were provided are described in Section 9 of this ROD.

**Required Determination:** Evaluate the effect of the proposed amendment on BLM management's desert-wide obligation to achieve and maintain a balance between resource use and resource protection.

The balance between resource use and resource protection is evaluated in the PA/FEIS. FLPMA Title VI, as addressed in the CDCA Plan, provides for the immediate and future protection and administration of the public lands in the California Desert within the framework of a program of multiple use and sustained yield, and maintenance of environmental quality. Multiple use includes the use of renewable energy resources, and, through Title V of FLPMA, the BLM is authorized to grant ROWs for the generation and transmission of electric energy. The acceptability of the proposed use of public lands within the CDCA for the AEWP is recognized through the CDCA Plan's approval of wind generating facilities within MUC M subject to certain requirements being met. The PA/FEIS identifies resources that may be adversely affected by approval of the AEWP, evaluates alternative actions that may accomplish the purpose and need with a lesser degree of resource impacts, and identifies mitigation measures that, when implemented, would reduce the extent and magnitude of the impacts and provide a greater degree of resource protection.

### **10.1.2 Conformance with CDCA Plan MUC Guidelines**

The proposed Land Use Plan Amendment to be made by the BLM is a site identification decision only. Because the proposed wind project and its alternatives are located within MUC M, the classification designation governs the type and degree of land use action allowed within the classified area. All land use actions and resource management activities on public lands within a MUC designation must meet the guidelines for that class. MUC M allows electric generation plants for wind facilities after NEPA requirements are met. These guidelines are listed in Table 1, *Multiple Use Class Guidelines*, in the CDCA Plan. The specific application of the MUC designations and resource management guidelines for a specific resource or activity are further discussed in the plan elements section of the CDCA Plan. The site for the AEWP meets the MUC Guidelines (as applicable to this project and site) for the reasons discussed in PA/FEIS Section 4.6.3 (p. 4.6-1 et seq.).

### **10.1.3 CDCA Plan Decision Criteria**

The CDCA Plan defines specific Decision Criteria to be used by the BLM in evaluating applications in the Energy Production and Utility Corridors Element of Chapter 3. The consideration of these Decision Criteria for the AEWP is described below.

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**Decision Criterion:** *Minimize the number of separate rights-of-way by utilizing existing rights-of-way as a basis for planning corridors.*

The AEWP would help minimize the number of separate ROWs as it would be partially located within the existing California Desert District (CDD) Designated Utility Corridor A.

**Decision Criterion:** *Encourage joint-use of corridors for transmission lines, canals, pipelines, and cables.*

The AEWP encourages the joint-use of corridors for transmission lines and cables and does not create conflicts. The AEWP would be partially located within CDD Corridor A, which includes two existing 230-kV transmission lines as well as two aqueducts, all owned by the Los Angeles Department of Water and Power, thereby maximizing the joint-use of this corridor. The AEWP would not create a conflict with these uses.

**Decision Criterion:** *Provide alternative corridors to be considered during processing of applications.*

This decision criterion is not applicable to the AEWP. Placement of the proposed facility within an existing corridor does not require designation of alternative corridors to support the project.

**Decision Criterion:** *Avoid sensitive resources wherever possible.*

The extent to which the AEWP has been located and designed to avoid sensitive resources is addressed throughout the PA/FEIS. BLM and other Federal regulations and policies were considered in the original siting process used by the Applicant to identify potential sites for the AEWP. Additionally, the alternatives analysis in the PA/FEIS considered whether the purpose and need of the project could be achieved with a different build alternative that had a lesser effect on sensitive resources. While the build alternatives share similar impacts, the Revised Project results in fewer impacts to various sensitive resources than the alternatives analyzed in the PA/FEIS.

**Decision Criterion:** *Conform to local plans whenever possible.*

As explained in Section 4.4 above, the BLM initiated the period of Governor's Consistency Review for the PA/FEIS in accordance with FLPMA (43 USC 1712(c)(9)) on February 15, 2013. The purpose of the review is to identify inconsistencies of the proposed PA with State and local plans, programs, and policies. The Governor's Office concluded its review on March 18, 2013 and no inconsistencies were identified. The majority of the AEWP is on BLM-administered lands and conforms to BLM land use plans, policies and regulations. The County has land use jurisdiction over 593 acres. Conformance of the project with local plans will be further assured through the County's environmental review and approval process for the Project.

**Decision Criterion:** *Consider wilderness values and be consistent with final wilderness recommendations.*

The AEWP site is not in a designated Wilderness Area or Wilderness Study Area. Additionally, the site is not located on lands with wilderness characteristics. See Section 4.15 of the PA/FEIS.

**Decision Criterion:** *Complete the delivery systems network.*

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This decision criterion is not applicable to the AEWP.

***Decision Criterion:*** Consider ongoing projects for which decisions have been made.

This decision criterion is not applicable to the AEWP. Approval of the project would not affect any other projects for which decisions have been made.

***Decision Criterion:*** Consider corridor networks which take into account power needs and alternative fuel resources.

This decision criterion is not applicable to the AEWP. The project does not involve the consideration of an addition to or modification of the corridor network.



United States Department of the Interior  
BUREAU OF LAND MANAGEMENT  
Washington, D.C. 20240  
<http://www.blm.gov>



**MAY 22 2013**

**DECISION MEMORANDUM FOR THE ACTING ASSISTANT SECRETARY**

From: Neil Kornze   
Acting Director, Bureau of Land Management

Subject: Record of Decision – Alta East Wind Project (CA)

**RECOMMENDATION**

I recommend you approve the Agency Preferred Alternative as described in the Record of Decision for the Alta East Wind Project. Your approval of this decision constitutes the final decision of the Department of the Interior and, in accordance with the regulations at 43 CFR 4.410(a)(3), is not subject to appeal under Departmental regulations at 43 CFR Part 4.

**DECISION BY THE ASSISTANT SECRETARY:**

APPROVE

DISAPPROVE

DATE: 5/23/13



Tommy P. Beaudreau  
Acting Assistant Secretary for Land and  
Minerals Management

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### 11.3 Secretarial Approval

I hereby approve these decisions. My approval of these decisions constitutes the final decision of the Department of the Interior and, in accordance with the regulations at 43 CFR 4.410(a)(3), is not subject to appeal under Departmental regulations at 43 CFR Subpart 4.400. Any challenge to these decisions, including the BLM AO's issuance of the ROW as approved by this decision, must be brought in the federal district court.

Approved by:



\_\_\_\_\_  
Tommy P. Beaudreau  
Acting Assistant Secretary Land and  
Minerals Management  
U.S. Department of the Interior

5/23/13  
\_\_\_\_\_  
Date