

# Organizations

Because “the EIS is intended to be used to guide decisionmaking, the alternatives analysis is naturally ‘the heart of the environmental impact statement.’” *ONDA v. BLM*, 625 F.3d at 1100 (quoting 40 C.F.R. § 1502.14). In the alternatives section, the agency must “[r]igorously explore and objectively evaluate all reasonable alternatives.” C.F.R. § 1502.14. When selecting alternatives, an agency may *consider* an applicant’s desires, but is not by any means bound or limited by them. It is not appropriate for an agency to rely on the “self-serving statements of the project applicants.” *S. Utah Wilderness Alliance v. Norton*, 237 F. Supp. 2d 48, 53 (D.D.C. 2002). Instead, the action agency must “to the fullest extent possible . . . study, develop and describe appropriate alternatives to recommended courses of action in any proposal which includes unresolved conflicts concerning alternative uses of available resources.” *Id.* at 54 (citing 42 U.S.C. § 4332(2)(E)).

Moreover, “[o]ther factors [other than the applicant’s desires] to be developed during the scoping process—comments received from the public, other government agencies and institutions, and development of the agency’s own environmental data—should certainly be incorporated into the decision of which alternatives to seriously evaluate in the EIS.” CEQ, Guidance Regarding NEPA Regulations, 48 Fed. Reg. 34,263, 34,267 (July 28, 1983). “In determining the scope of alternatives to be considered, the emphasis is on what is ‘reasonable’ rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.” CEQ, Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations at Question 2a (available at <http://ceq.hss.doe.gov/nepa/regs/40/1-10.HTM#1>).

The DEIS, which appears to be almost entirely prepared by the applicants’ consultants, presents three alternatives—of which the two action alternatives are virtually identical and which include no disclosure of potential conditions BLM could impose. By failing to develop alternatives that would reduce the number of turbines to decrease impacts to the human and natural environment, other reasonable alternatives, or *any* alternatives which incorporate ROW conditions that would be protective of the environment and necessary to comply with BLM’s statutory obligations, the DEIS violates NEPA.

**1. BLM must consider alternatives that impose more protective conditions on the project.**

The DEIS acknowledges that BLM has the authority and obligation to impose conditions on the ROWs that will satisfy BLM’s obligations under substantive laws. However, there is no discussion in the DEIS of alternative conditions. Without a presentation of detailed information about potential conditions, the public is left entirely in the dark about the actual action BLM is proposing to take. Part of this failure in the DEIS to discuss alternative conditions is due to the paucity of the DEIS’s analysis of the impacts to desert tortoises and the misrepresentation of impacts to other resources described in more detail below. Dozens of turbines on the project site would be placed within 2,500 feet of designated critical habitat for desert tortoise within the ACEC or within a similar distance from the only access road to Cottonwood Cove in the Lake

NewFields in an independent third party contractor supporting the BLM with preparation of this NEPA document.

Mead NRA, and as close as 1,345 feet from a residential home. BLM has not evaluated any alternative that, for example, would impose a condition on the ROW grant that prohibits construction of turbines within a mile of designated tortoise habitat or public roads or homes to actually “minimize” impacts to the human and natural environment.

The DEIS also fails to discuss any potential conditions that would flow from the USFWS’s Wind Turbine Guidelines Advisory Committee Recommendations, issued in March 2010 (available at [http://www.fws.gov/habitatconservation/windpower/Wind\\_Turbine\\_Guidelines\\_Advisory\\_Committee\\_Recommendations\\_Secretary.pdf](http://www.fws.gov/habitatconservation/windpower/Wind_Turbine_Guidelines_Advisory_Committee_Recommendations_Secretary.pdf) and included on the enclosed CD-ROM). BLM has the authority to impose conditions on the ROW that would require any energy generation connected to the ROW to comply with the recommendations in these Guidelines. Please explain why the DEIS does not consider ROW conditions that would comply with these Guidelines. Please discuss whether the recommendations contained in these Guidelines should be included as binding conditions in the ROW grant.

The DEIS contains no definition of the “Project Area,” but rather only a map. DEIS at 1-2, 1-5 (Figure 1-3). The BLM needs to spell out clearly what it means by the “project area” See *Friends of Yosemite Valley v. Norton*, 348 F.3d 789, 800 (9th Cir. 2003) (“[A] reviewing court [must] focus upon a proposal’s parameters as the agency defines them” (alteration in original omitted) (quoting *Block*, 690 F.2d at 761)). The DEIS fails to discuss effects on lands and resources that would be affected by noise and visual effects from the turbines, such as tortoises and bighorn sheep which inhabit the surrounding ACEC. The DEIS includes no discussion of reasonable alternatives to minimize harm from generation and transmission facilities to such resources, even though they are clearly affected by the project. Here, the agency has refused to even provide a definition of the scope of the action, but appears to have considered no impacts (besides a few visual impacts) that would spill over onto public lands outside of the boundary of the project site drawn in Figure 1-3. BLM must more clearly define the scope of the action, and consider *all* areas that are affected by operation of the turbines, include areas outside of the boundary of the project site.

Similarly, the DEIS fails to consider any alternative conditions on the ROWs that would require the project constructed without turbines which detrimentally affect the scenic character and environmental and human environment of the Searchlight desert and mountains surrounding the project site—by imposing conditions mandating the maximum number of turbines, the configuration of the turbines, requiring minimum setbacks, setting maximum turbine heights, or mandating different locations. In addition, although the idea of an eventual decommissioning of the turbines and transmission line is mentioned in passing (see, e.g. DEIS at xi), there is no evaluation of whether BLM should require a bond as a condition of a ROW grant to ensure that the project is, in fact, decommissioned, if it is ever approved and built.

Instead, the DEIS analyzes what boils down to only two alternatives: 1) construction of industrial-scale wind energy generation and transmission project with either 87 or 96 turbines within the project site or 2) no action. The two “action” alternatives are virtually identical with only a few megawatts of generation capacity separating them. Almost every discussion of effects

Judy Bundorf – Friends of Searchlight Desert and Mountains – Basin and Range Watch  
Comments on Searchlight Wind Energy Project DEIS, April 2012

24

Refer to Section 5.2.3-Coordination on the BBCS and Appendix B-4: Bird and Bat Conservation Strategy (formerly referred to as the Avian and Bat Protection Plan [ABPP]), which have been added to the EIS.

The project area is described in Section 1.3-Background and delineated in Figure 1.3-Proposed Project Area Map.

Noise and visual effects on land resources are discussed in Section 4.10-Noise Impacts and Section 4.9-Visual Impacts, respectively. Impacts to bighorn sheep and desert tortoise are discussed in Chapter 4.4.5-Special Status Wildlife Species. Section 4.4.4 Wildlife has been updated to include potential noise impacts to wildlife. Chapter 3.0-Affected Environment discusses the conditions beyond the proposed project area to include analysis of off-site and cumulative impacts discussed throughout Chapter 4.0-Environmental Consequences.

Potential impacts resulting from the proposed project and alternatives including the No Action alternative are analyzed in Chapter 4- Environmental Consequences. The BLM will require a bond for decommissioning of the project and this will be a stipulation of the ROW grant.

Comment noted.

concludes with the statement that “the type, intensity, and duration of the effects would be similar under either action alternative” or other acknowledgement that effects under both action alternatives would be “similar.” *E.g.* DEIS at 4-31, 4-78. In addition, the DEIS discloses that, under the 87 turbine alternative, about “152 acres of native vegetation would be permanently removed, 8 acres *more* than under the 96 WTG Layout Alternative.” DEIS at 4-33 (emphasis added). No alternative is included that would minimize impacts to the environment, *i.e.* there is no “environmentally preferred” alternative in this DEIS.

Furthermore, it is clear that the two supposedly “distinct” action alternatives are a fiction generated solely as pretense for conducting a genuine alternatives analysis. BLM released the DEIS for public comment on January 20, 2012. 77 Fed. Reg. 2,999 (Jan. 20, 2012). Yet, in March 2011—10 months earlier—Duke already had filed with BLM its “Plan of Development (POD)—Revision 4.” BLM has this document, presumably, but a copy is enclosed on the CD-ROM. The Revised POD states that “[t]he *proposed* project consists of the construction of up to 87 2.3 megawatt (MW) wind turbine generators that will provide up to 200 MW of electricity.” Revised POD at 1-1 (emphasis added). Nowhere in the March 2011 Revised POD is there any reference to a 96-turbine “proposed action.” Nearly a year before BLM issued the DEIS, Duke already was proposing an 87-turbine project, with the same configuration that became the “preferred alternative” in the DEIS. *Compare* Revised POD at 1-5 with DEIS at 2-5. The 96-turbine “alternative” presented as the “proposed action” had ceased to be any such thing long before BLM issued the DEIS. This underscores that the alleged proposed action and the preferred alternative are indistinguishable.

Shockingly, BLM only lists two “other” alternatives, both generation alternatives, that purportedly were considered but not analyzed in detail—a 140-turbine layout, and a 161-turbine layout, on the same project site—and three alternative sites for the interconnection. DEIS at 2-7 to 2-12. This is despite receiving 41 comments regarding project alternatives during the public scoping process. DEIS at 5-2. BLM recognized that, during scoping, “[t]he topics receiving the most comments were biological resources, project alternatives, socioeconomics, and visual resources.” DEIS at xiii. BLM even notes in the Public Scoping Summary Report that “Project alternative suggestions (11 percent of total comments) were also relatively high. Sixty-six percent of comments in this category included suggestions on alternative locations, while 29 percent of comments included questions about other forms of renewable energy.” Scoping Summary Report at 3-4. Yet the scoping summary report includes only seven bullet points purporting to be representative of the 41 comments received on this issue. Scoping Summary Report at 3-6.

The options presented in the DEIS itself only advance the applicant’s goals, rather than the public’s interest, to the exclusion of other reasonable alternatives. The DEIS is fatally flawed in its failure to consider an adequate range of reasonable alternatives. *See Muckleshoot Indian Tribe v. U.S. Forest Serv.*, 177 F.3d 800, 913 (9th Cir. 1999) (agency failed to consider an adequate range of alternatives when an EIS considered only a no action alternative along with two “virtually identical” action alternatives on the same lands).

The initial Plan of Development (POD) for the proposed project was submitted in January 2008 along with the right-of-way application. The POD is a living document that continues to be refined during BLM’s evaluation of the application. Development of the POD is an iterative process. As new information on project design, project alternatives, and/or or project constraints becomes known, the POD is revised. The POD revisions to reduce the original number of 161 turbines reflect formal and informal comments, along with engineering constraints.

Comment noted.

The BLM developed its purpose and need statement and considered a range of reasonable alternatives consistent with NEPA, applicable regulations, and BLM policies and procedures, including BLM Instruction Memorandum 2011-059. The purpose and need statement appropriately integrates Congress’s goal that the Secretary of the Interior should seek to approve renewable energy projects on the public lands; direction from Secretarial Order 3285A1 (March 11, 2009, amended February 22, 2010), which establishes the development of environmentally responsible renewable energy as a priority for the Department of the Interior; and the BLM’s responsibility under FLPMA to manage the public lands for multiple use, taking into account the long-term needs of future generations for renewable and non-renewable resources. The two action alternatives satisfy the purpose and need in that they fulfill BLM’s obligation to consider the ROW applications under FLPMA and NEPA, and are consistent with other applicable federal mandates and renewable energy policies and goals. Though the BLM has considered Searchlight Wind Energy’s objective for the project, which is presented in Section 1.3-Background, Searchlight Wind Energy’s objective is not the BLM’s purpose and need for the project.

The DEIS does not consider imposing conditions that would require dramatically smaller, alternative configurations (with fewer wind turbines and/or in different locations) for the project sites. Rather, the DEIS seems to assume that the site must be built to at least a 200 MW capacity. *See, e.g.*, DEIS at xii, 1-6. There are no financial data or projections provided to support any claim that this threshold is anything but arbitrary, or that a minimum number of turbines must be built to be financially feasible. Please disclose and evaluate what the threshold number of turbines would be for this project to be financially feasible so that the public and the decisionmakers can understand and comment on whether such a project is justified when its major purpose appears to be generating revenues for a large utility rather than complying with BLM's management responsibilities for the public lands.

In addition, BLM must prepare and circulate for public comment a supplemental DEIS that considers the reasonable alternatives below, all of which were proposed to BLM in some form or other during the public scoping process and which BLM has heretofore ignored.

## **2. BLM must consider a distributed solar generation alternative.**

BLM does not consider other potential renewable energy sources in the DEIS. A dismissal of renewable energy sources other than wind energy, such as solar power or distributed generation, does not comport with the agency's stated goal of acting consistently with their environmental and social responsibilities.

Duke Energy primarily produces electricity in the United States from coal-, natural gas-, oil-, and nuclear-fired power plants. It also has begun to diversify into renewable generation sources through investment in hydropower and the Davidson County Solar Farm in North Carolina; it also owns the largest solar energy "farm" in Texas. Over the past three years, Duke also has invested in one of the nation's first and largest distributed solar generation projects, investing over \$40 million to generate approximately 10 MW of electricity from distributed generation at over 19 micro-generation sites atop commercial and residential buildings. Duke Energy to Build 'Mini' Solar Power Plants, *Industry Week* (May 8, 2009) (<http://www.industryweek.com/articles/duke-energy-to-build-mini-solar-power-plants-19105.aspx?SectionID=25>); *see also* Exhibit 5 (page from Duke Energy website describing distributed generation project).

Duke is not a wind energy company, but it has expertise in the installation and operation of distributed solar generation technology. Las Vegas, Henderson, and Searchlight, Nevada are among the sunniest places in the United States, with Las Vegas experiencing over 85% clear skies per year. The Mojave Desert (which Las Vegas sits at the heart of) has the highest density of solar radiation in all of North America. World's Sunniest Regions: Power Houses for Solar Technology, *Renewable Power News* (Feb. 11, 2012) (<http://www.renewablepowernews.com/archives/2941>), Exhibit 6. The City of Las Vegas—not counting surrounding areas and not including other population centers in Clark County where platforms for distributed generation exist—covers 135 square miles, nearly five times the size of the project area of the Searchlight Wind Project. Given the poor economic conditions in Nevada and in the Las Vegas particularly over the past several years, the prospect of leasing roof space

BLM considered a reasonable range of alternatives consistent with NEPA and BLM policies and procedures. The two action alternatives satisfy the purpose and need in that they fulfill BLM's obligation to consider the ROW application, meet federal renewable energy mandates, and respond to impacts identified in the NEPA analysis. The Applicant has provided BLM with an economic determination that any project generating less than 200 MWs/and or less than 87 turbines is uneconomic due primarily to transmission line costs.

The BLM will not typically analyze an alternative for a different technology when a right-of-way application is submitted for a specific technology (e.g., evaluate a photovoltaic alternative for a concentrated solar power application) 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.

for installation of solar panels for a distributed generation project would be welcome to many commercial and residential property owners. Indeed, Las Vegas already has over 10,000 KW of installed commercial solar photovoltaic generation at distributed sites with no reported problems. John Farrell, *The Political and Technical Advantages of Distributed Generation, Energy Self-Reliant States* (July 6, 2011) at 3, attached as Exhibit 7.

Given Duke's expertise in distributed solar generation, the nearly-perfect weather conditions for generating reliable electricity from solar power, the proximity of an enormous metropolitan area with ample space for installation of distributed solar power technology, and given the marginal winds at the Searchlight project site, BLM must evaluate a distributed solar generation alternative that would achieve Duke's objective of generating 200 MW of renewable power—and leaving inviolate the desert and mountains east of Searchlight. Such a project is feasible in the very same county in which Duke proposes to build the marginal wind facility.

Distributed solar generation is a reasonable alternative to the construction of this wind facility. The circumstances here present a unique opportunity for the BLM and the Secretary of the Interior to promote the shift of production of electricity from industrial-scale generation facilities located dozens or even hundreds of miles from where the energy would be used to distributed generation located where there needs to be no loss of energy due to long-distance transmission. By evaluating a distributed solar generation alternative, BLM has an opportunity to evaluate the true potential trade

### **3. BLM must consider a private lands alternative and a brownfields alternative.**

The supplemental DEIS also should consider alternative locations for industrial-scale renewable energy generation that would produce the desired 200 MW other than the sites leased or proposed to be leased by Duke. Under NEPA, the EIS may even have to look at alternatives over which the applicant has no control. *NRDC v. Morton*, 458 F.2d 827, 835 (D.C. Cir. 1972); *Nat'l Wildlife Fed'n v. NMFS*, 235 F. Supp. 2d 1143 (W.D. Wash. 2002). It is irrelevant whether an applicant already owns alternative sites for the purposes of NEPA review: "The fact that this applicant does not now own an alternative site is only marginally relevant (if it is relevant at all) to whether feasible alternatives exist to the applicant's proposal." *Van Abbema v. Fornell*, 807 F.2d 633, 638 (7th Cir. 1986). As stated in the *Van Abbema* case, other alternatives for a project cannot be eliminated as non-feasible simply because the applicant does not now own or lease the site where an alternative location may exist. And, as the NEPA regulations clearly provide, the agency must "[i]nclude reasonable alternatives not within the jurisdiction" of the BLM. 40 C.F.R. § 1502.14(c).

The DEIS fails to consider whether alternative locations could provide comparable energy output with less damage to the human and natural environment. Thousands of wind turbines have been built throughout the nation—on public and private lands—in recent years which pose far fewer resource impacts than the Searchlight site. In addition, there are millions of

Wind Energy facilities must be located where wind resources are available and cannot be limited to "brownfield" sites. The BLM will not typically analyze a non-Federal land alternative for a right-of-way application on public lands 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 renewable energy development.

acres of contaminated lands—“brownfields”—in the United States.<sup>3</sup> Serious potential exists for installing new renewable power generation and the associated transmission, such as that proposed in the Searchlight Wind Project, on such lands, either as large-scale projects or as distributed smaller-scale wind or solar generation installations.

The analysis of the alternatives to the project should assess the potential to relocate all or part of the project on already degraded or contaminated lands. Doing so will increase the net public benefits of the project, by reducing the amount of undeveloped public and private lands that are degraded. A supplemental DEIS should include an analysis of the relative benefits of siting the proposed energy generation on brownfields and other degraded lands, both public and private. The analysis should examine the net public benefits of siting on these lands relative to siting on undeveloped lands, especially undeveloped public lands which may be more important for the climate change mitigation properties, the provision of recreation opportunities, their role in local economies and their provision of passive use and other non-market values.

#### **4. BLM must consider a lower tortoise density site alternative.**

The DEIS improperly fails to address any alternative that would avoid or reduce impacts to the desert tortoise. It is increasingly difficult to find the sort of intact, high-quality desert tortoise habitat that can mitigate the effects of the over 6,350 MW of energy production projects already approved or pending in the species’s habitat range. Therefore, avoiding impacts to high-quality, essential habitat and maintaining the largest possible areas of intact, high-quality habitat is critical to the survival and recovery of the desert tortoise. BLM’s failure to provide baseline information about the tortoise and information about the cumulative effects on the tortoise from the current spate of energy development in its range has led the agency to not analyze any alternative that would avoid or reduce impacts to the tortoise. A valid EIS must address the impact of this project for the survival and recovery of desert tortoise in the Eastern Mojave Recovery Unit.

Due to the controversy associated with desert tortoise disturbance, BLM must consider an alternative away from the proposed project site and development on a site that would not have such an impact to the desert tortoise. Impacts to the (at least) 122 tortoise on the project site and in the surrounding critical habitat in the ACEC will be unacceptable for a species under so much other pressure in its range. Recent studies (detailed below) indicate that tortoise mortality from efforts to translocate tortoises off of a construction site can reach 50%. Studies of noise effects on wildlife also show that the project alternatives would harm tortoises in their critical habitat in the surrounding ACEC.

In addition, BLM must consider an alternative at the project site that complies with its obligations to minimize impacts to the desert tortoise. BLM should consider a turbine

<sup>3</sup> Powerpoint: Land-Based Initiatives and Climate Change. SRA International. EPA Land Revitalization Staff Office. June, 2007. <http://www.authorstream.com/Presentation/Margherita-45877-NARUC-Pres-July-15-Land-Based-Initiatives-Climate-Change-June-2007-Opportunities-GHG-Education-ppt-powerpoint/>

BLM considered a range of reasonable alternatives consistent with NEPA and BLM policies and procedures. The two action alternatives satisfy the purpose and need in that they fulfill BLM's obligation to consider the ROW application, meet federal renewable energy mandates, and respond to impacts identified in the NEPA analysis.

configuration that moves all turbines at least one mile back from designated tortoise critical habitat to prevent turbine noise from adversely modifying critical habitat and taking tortoises outside the project site. This alternative also should eliminate turbines (and associated construction effects) from the areas of the project site where tortoises are concentrated, based on identification of live tortoises or carcasses during the field survey: turbines 12–26, 27–32, 60–67, and 74–78 in the 87 turbine configuration (DEIS at 2-5, Desert Tortoise Inventory Survey at 6). This alternative should be combined with conditions to protect remaining tortoise on the site during all phases of the project’s construction and operation. This would result in a turbine configuration capable of generating approximately 50–60 MW of power, a very viable project that could be combined with other means—such as distributed solar generation—to achieve Duke’s overall power generation goal while minimizing harm to the tortoise and the surrounding environment.

#### **5. BLM must consider a conservation alternative.**

No conservation alternatives were considered to eliminate the stated “need” for the 200-220 MW of installed capacity that the project would represent. Conservation alternatives, such as demand response technologies, also should have been included in order to meet BLM’s goals of promoting their environmental and social responsibilities. The DEIS fails to comply with this requirement, because it fails to consider the possibility of delaying the development of wind energy until a later date, perhaps at a time when the energy grid will be more equipped to handle the addition of new wind energy sources.

The above alternatives were not considered at all because the applicants’ “objective” of developing a 200-MW industrial wind energy generation facility dictated the results of this DEIS. The DEIS violates BLM’s duties to consider all reasonable alternatives.

#### **6. Additional comments regarding proposed project features.**

In the process of evaluating additional reasonable alternatives, please also update the existing discussion of the 87- and 96-turbine alternatives to disclose and analyze the following issues, and discuss them in context of any additional alternatives that involve a smaller project alternative on the same site:

DEIS at 2-2 and 2-3: The DEIS states that it is not actually providing accurate information for the public to review because “exact locations of depicted proposed [turbines], roads, power lines, and other facility-related construction elements would vary based on environmental, engineering, meteorological, and/or permit requirements.” Thus the exact footprint of impacts for each turbine has not been determined yet. As a consequence of this imprecision, Duke and BLM have not yet conducted geotesting for each turbine, and it is not possible to assess how much blasting or grading will be needed for each turbine or how much concrete, water, or other materials will be needed for stabilizing the turbines.

This imprecision compromises the DEIS’s discussion of alternatives, and the baseline assumptions of the NEPA analysis. Without accurate information about where turbines would be

BLM considered a range of reasonable alternatives consistent with NEPA and BLM policies and procedures. The two action alternatives satisfy the purpose and need in that they fulfill BLM’s obligation to consider the ROW application, meet federal renewable energy mandates, and respond to impacts identified in the NEPA analysis.

Text in Section 2.1-Proposed Action and Alternatives has been revised to clarify that placement of project components could vary slightly; however, the acreage of disturbance and associated impacts have been disclosed to the best extent possible. Retaining some flexibility allows for a possible non-substantive shift in project facilities to avoid unanticipated engineering challenges or environmental considerations. For example, minor road alignment may occur in order to avoid a cultural resources site.

placed, the public is left having to guess and comment on a proposal that may not, in fact, reflect what is being proposed or what would be built. The description of locations is not sufficiently precise to allow the public to comment on what the developer is actually proposing, because the effects on the environment can be significantly different depending on whether the low or high range of turbines actually is developed, and which strings or turbine site locations may, or may not be, used.

DEIS at 2-14: Why do any of the roads have to be 36 feet wide? This is not explained. The existing paved Cottonwood Cove Road is only 24 feet wide. Please consider conditions that would limit the size of roads to the existing width of the principle road through the project site. Roads double that width would cause unnecessary destruction of even more land than necessary and do not satisfy BLM's obligation to minimize impacts and avoid unnecessary and undue degradation of the public lands.

DEIS at 2-15: Why are project features located so close to Cottonwood Cove Road? The substation and laydown area should be set back a greater distance from Cottonwood Cove Road. The road accesses a National Recreation Area and passes through an Area of Critical Environmental Concern: this is not an industrial park, and residents and tourists do not travel to Cottonwood Cove within the Lake Mead NRA to see industrial development.

DEIS at 2-17: The DEIS states that "[p]ortable water supplies" would be available at the building. Is this a typographical error, and should it be "potable water supplies"? If it is "portable," how large are the storage tanks? Where will the "portable" supply be replenished from?

Also, the laydown area immediately adjacent to Cottonwood Cove Road should not be permanent. Please clarify whether the project contemplates a permanent laydown area. If a permanent laydown area is contemplated, BLM should evaluate alternative locations. To minimize impacts, the laydown area should be southeast of Searchlight in the southern portion of the project site, near turbines 68 and 69 ("preferred alternative") and adjacent to the substation there described at DEIS 2-15. In addition, please explain why the laydown area needs to be so large?

DEIS at 2-18: BLM must provide a diagram or drawing that visually represents the sentence: "Equipment clearance would require a minimum inside radius of 148 feet at all turns ..." Does this mean that all turns in the roads would have a width of 148 feet? If so, BLM must disclose how the upgrades to the roads will look when completed. Also, how many turnouts with dimensions of 16' x 210' will be built? Was this area calculated into the acreage to be permanently altered (destroyed) by the project construction? Where will the "licensed offsite private source" of fill or road base be? How many miles will it be transported? Has the carbon dioxide and other greenhouse gas emissions resulting from many trips hauling the aggregate been calculated and incorporated into project documents? If not, BLM should disclose this figure as part of its overall calculation of the effects of this project on climate change.

Refer to Section 2.3.1-General Features of the Proposed Project, under the subheading Roads. Cottonwood cove road would not be widened.

Comment noted.

Typographical error corrected. Refer to Section 4.3-Water Resources Impacts for a description of how water would be delivered to the site and stored. Section 4.3-Water Resources Impacts has been revised to clarify that the Applicant will coordinate with the Las Vegas Valley Water District to support the water needs for the project. If sufficient resources are not available, the Applicant will procure water from local willing sellers.

As stated in the EIS in Section 2.3.2-Construction, the laydown area near the north substation might be permanent and could be used for extra storage and spare parts during the life of the project. Laydown areas need to be large enough to store components, allow for delivery traffic, and pre-assembly of WTGs and other components. Additionally, this is where the mobile concrete batch plant would be located.

Figures 2-1-96 WTG Layout Alternative, and 2-2-87 WTG Layout Alternative, illustrate the areas where existing roads would be widened and upgraded. The road widths would range between 16 and 36 feet and as described in Section 2.3.1-General Features of the Proposed Project. This section has been updated to explain turning radius (Refer to Figure 2.3-2. Turning Radius Example).

The licensed offsite private source has not been identified. For purposes of the analysis, it was assumed that the materials would be located within a 48-mile radius. Construction emissions include 96 mile round trip for trucks to haul required construction materials to the site. See Table 4.6-1. Criteria Air Pollution Emissions (Tons/Year) Over the 8 to 12 Month Proposed Project Construction Duration of the 96 WTG Alternative and Table 4.6-2. Criteria Air Pollutant Emissions (Tons/Year) During the Proposed Project O&M Duration of the 96 WTG Alternatives.

How will the area be “re-vegetated”? The DEIS provides no details of this proposed mitigation, and whether or not it would be effective. When disturbed areas along nearby route US 95 were “re-vegetated” after construction activity, fully ninety percent (90%) of the transplanted plants died. Please describe in detail what the proposed re-vegetation will involve, and whether or not it will actually result in a vegetated condition after construction that is similar to what currently exists.

DEIS at 2-21: Have any geotechnical investigations been done thus far? The possibility exists that the granitic bedrock may be too difficult to excavate or blast, and adequate foundations would be too costly to construct. BLM should disclose this information to evaluate whether the DEIS’s characterization of the impacts from construction is accurate.

DEIS at 2-25: What “existing private roads” would be used for transporting materials and equipment? Have the owners of the private roads been notified of Duke’s intention to use the private roads? How will people who own and use these roads be compensated?

DEIS at 2-27: Are BLM and Duke aware that the existing Cottonwood Cove Road, from the intersection with US 95 to the east end of the project, is only 24 feet wide? That road also is not designed for the weight of the loads anticipated with this project. Will the applicant widen and improve the road BEFORE construction begins, so the road can accommodate the large, heavy loads? This is not disclosed in the DEIS, and must be for the public to understand the potential impacts from the project. And, if so, does Duke plan to return the road to pre-construction width and design? Experience with construction of industrial wind energy projects across the country discloses that the weight of the trucks bearing the turbines and construction equipment can cause serious damage to rural roads. Exhibit 8. The gross weight of trucks carrying turbines and tower sections can be up to 232,000 lbs. *Id.* This likely far exceeds the designed capacities for the roads that would be used to develop the project. BLM should disclose the designed load capacity of Cottonwood Cove Road, US 95, and other roads that would be used to access the project site, and evaluate the extent to which damage to roads in the area will result from the project and who will bear those costs.

DEIS at 2-28: Where will the 250-300 vehicles used by the workmen be parked while they work?

DEIS at 2-28: The area presently has dark night skies. The construction of the turbines with flashing lights would destroy the rural environment. According to the DEIS, each turbine would have two lights, which flash day and night. That would be a total of 174 to 192 flashing lights in the previously dark sky. While the document states it is “anticipated” that not every turbine would be lighted, there is no guarantee that this would be the case. BLM must disclose accurately what the actual scope of lighting for the turbines will be.

DEIS at 2-29: Where is the waste disposal site or landfill that the refuse would be hauled to? Searchlight has one small drop station, which is inadequate for existing use, and would certainly not accommodate waste from a commercial operation. This could be a significant impact to the local community that is not addressed in the DEIS.

---

Judy Bundorf – Friends of Searchlight Desert and Mountains - Basin and Range Watch  
Comments on Searchlight Wind Energy Project DEIS, April 2012

31

MM-BIO-1 describes the interim rehabilitation (Table 2.6-2. Mitigation Measures). APM-10, Site Rehabilitation Plan and Site Decommissioning Plan would be developed 6 months prior to decommissioning.

No ground-disturbing geotechnical investigations have been completed to date. The EIS in Section 2.3.1- General Features of the Proposed Project, states that, “Prior to construction, geotechnical investigations would be conducted to determine the soil characteristics at each WTG location. These geotechnical data would assist the project proponent in the selection of the appropriate WTG foundation type.”

No existing private roads would be utilized and the EIS has been updated to reflect this.

Cottonwood Cove Road would not be widened. Figures 2-1-96 WTG Layout Alternative and 2-2-87 WTG Layout Alternative, illustrate the areas where existing roads would be widened and upgraded. Road widths would range between 16 and 36 feet. BLM disclosed that streets could receive wear from equipment and deliveries and has required a mitigation measure to address the effect, refer to MM TRAN-2: Repair Damaged Streets.

All project related activities, including parking, would be limited to the ROW. This would be a requirement in the ROD and/or ROW grant. Generally parking would be limited to the laydown and staging areas.

While the BLM does not have a Dark Sky Management policy, the BLM does recognize the importance of considering the dark sky environment. MM-VIS-5 has been updated to reflect that a lighting plan would be submitted and approved by the BLM and the basic elements that would be contained in that plan. The EIS discloses the maximum impact. The FAA will determine the actual requirements below that maximum impact.

If Searchlight cannot accept the volume of waste generated by the facility, the waste would be hauled off-site to a licensed waste management facility. Please refer to APM-8 and Section 4.15.14- Human Health and Safety. A Waste Management Plan would be a stipulation of the ROW grant.

DEIS at 2-30: The DEIS lists “Re-grading and re-vegetation” as part of Decommissioning. Desert plants require watering for a year after transplant. If the project is decommissioned, who will be responsible for the care of the vegetation for that year? Has a decommission plan been prepared? Please disclose how the applicant plans to carry out and pay for the decommissioning. Even if the project is no longer in use, and a candidate for decommissioning, what guarantee is there that this will this really happen? There is an abandoned wind project in Hawaii, and many abandoned, non-working turbines littering the landscape throughout California. How will BLM guarantee that the same thing won’t happen here? Who will pay for decommissioning?

Also, bird and bat fatalities supposedly will be monitored ... but what will happen if extreme numbers of both are killed? The bodies are counted, disposed of, and then what? Why not put in place avian radar to detect birds and bats and shut down the turbines? Better still, do more studies to determine if it is really feasible to build turbines where at a site where there large numbers of birds and bats present. It is also stated the mortalities will be monitored for three years. Then what? This is a project that has a 30 year life span. Monitoring for only three years will not do anything to address harm to birds and bats during 90% of the projected life of the project. Post-construction monitoring occurs too late to contribute to the decision whether to approve the project at all, and too late for the birds and bats harmed by the project.

The area of the proposed turbines is home to several dozen Turkey Vultures. Vultures are particularly vulnerable to “death by turbine” because of their flight patterns. The area is also home to both golden eagles and bald eagles. The USFWS requires “no net loss” of golden eagles, and wind projects in California and Oregon have been killing significant numbers of these protected birds. Knowing this, why would the applicant attempt to build an industrial wind energy generation facility in known vulture and eagle habitat? And why would BLM approve its application to do so?

DEIS at 2-31: How far from the Lake Mead NRA entrance station is the switching station? The 30-foot tall buswork would be very visible and disruptive to the viewshed for those people traveling to recreate at the NRA.

### **III. The Environmental Impacts Analysis in the DEIS is Seriously Deficient.**

#### **A. The DEIS fails to adequately disclose and evaluate the likely impacts of the project on natural resources.**

The DEIS’s discussion of likely impacts to wildlife, both birds and mammals, is cursory, omits discussion of significant scientific information, and fails to evaluate adequately the significant harm which the generation and transmission project is likely to cause to wildlife. The DEIS’s discussion of impacts to desert tortoise that will result if BLM grants the requested ROWs is inadequate because it provides no information about mitigation. The DEIS similarly understates likely impacts to golden eagles and other avian species from project.

A reclamation plan is a condition of the bonding process and will be approved by the BLM.

Refer to Appendix B-4: Bird and Bat Conservation Strategy (BBCS) (formerly referred to as the Avian and Bat Protection Plan [ABPP]), which has been developed for the proposed project utilizing the recommendations within the USFWS’s March 2012 Land Based Wind Energy Guidelines and includes monitoring requirements and provisions for adaptive management measures based on mortality rates.

Comment noted.

Section 2.4.1-Western’s Interconnection Switching Station has been updated to disclose the proximity of the switching station to the NRA fee station. Additionally, Section 4.9-Visual Resources Impacts has been updated to include a visual simulation of the switching station.

Potential impacts to wildlife species are addressed throughout Sections 4.4-Biological Resources Impacts. Pursuant to Section 7 of the Endangered Species Act, BLM has complete consultation with the USFWS resulting in a Biological Opinion. Appendix B-2: USFWS Biological Opinion contains the required desert tortoise mitigation measures and a discussion of how such mitigation would be effective. A Bird and Bat Conservation Strategy (BBCS) (formerly referred to as an Avian and Bat Protection Plan [ABPP]) was developed for the project, which follows the guidelines of the recently published USFWS Land-Based Wind Guidelines (Appendix B-4: Bird and Bat Conservation Strategy). The BBCS provides a qualitative risk assessment for the effect of a factor (e.g., collision, electrocution) on birds and the adaptive mitigation measures.

BLM must collect, evaluate, and disclose to the public accurate and complete information about the likely impacts to wildlife from the project. The DEIS in its current form does not do this.

**1. The DEIS does not adequately address impacts to desert tortoise.**

The DEIS fails to adequately evaluate impacts to the ESA-listed, threatened desert tortoise. During surveys of the project site, 122 tortoises were located within the project site. DEIS at 3-26. However, the maps (Figures 1 and 2 to the Desert Tortoise Inventory Survey) show that only a small fraction of the site was surveyed, indicating that far more tortoises likely make their home in the project area. In addition, the surveys only extended for 800 feet on either side of turbines, roads, transmission lines, and other project infrastructure. DEIS at 3-26. However, known effects of noise on wildlife stretch far beyond the survey “belts,” and noise and habitat fragmentation through avoidance of human structures, extend far beyond the survey belts and would affect tortoises within their designated critical habitat in the Piute-El Dorado ACEC which completely surrounds the project site.

The desert tortoise is listed as “threatened” under the federal Endangered Species Act (55 Fed. Reg. 12,178 (Apr. 2, 1990)), with critical habitat designated in 1994. 59 Fed. Reg. 5,820 (Feb. 8, 1994). The species is desperately in need of additional protections to stem population declines due to ongoing threats, particularly from the over-aggressive development of industrial-scale energy projects in its habitat. These issues should have been fully explored in the baseline discussion, but are not. The DEIS even ignores the current status of the species and does not explain the need for additional protective measures to ensure recovery.

**a. The DEIS does not address the best available science and does not provide high-quality information about the tortoise.**

The DEIS includes no information or analysis of the May 2011 Recovery Plan. The recovery plan discusses a variety of threats to the survival and recovery of the desert tortoise, including threats from the construction and energy generation activities proposed for the Searchlight Wind Project. The revised Recovery Plan describes that threats to the tortoise have increased since the original 1994 recovery plan, and that the tortoise has a low potential for recovery. Recovery Plan at vii. The vast majority of threats to the desert tortoise or its habitat are associated with human land uses. *Id.* Moderate downward fluctuations in adult survival rates can result in rapid population declines. *Id.* at viii. “Because desert tortoises occupy large home ranges, the long-term persistence of extensive, unfragmented habitats is essential for the survival of the species. The loss or degradation of these habitats to urbanization, habitat conversion from frequent wildfire, or other landscape-modifying activities place the desert tortoise at increased risk of extirpation.” *Id.*

The Recovery Plan illustrates that the project site, although a “keyhole” within a broad area of designated critical habitat, contains a concentration of high potential habitat equal to or greater than many areas designated as critical habitat. Recovery Plan at 12. The fact that 122 tortoises were located on the project site within the narrow survey belts, indicating a population of 8.2 tortoises per square kilometer, underscore the importance of the lands within the project

BLM has completed consultation with the USFWS pursuant to Section 7 of the Endangered Species Act (For details refer to Section 5.2.2-U.S. Fish and Wildlife Service Section 7 Consultation and Appendix B-2: USFWS Biological Opinion).

Refer to Section 4.4.5.2-Desert Tortoise – Direct and Indirect Impacts by Alternatives for an updated discussion on impacts to desert tortoise. BLM has completed consultation with the USFWS pursuant to Section 7 of the Endangered Species Act (For details refer to Section 5.2.2-U.S. Fish and Wildlife Service Section 7 Consultation and Appendix B-2: USFWS Biological Opinion).

Comment noted. Data on the desert tortoise includes site-specific surveys in accordance with USFWS protocol.

BLM has completed consultation with the USFWS pursuant to Section 7 of the Endangered Species Act (For details refer to Section 5.2.2-U.S. Fish and Wildlife Service Section 7 Consultation and Appendix B-2: USFWS Biological Opinion).