

RECORD OF DECISION

**Ocotillo Wind Energy Facility
and
Amendment to the California Desert Conservation Area Plan**

Cooperating Agency:
U.S. Army Corps of Engineers

Environmental Impact Statement FES 11-20
Case File Number: CACA- 051552

**Ocotillo Wind Energy Facility
Decision to Amend the CDCA Plan and to Grant Right-of-Way**

United States Department of the Interior, Bureau of Land Management
El Centro Field Office
1661 S. 4th Street
El Centro, CA 92243

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Acronyms and Abbreviations

ABPP	Avian and Bat Protection Plan
ACEC	Area of Critical Environmental Concern
ACHP	Advisory Council on Historic Preservation
ACOE	U.S. Army Corps of Engineers
AO	BLM Authorized Officer
BLM	Bureau of Land Management
BO	Biological Opinion
BMP	Best Management Practice
CCA	Corridor Conflict Analysis
CDCA Plan	California Desert Conservation Area Plan of 1980, as amended
CDFG	California Department of Fish and Game
CEQ	Council on Environmental Quality
CEQA	California Environmental Quality Act
CFR	Code of Federal Regulations
CPUC	California Public Utilities Commission
DOI	Department of the Interior
ECCMP	Environmental Construction Compliance and Monitoring Program
EIS/EIR	Environmental Impact Statement/Environmental Impact Report
EPA	Environmental Protection Agency
EPAct	Energy Policy Act
ESA	Endangered Species Act
FLPMA	Federal Land Policy and Management Act
FR	Federal Register
I-8	Interstate 8
IM	Instruction Memorandum
kV	Kilovolt
MOA	Memorandum of Agreement
MW	Megawatt
NEPA	National Environmental Policy Act
NHPA	National Historic Preservation Act
NOA	Notice of Availability

NOI	Notice of Intent
NTP	Notice to Proceed
O&M	Operation and Maintenance
OHV	Off-highway Vehicle
OWEF	Ocotillo Wind Energy Facility
POD	Plan of Development
PPA	Power Purchase Agreement
ROD	Record of Decision
ROW	Right-of-Way
RPS	Renewable Portfolio Standard
RWQCB	Regional Water Quality Control Board
TCP	Traditional Cultural Property
SDG&E	San Diego Gas & Electric
SHPO	State Historic Preservation Office
SWRCB	State Water Resources Control Board
U.S.C.	United States Code
USFWS	United States Fish and Wildlife Service
WECO	Western Colorado Desert Routes of Travel Designations

Executive Summary

This Record of Decision (ROD) explains the decisions of the Department of the Interior (DOI) and Bureau of Land Management (BLM) to approve a reduced configuration of Ocotillo Express LLC's (Applicant's) application for a right-of-way (ROW) grant for the Ocotillo Wind Energy Facility (OWEF or Project) and associated amendments to the California Desert Conservation Area Plan 1980, as amended (BLM (1980) (CDCA Plan)).

As explained in more detail below, these decisions are based on our careful consideration of: (i) the information generated during the analytical and consultation processes required by the National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA), Endangered Species Act (ESA), and DOI tribal consultation policies; (ii) the reasonable alternatives to the proposed Project and potential for resource conflicts associated with the proposed wind power development in southwestern Imperial County, California; (iii) the agency's balance of essential considerations of national policy and the Project's potential impacts on environmental and cultural resources; and (iv) the practicable means to avoid, minimize, or mitigate those impacts. This information was presented and analyzed in the Proposed Plan Amendment & Final Environmental Impact Statement/Final Environmental Impact Report for the Ocotillo Wind Energy Facility (Final EIS/EIR), which was published on March 9, 2008.¹ This ROD makes three decisions.

- **First**, it approves the issuance of a Federal Land Policy & Management Act (FLPMA) Title V ROW grant to the Applicant to construct, operate, maintain, and decommission the OWEF. This ROD approves the Final EIS/EIR's Preferred Alternative, referred to as the Refined Project, which is a reduced-size configuration of the Applicant's Proposed Action consisting of 112 turbines, a switch yard, substation site, and other ancillary facilities, as shown in Figure 2 of this ROD. The Refined Project will generate up to 315 megawatts (MW) of electricity using a combination 1.6 to 3.0 MW wind turbine generators.² As described in Section 1.2 below, the turbine configuration approved by this ROD has been modified slightly from the configuration presented in Figure 2.1-6 of the Final EIS/EIR, but the total number of turbines has not changed.
- **Second**, it amends the CDCA Plan to identify approximately 10,151 acres of public land within the Refined Project footprint as suitable for wind energy development (see Figure 3 of this ROD).
- **Third**, it provides for the protection of cultural resources by identifying as unsuitable for wind energy development approximately 2,285 acres of public land that were within the area analyzed for the Applicant's Proposed Action, but outside the Refined Project's footprint (see Figure 3 of this ROD).

¹ A Notice of Availability (NOA) for the Proposed Plan Amendment & Final EIS/EIR was published by the United States Environmental Protection Agency (EPA) in the Federal Register on March 9, 2012 (77 FR 14360-02).

² The power generated by the Refined Project will feed into the OWEF substation, where it will interconnect with the San Diego Gas & Electric Company's (SDG&E's) Sunrise Powerlink 500-kV transmission line. As explained in the Final EIS/EIR, the substation site will be prepared by the Applicant, but ultimately constructed by SDG&E.

These decisions are made based on a careful balancing of:

- (i) the importance of the OWEF to helping California achieve its renewable portfolio standard (RPS) and greenhouse gas (GHG) reduction objectives, diversifying the nation's energy supply, job creation, and the implementation of the Energy Policy Act (EPAAct) "sense of Congress" direction to authorize the production of 10,000 MW of non-hydropower renewable energy on public lands by 2015, against
- (ii) the importance of preserving the environmental and cultural resources found on those lands that would be affected by the construction, operation, and decommissioning of the Refined Project.

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 Final EIS/EIR, the Biological Opinion (BO) and the Memorandum of Agreement (MOA).³ In announcing this decision and based on the analysis in the record, this ROD emphasizes the following considerations:

- That the Refined Project will offset approximately 288,000 metric tons of carbon dioxide equivalent (MTCO₂e) emissions per year (i.e., GHG emissions) by providing up to 315 MW of renewable energy generation that can offset conventional fossil fuel-based electricity generation and can be used to meet both California's RPS standard and the EPAAct's public lands generation capacity objective;
- That, based on consultations with the United States Fish & Wildlife Service (USFWS), the Refined Project is not likely to jeopardize the continued existence, or even adversely affect the survival and recovery, of the federally listed peninsular bighorn sheep or least Bell's vireo;
- That the Project's Eagle Conservation Plan (ECP) and Avian and Bat Protection Plan (ABPP) will avoid, minimize, and monitor the Project's impacts to migratory birds, bats and eagle. These plans include advanced measures to reduce or eliminate the risk of eagle mortality, notably the deployment of the Merlin avian radar system and full time biological monitoring to curtail turbines operations when there is a risk of eagle collision;
- That 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 cultural, biological and other environmental resources to the maximum extent practicable, including special status plant species, the flat-tailed horned lizard, red-diamond rattle snake, rosy boa, golden eagle, American badger, and western burrowing owl, among others;

³ The BLM worked with ACOE, USFWS, California Department of Fish and Game (CDFG), Imperial County, and other responsible agencies on assessing these issues.

- That the Refined Project would result in impacts to recreational users of the area of the Refined Project during construction and decommissioning, by limiting public access to the site, and during operation given the Refined Project's alterations to the site's visual character;
- That the Refined Project has been designed to avoid direct physical impacts to identified archeological and cultural resources, and that the configuration is designed to mitigate other impacts to those resources to the extent practicable; and
- That the Refined Project will, even after implementation of the measures in the MOA, still have an unmitigated adverse effect on resources that are spiritually and culturally significant to the affected Tribes.

With respect to the last point, the DOI and the BLM have sought meaningful consultation with affected Tribes, both on a Section 106 and a government-to-government basis, throughout the ROW application process and seriously considered the concerns expressed by the affected Tribes. Specifically, the Refined Project, which eliminates 43 of the 155 turbines analyzed as part of the Proposed Action, was developed to respond to information from the Tribes regarding the spiritual and cultural significance of the Project site and surrounding area.⁴ Moreover, in recognition of the resources concerns identified through the tribal consultation and environmental review process, this ROD determines that the public lands outside of the of the Refined Project footprint, but within the Proposed Action area, are unsuitable for wind energy development. Ultimately the existence of unresolved adverse effects does not require the DOI or the BLM to deny the ROW application or otherwise prohibit the Project from proceeding. However, BLM will continue to consult with the Tribes in a government-to-government manner regarding the discovery of archeological materials and BLM's evaluation of the effects to historic properties to which the Tribes attach significance.

After a careful review of the totality of this information and responding to the comments and concerns identified by members of the public and affected tribes, the DOI and the BLM find that the issuance of the Project's ROW grant and associated plan amendments is in the public interest.

⁴ The Refined Project's reduction in turbines also reduces impacts to biological, viewshed, and other resources.

Record of Decision

Ocotillo Wind Energy Facility and Amendment to the California Desert Conservation Area Plan

1. Decisions

This ROD explains the decisions of the DOI and BLM to approve a reduced configuration of the Applicant's proposed ROW grant for the OWEF and associated amendments to the CDCA Plan.

1.1 Project Site Overview

The Project site is located within the BLM's California Desert District along Interstate-8 (I-8) approximately five miles west of the community of Ocotillo and 30 miles west of the City of El Centro in southwestern Imperial County, California (see Figure 1). The OWEF site currently is used for recreational activities, including camping, off-highway vehicle (OHV) use, and recreational shooting. It is within four miles of the Juan Bautista de Anza National Historic Trail (Anza Trail) and is adjacent to the Anza-Borrego Desert State Park, the largest state park in California. The site currently consists of vacant and undeveloped desert land. Development in the surrounding area includes the rural communities of Ocotillo and Nomirage, California, and the United States Gypsum Corporation's wallboard and gypsum manufacturing facility (known as Plaster City) to the east. As explained below with respect to NHPA Section 106 and government-to-government consultation, the Project site has been identified by a number of Tribes as having a strong spiritual and cultural connection for them

1.2 Decision/Project Overview

The ROW grant and associated plan amendments approved by the ROD authorize the construction, operation, maintenance, and decommissioning of an up to 315 MW wind energy facility on BLM-managed public lands in southwestern Imperial County, California, as explained below and analyzed in the Final EIS/EIR. The Project configuration being approved is the Preferred Alternative identified in the Final EIS/EIR, which is referred to as the "Refined Project" in this ROD. This approval will take the form of a FLPMA ROW grant, issued in conformance with Title V of FLPMA and the applicable implementing regulations found at Title 43 Code of Federal Regulations (CFR) Part 2800. The decision to grant a ROW contained herein applies only to the BLM-administered public lands within the boundary of the Refined Project; the decision to amend the CDCA applies only to the BLM-administered public lands within the boundary of the Proposed Action.

Under this ROD, a 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 ROW grant will allow the Applicant the right to use, occupy, and develop approximately 10,151 acres of public lands within the

Refined Project's footprint to construct, operate, maintain, and decommission the Refined Project. As explained in the Final EIS/EIR, the Refined Project is a modified turbine configuration that eliminates 43 of the 155 turbines proposed under the Proposed Action. It involves installation of wind turbines, and the construction of new access roads, an operation and maintenance (O&M) facility with associated utility routing, the electrical collection system, the Project substation, the utility switchyard, utility staging and storage areas, up to three permanent meteorological towers, temporary work areas, fencing, and a concrete batch plant/construction lay-down area. As shown in Figure 2, the following components of the Refined Project are located on public lands:

- 112 Wind Turbine Generators (WTGs) selected from a pool comprised of 117 of Alternative 1's 155 turbines sites (i.e., 112 installation sites plus 5 alternate sites)

Note: The Refined Project's 112-turbine configuration approved by this ROD has been modified slightly from the configuration presented in Figure 2.1-6 of the Final EIS/EIR. See Section 1.2 for an explanation of the modifications.

- One 12-acre concrete batch plant/laydown area
- One 3.4-acre O&M facility
- One 2.1-acre substation
- One 23.5-acre interconnection switchyard
- Approximately 42 miles of new access roads
- Up to three permanent meteorological towers

Project construction, which can be phased, is expected to begin in 2012 and is anticipated to require 11 months to complete.⁵ Under this ROD, the initiation of construction will be conditioned on final approval by BLM of the construction plans, which approval will take the form of a Notice to Proceed (NTP) for each phase or partial phase of construction.⁶ The sequence of the Refined Project construction activities is outlined in the Plan of Development (POD) on file with the BLM. The POD is also contained in the Biological Opinion (BO), which is provided in Appendix A to this ROD.

As explained, below, the Project's ROW grant incorporates and is conditioned upon implementation of the mitigation measures and monitoring programs identified in the Final EIS/EIR as amended by this ROD, which are provided in Appendices C and D; the BO issued by the USFWS, which is provided in Appendix A; and the NHPA Section 106 MOA, which is provided in Appendix B. The grant is also conditioned on the Applicant obtaining all other applicable local, state, and federal approvals, authorizations and permits. Commercial operation of a portion of the Refined Project could commence as early as December 2012. The Applicant has entered into a Power Purchase Agreement (PPA) with SDG&E under which up to 315 MW

⁵ The BLM requires the initiation of project construction within two years of the issuance of the ROW grant.

⁶ If the approved Project does not progress to construction or operation within the allotted time period under the grant, or if there is a substantial deviation in location or use, an amended application and additional review under NEPA may be required.

generated by the OWEF will be purchased by SDG&E for a 20-year term. The California Public Utilities Commission (CPUC) approved the PPA in December 2011.

1.2.1 Applicant Overview

The Applicant, a wholly owned subsidiary of Pattern Energy Group LP, is proposing to construct, operate, maintain and decommission the OWEF. The Applicant was assigned an existing BLM ROW Grant/Temporary Use Permit (Serial Number CACA- 047518) for wind testing and monitoring at the proposed OWEF site on October 20, 2009. (Another company had been authorized to conduct wind testing on the Project site since 2007.) The BLM authorized additional wind testing and monitoring at the Project site on August 31, 2010 when it issued ROW Grant/Temporary Use Permit (Serial CACA-50916) to the Applicant. In October 2010, the Applicant submitted a ROW application and initial POD to the BLM to construct, operate, maintain, and decommission the OWEF. The Applicant has submitted several revisions to the POD based on BLM comments. The most recent POD was submitted in March 2012.

1.2.2 Bureau of Land Management Purpose and Need for the Project

In accordance with FLPMA (Section 103(c)), public lands are to be managed for multiple uses that takes into account the long-term needs of future generations for renewable and non-renewable resources. The Secretary of the Interior is authorized to grant ROWs on public lands for systems of generation, transmission, and distribution of electric energy (Section 501(a)(4)). Taking into account the BLM's multiple use mandate, the purpose and need for the Proposed Action is to respond to a FLPMA ROW application submitted by the Applicant to construct, operate, maintain, and decommission a wind energy-generating facility and associated infrastructure on public lands administered by the BLM in compliance with FLPMA, BLM ROW regulations, and other applicable Federal laws and policies. Primarily through development of the Final EIS, the BLM has processed the ROW application and determined that issuing a ROW for the Refined Project is consistent with FLPMA and the ROW regulations.

The Refined Project, as approved by this ROD, also furthers the development of environmentally responsible renewable energy, a DOI priority. It also assists the BLM in addressing the following management objectives:

- Executive Order 13212, dated May 18, 2001, which mandates that agencies act expediently and in a manner consistent with applicable laws to increase the “production and transmission of energy in a safe and environmentally sound manner.”
- The EPAct which sets forth the “sense of Congress” that the Secretary of the Interior should seek to have approved non-hydropower renewable energy projects on the public lands with a generation capacity of at least 10,000 MW by 2015.
- Secretarial Order 3285A1, dated March 11, 2009, and amended on February 22, 2010, which “establishes the development of renewable energy as a priority for the Department of the Interior.”

1.2.3 BLM Authority

1.2.3.1 *Federal Land Policy and Management Act of 1976*

The BLM's authority to issue a ROW grant for projects like the OWEF comes from Title V of FLPMA (43 U.S.C. 1761-1771) and its implement regulations (43 C.F.R. Part 2800), which authorize the BLM, acting on behalf of the Secretary of the Interior, to issue ROW grants on, over, under, and through the public lands for systems for generation, transmission, and distribution of electric energy. The authority to approve and manage Title V ROW grants on public lands has been delegated from the Secretary to the BLM State Directors (BLM Manual 1203, Appendix 1, p.33), and in California, that authority has been further delegated to the Field Managers. With respect to the OWEF, the BLM's Authorized Officer (AO) with respect to the administration of the ROW has been delegated to the Field Manager of the BLM's El Centro Field Office.

BLM's authority with respect to the plan amendment decision associated with the OWEF comes from Title II of FLPMA (43 U.S.C. 1711-1722 and the relevant land use planning regulations (43 CFR subparts 1601 and 1610).

1.2.3.2 *California Desert Conservation Area Plan*

Consistent with the requirements of FLPMA, the BLM manages public lands pursuant to land use plans. In area where the Project is located the relevant land use plan is the CDCA Plan. The CDCA Plan governs actions on the 12 million acres of BLM-administered public lands with the a 25 million-acre CDCA. The CDCA Plan provides guidance concerning the management and use of BLM lands in the California Desert while balancing other public needs and protecting resources. The Plan groups land within the CDCA into 4 multiple use classes (MUCs). The CDCA Plan classifies the OWEF sites as MUC L. MUC L lands area intended to "protect[] sensitive, natural, scenic, ecological, and cultural resource values," and are managed to provide for generally lower-intensity, carefully controlled multiple use of resources, while ensuring that sensitive values are not significantly diminished. In addition to the MUC guidelines, the CDCA Plan's 12 Elements establish the goals and actions for each resource managed by the BLM within the CDCA by providing Desert-wide perspective on the planning decisions for each major resource or issue of public concern. The Plan's elements also provide more specific interpretation of MUC guidelines for a given resource and its associated activities.

With respect to energy generation, the CDCA Plan specifically recognizes the potential compatibility of wind energy facilities on public lands, and specifically states, with respect to MUC L lands that "...electrical generation plants may be allowed" on such lands "after NEPA requirements are met." The other primary requirement on electricity generating facilities is that they be located on sites specifically identified as being associated with power generation or transmission. While the CDCA Plan encourages the development of energy and transmission facilities within existing corridors or at previously identified sites, it recognizes that development might also occur outside of such corridors. For sites, like the OWEF, there we not so identified, the CDCA Plan requires that specific project site "be considered through the Plan Amendment process (CDCA Plan, p. 95). Because the CDCA Plan has not previously identified the OWEF

site for wind energy generation, the Plan must be amended to find the Project site suitable for a wind energy generation project. The relevant planning criteria are discussed in CDCA Plan Section 4.10, *Land Use and Corridor Analysis*. In addition, certain lands within the CDCA Plan area may not be suitable for large-scale energy development. The BLM has addressed the suitability of certain of these lands in the Final EIS/EIR.

1.2.3.3 National Environmental Policy Act

When taking actions such as approving ROW grants or amending plans, the BLM must comply with the applicable requirements of NEPA (42 U.S.C. 4321 et seq.) and its implementing regulations (both CEQ's 40 CFR Parts 1500–1508, and DOI's 43 CFR Part 46). 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 and Final EIS/EIR, Final EIS/EIR, and this ROD document the BLM's compliance with these requirements.

1.2.3.4 Other Guidance and Regulations

The BLM processes ROW grant applications for wind development in accordance with 43 CFR 2804.25 and BLM's Instruction Memorandum (IM) 2011-060 Solar and Wind Energy Applications – Due Diligence. The IM ensures BLM-wide consistency in the processing of ROW applications and the management of authorizations for wind energy site testing and development on the public lands.⁷

The other applicable management objectives and directions policies include the:

- Energy Policy Act of 2005 (119 Statutes 594, 600), Section 211, which states “It is the sense of the Congress that the Secretary of the Interior should, before the end of the 10-year period beginning on the date of enactment of this Act, seek to have approved non-hydropower renewable energy projects located on public lands with a generation capacity of at least 10,000 megawatts of electricity.”
- Executive Order 13212 (May 18, 2001), which mandates that agencies act expediently and in a manner consistent with applicable laws to increase the “production and transmission of energy in a safe and environmentally sound manner.”

⁷ Applications for a wind energy ROW grants may be submitted for three types of wind energy projects:

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

The OWEF's ROW application under consideration is a Type III application.

- Secretarial Order 3285A1, amended February 22, 2010, establishes a policy encouraging the production, development, and delivery of renewable energy as one of the Department's highest priorities.
- IM 2011-59, National Environmental Policy Act Compliance for Utility-Scale Renewable Energy Right-of-Way Authorizations (February 7, 2011), which reiterates and clarifies existing BLM NEPA policy to assist offices that are analyzing externally-generated, utility-scale renewable energy ROW applications. It includes examples and guidance applicable to such applications that supplement information in the BLM's NEPA Handbook (H-1790-1) that reflect that utility-scale renewable energy projects are distinct from many other types of land and realty actions due to their size and potential for significant resource conflicts, as well as the priority that has been placed on them by the DOI.

1.3 Information Developed Since the Final EIS/EIR and NEPA Adequacy

Since the publication of the Final EIS/EIR and the close of the protest period, the following new information has become available:

- 1) Desert Protective Council, 2012a. Table of missing or deferred "plans" for proposed Ocotillo Wind Energy Facility (OWEF) wind turbine project in SW Imperial County (April 14).
- 2) Desert Protective Council, 2012b. Modified Figure 2.1-6, Refined Project (April 7).
- 3) Desert Protective Council, 2012c. Transparency Overlay [Fault Lines] Pattern Energy EIR/EIS Figure 2.1-6 Refined Project.
- 4) Edie Harmon, 2012. Desert Protective Council (DPC) and Center for Biological Diversity (CBD) Reply to Staff Report and Other Documents for Ocotillo Wind Energy Facility (OWEF) Project Public Hearing before the Imperial County Board of Supervisors April 24, 2012 for Appeal #12-0008 (5 consolidated appeals) (April 24).
- 5) Imperial County Planning & Development Services, 2012. Agreement to Implement Health, Safety, Environmental and Related Measures for the Ocotillo Wind Energy Facility on Certain BLM-administered Federal Lands Within the County of Imperial, California ("Implementation Agreement") (unexecuted draft, April 19).
- 6) Imperial County Planning/ Building Department, 1994. Ocotillo/Nomirage Community Area Plan (April 26).
- 7) Pattern, 2012. Ocotillo, CA Wind Farm Project Farm Design (112 WTGs w/ 5 Alternates) Modified to Show 0.5 mile Distance from Project Boundary (February 27).

This information was not considered in the protest responses. However, the BLM has reviewed it and determined that no new or supplemental environmental analysis is necessary because the new information would not substantially change the analysis in the Final EIS/EIR. This information was the result of public involvement in the environmental review process. No additional public involvement is warranted to consider it because the analysis Final EIS/EIR remains valid.

Also since publication of the Final EIS/EIR, there have been some minor modifications to the Refined Project turbine configuration as presented in Figure 2.1-6 of the Final EIS/EIR. These refinements were based on information obtained during government-to-government consultations since the publication of the Final EIS/EIR. Specific turbine location changes to the Refined Project configuration are reflected in the MOA and in ROD Map Figure 2, and include the following:

- 1) The total number of alternate turbine sites has been reduced from 6 to 5;
- 2) Three turbine sites presented in Figure 2.1-6 (locations 85, 115, and 127) were eliminated;
- 3) Three of the alternate turbine sites identified in Figure 2.1-6 (locations 64 and 165) were converted to proposed turbine sites; and
- 4) Two turbine sites (locations 107 and 135), selected from the 155 sites originally analyzed as part of the Proposed Action, were added to the configuration as alternate sites.

The BLM has determined that these minor changes to the Refined Project's turbine configuration are within the range of alternatives analyzed in the EIS/EIR and that no additional NEPA analysis is required.

1.4 Decisions Being Made

1.4.1 Right-of-Way Grant

Under FLPMA law, the BLM is responsible for processing requests for ROW grant applications to determine whether and to what extent to authorize requests such as renewable energy projects and other appurtenant facilities on land it manages (43 U.S.C. 1761(a), 1764(a)). Because the Project is a privately initiated venture and would be sited on lands managed by the BLM, the Applicant applied for a ROW grant from the BLM pursuant to FLPMA and the BLM's ROW regulations. The BLM concludes that the area approved by the ROW grant and as shown in the ROD Figures 2 and 3 is the property to be occupied and that is required for constructing, operating, maintaining, and decommissioning the authorized facilities on public lands. A few specific changes from the turbine locations identified in the FEIS are shown in ROD Map Figure 2. These changes are designed to preserve the cultural view shed as seen from an important cultural site and as identified during government-to-government consultation. In addition, the BLM has included grant conditions—based on the Final EIS/EIR, the BO, the MOA, the Bald and Golden Eagle Protection Act consultation, and other applicable Federal rules and regulations (any and all of which may be amended)—to protect public health and safety, prevent unnecessary damage to the environment, and ensure that the Project will not result in unnecessary or undue degradation of public lands. The ROD requires the Applicant to secure all necessary local, state,

and Federal permits, authorizations, and approvals. Upon receipt of the NTP(s), and by remaining in compliance with the ROW grant, the Applicant will be able to construct, operate, maintain, and decommission the OWEF. The BLM also has the discretion to work with the grant holder to determine a logical sequence of construction activities to assist with meeting development financing constraints.

1.4.2 Land Use Plan Amendments

Under the CDCA Plan, the OWEF site currently is classified as MUC L (Limited Use). As explained above, the CDCA Plan contemplates industrial uses, such as the OWEF, on MUC Class L lands so long as “NEPA requirements are met” (CDCA Plan, p. 15). The CDCA Plan ROD specifically discussed the allowance of wind, solar, and geothermal power plants within designated Class L lands (CDCA ROD, p. 15) and recognized that “These facilities are different from conventional power plants and must be located where the energy resource conditions are available. An EIS will be prepared for individual projects.” The recommended decision, which was ultimately approved, noted:

Keep guidelines as they are to allow these power plants if environmentally acceptable. Appropriate environmental safeguards can be applied to individual project proposals which clearly must be situated where the particular energy resources are favorable.⁸

In addition to this requirement, while the CDCA Plan encourages the development of energy facilities within existing corridors or at previously identified sites, it recognized that development might occur outside of such corridors. Because the OWEF site was not previously identified, the BLM must amend the CDCA Plan to find the site suitable for a wind power generating facility.

The EIS/EIR and this ROD for the OWEF meet the requirements for consideration of the Project under the CDCA Plan and for consideration of the ROW application area as being suitable or unsuitable for wind development. Therefore, it amends the CDCA Plan to: (1) identify the Refined Project site as suitable for the proposed wind energy development; (2) identify the remainder of the land analyzed in the 155-turbine Proposed Action alternative but not included in the Refined Project site as unsuitable for wind energy development (Figure 3).

1.4.3 Temporary Construction Closures

The MUC-L classification allows for low to moderate recreation activities, including non-competitive vehicle touring and events on approved routes of travel. In addition, the Western Colorado Desert Routes of Travel Designations (WECO), which amended the CDCA Plan, designated specific open routes in the Project Area. There are approximately 27 open routes of travel designated within the Project site.

During construction of the OWEF, roads in the Project area would be temporarily closed to public access. The only exceptions to these temporary closures are the BLM or its assigns, the grant

⁸ The allowance of wind, solar, and geothermal plants on designated Class L lands was approved by the Assistant Secretary for Land and Water Resources, and concurred in by the Secretary of the Interior on December 19, 1980

holder or its assigns, and emergency response personnel. Specific routes and times will be announced once a more detailed construction schedule is completed.

The rationale for these decisions is discussed in Section 3.1 of this ROD.

1.4.4 Project Alternatives Evaluated But Not Being Approved

As discussed in Final EIS/EIR Chapter 2, *Proposed Action and Alternatives*, six alternatives were fully analyzed - three action alternatives, one no action/no plan amendment alternative, and two no project/CDCA Plan amendment alternatives. These alternatives are listed below.

- Alternative 1 - 155 Wind Turbine Generators Proposed Action Alternative (up to 465 MW) with Land Use Plan Amendment (the Proposed Action);
- Alternative 2 - 137 Wind Turbine Generators Alternative (315 MW) with Land Use Plan Amendment;
- Alternative 3 - 105 Wind Turbine Generators Alternative (315 MW) with Land Use Plan Amendment;
- Alternative 4 - No Issuance of a ROW Grant and No Land Use Plan Amendment (No Action);
- Alternative 5 - No Issuance of a ROW Grant with Land Use Plan Amendment to Identify the Area as Unsuitable for Wind Energy Development Project; and
- Alternative 6 - No Issuance of a ROW Grant with Land Use Plan Amendment to Identify the Area as Suitable for Wind Energy Development Project.

As explained summarily below and in detail in Chapter 2 of the Final EIS/EIR, these alternatives were developed from among the 18 alternatives identified in the EIS/EIR, including alternative location/configurations and design alternatives, alternatives proposed by the Applicant, other generation technologies, including energy efficiency and distributed generation, alternative turbine designs, and alternative fuels, were evaluated. The remaining alternatives considered, but not carried forward detailed analysis for the reasons explained below and in Section 2.7 of the Final EIS/EIR.

While the Refined Project is not one of the Alternatives identified for analysis, it is squarely within the spectrum of alternatives analyzed in the EIS/EIR. As explained above, the Refined Project eliminates 43 of the turbines considered under Alternative 1 in order reduce the effects of the Proposed Action on cultural resources and to respond to specific concerns raised by the public and tribes about impacts associated with the OWEF.⁹ Because the Refined Project is a subset of the turbines sites and supporting faculties analyzed under Alternative 1, it would not result in effects outside the spectrum of alternatives analyzed in the Final EIS/EIR. The Refined Project is merely a reduced scope and impact version of Alternative 1, the impacts of which are similar to, or only slightly larger than, the impacts identified for Alternative 3 (the 105 turbine configuration). Therefore, the impacts associated with the construction, operation, maintenance,

⁹ The reduced turbine configuration also reduces impacts to biological and viewshed resources.

and decommissioning of wind turbines at the Refined Project's turbine sites were fully disclosed and analyzed in both the Draft and Final EIS/EIR.

With the exception of the No Action and No Project Alternatives, each of the fully analyzed alternatives would develop renewable energy on public lands and therefore would contribute to the BLM's goal for increased renewable energy development on public lands as established by the EPAct. The fully analyzed alternatives are described below.

1.4.4.1 Alternatives 1, 2, and 3: The Build Alternatives

All build alternatives contemplated using wind turbines ranging in size from 1.6 to 3 MW in generating capacity. Similarly, all alternatives contemplated interconnection with the California power grid via the Sunrise Power Link 500kv line (currently under construction) that crosses the proposed OWEF site.

Under Alternative 1, the Proposed Action, Ocotillo Express LLC would construct, operate, maintain, and decommission 155 Wind Turbine Generators (WTGs) and associated facilities and infrastructure necessary to generate up to 465-MW of wind energy on approximately 12,500 acres in Imperial County, California, near the unincorporated community of Ocotillo. Alternative 1 would be located primarily on BLM-administered land except for approximately 500 acres of private and public land outside the Project boundaries that would be utilized for road access and collection line ROWs necessary to connect the few turbines proposed south of I-8 to the balance of the turbines located north of I-8. Under this alternative, Ocotillo Express LLC would coordinate with the BLM, private property owners, and Caltrans for access the private lands. In addition to wind turbines, Alternate 1 would also involve construction of various ancillary facilities, including a substation, switchyard, operation and maintenance (O&M) facility, batch plant, rail yard, and meteorological towers. Construction of the Proposed Action would be completed in one phase lasting 11 months.

Alternative 2 would have 137 WTGs as compared to 155 in Alternative 1. These turbines would be 2.3-MW WTGs, which would meet the Power Purchase Agreement amount of 315 MW. Wind turbines have been eliminated to avoid sensitive cultural and biological resources, particularly in the southwestern portion of the site. Construction of Alternative 2 would be completed in a single phase lasting 11 months. Land disturbance would be reduced relative to the Proposed Action because 18 fewer turbine foundations/crane pads would be required and fewer access roads and collector lines would be needed.

Alternative 3 would have 105 WTGs, 50 fewer than in Alternative 1. The turbines would have to be 3.0-MW WTGs to meet the Power Purchase Agreement amount of 315 MW. The 3.0-MW WTGs are approximately 20 feet taller than the 2.3-MW WTGs. Construction of Alternative 3 would be completed in a single phase lasting 11 months. Land disturbance would be reduced relative to the Proposed Action because 50 fewer turbine foundations/crane pads, one fewer meteorological tower, and fewer access roads and collector lines would be needed.

1.4.4.2 Alternative 4: No Action

Under Alternative 4, the No Action Alternative, no ROW grant or CDCA Plan Amendment would be approved. The OWEF would not be constructed and the BLM would continue to manage the site consistent with the existing land use designation in the CDCA Plan. As a result, there would be no direct, indirect, or cumulative impacts associated with the OWEF or its alternatives.

1.4.4.3 Alternatives 5 and 6: No Project/CDCA Plan Amendment

Under Alternative 5, the BLM would not issue a ROW grant; however, the BLM would amend the CDCA Plan to exclude wind energy development on the proposed OWEF site. As a result, no wind energy project could be constructed on the site in the future, and the BLM would continue to manage the site consistent with the existing land use designation in the CDCA Plan. As a result, there would be no direct, indirect, or cumulative impacts associated with the OWEF or its alternatives.

Under Alternative 6, the BLM would not issue a ROW grant for the OWEF; however, the BLM would amend the CDCA Plan to allow for other wind projects on the Project site. As a result, it is possible that another wind energy project could be constructed on the site in the future. While Alternative 6 would not result in any of the impacts associated with the OWEF or alternatives, any future wind development project might have impacts similar to those described for Alternatives 1, 2, or 3.

1.4.4.4 Alternatives Not Fully Analyzed

Alternative sites, technologies, and methods were considered but not carried forward for detailed analysis. These alternatives are described below.

Private Land Alternative

Although the BLM has no jurisdiction over the siting of projects on private land, other private lands within Imperial County were considered for siting the OWEF. However, unlike solar power resources, wind resources are much more site specific. As explained in Chapter 2 of the EIS/EIR, wind resource potential on private lands in Imperial County is not consistently rated as “Good” or higher, and, more importantly, lands that are both highly rated and available for development are not aggregated. This disaggregation is readily apparent in Figures 2.7-1 to 2.7-3 of the Final EIS/EIR, which shows that the best wind resource in Imperial County is concentrated in the immediately vicinity of the Project site. Therefore, in order to construct and operate a project capable of generating up to 315 MW of power from wind energy using private parcels, the wind towers would need to be constructed in clusters, where land and wind potential are both available, and an extensive system for power collection from these scattered parcels would need to be designed and implemented creating a much larger project footprint than the proposed Project to generate the same amount of power. Such a footprint would be technically challenging and would make the Project non-competitive from a cost perspective, and not likely to provide a

reliable source of power to California's Investor Owned Utilities and so would be contrary to the proposed OWEF's purpose and objectives. Due to a lack of aggregated parcels of private lands large enough to accommodate the Proposed Action within a "Good" or better wind resource area, a private lands alternative in Imperial County was determined to be technically and economically infeasible, and therefore was not carried forward for review. Additionally, a private land alternative does not respond to BLM's purpose and need for the Proposed Action, namely, to consider an application for the authorized use of public lands for a wind energy generation facility.

Alternative BLM-Administered Lands

Much of the BLM-administered land in the areas with the highest wind energy resource in Imperial County is excluded from potential development by special designations such as wilderness areas and ACECs or are encumbered by other proposed or granted wind energy ROWs. During the site identification process, there was one large swathe of BLM land with a "Fair" to "Good" wind resource that is not currently encumbered by any other known ROW grant applications. (See Final EIS/EIR Figures 2.7-1 to 2.7-3) However, the wind resource on this site is of substantially lower quality than the site of the Proposed Action and would require a much larger footprint to generate up to 315 MW, thus making this alternative less feasible from an environmental impact and economic standpoint.

Alternate Wind Turbine Layouts

193 Wind Turbine Generators. This alternative includes 35 more WTGs (193 total) than the Proposed Action and would be comprised of a combination of 3-MW and 2.3-MW turbines totaling up to 550 MW. Based on information developed from biological resource surveys, cultural resource surveys, and a delineation of jurisdictional waters within the proposed Project footprint, Ocotillo Express LLC elected to abandon this site plan and modify the Project to develop a proposal that avoided sensitive biological and cultural resources and minimized impacts on jurisdictional waters; therefore, this alternative was not further analyzed.

106 Wind Turbine Generators. This alternative is similar to the Proposed Action but with 49 fewer WTGs (106 total), where turbines were eliminated specifically to reduce or avoid environmental resources, primarily jurisdictional waters. While this alternative was developed specifically to reduce impacts to jurisdictional waters, it was determined that the impacts to jurisdictional waters would be comparable to the 105 Wind Turbine Generators Alternative (Alternative 3) that was carried forward for review. Due to its substantial similarity to Alternative 3 from both a layout and impact perspective, this alternative was not carried forward for further analysis.

Reconfiguration Alternative

An alternative to the Proposed Action could include reconfiguring ancillary facilities on the Project site, such as placing the substation on private land rather than on BLM-administered lands. Placement of the substation private land would require reconfiguring the Sunrise Powerlink

500-kV transmission line to go into and out of the substation, which would be located 0.8 mile east of the existing transmission line alignment rather than immediately adjacent, and construction of the switchyard in generally the same location as the currently proposed substation/utility switchyard. This alternative would place the substation on a private parcel where a home exists and where the area required for a substation may not be sufficient without encroaching on the home. Also, greater land disturbance would result from separating the substation from the utility switchyard. Considering the additional impacts that would result from construction in geographically separate areas, the Reconfiguration Alternative was not considered to be a reasonable alternative means of meeting the purpose and need for the Proposed Action under NEPA.

Alternative Generation Technologies

An alternative to the Proposed Action could include reconfiguring ancillary facilities on the Project site, such as placing the substation on private land rather than on BLM-administered lands. Placement of the substation

1.4.4.5 Agency Preferred Alternative

After consideration of the impact analysis in the Final EIS/EIR and comments from the public, Federal and state agencies, local groups, and individuals, the BLM identified the Preferred Alternative. BLM's Preferred Alternative for the OWEF is the Refined Project identified in the Final EIS/EIR, as modified by the ROD (see Section 1.2).

1.5 ROW Requirements

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

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

According to BLM policy (IM 2011-060, as it may be amended), a bond is required for all ROW grants to ensure compliance with the terms and conditions of the authorization and applicable

regulatory requirements. A minimum bond amount is required for all wind energy development projects on public lands. The bond will be reviewed periodically (at least every 5 years) by the BLM authorized officer to ensure adequacy of the bond.

1.6 Changes to the Approved Project

At various times during Project construction and operation, the need may arise for additional work areas. Similarly, changes to the Project requirements (e.g., mitigation measures, specifications, etc.) may be needed to provide more effective protection of resources or reflect changed circumstances associated with Project construction and/or operation. The BLM will work with Applicant to address such situations as they arise while avoiding conflicts with adopted mitigation measures or specifications.

To the extent it is determined that adjustments are required to the Project's mitigation measures or specifications, the BLM shall ensure that such variation are approved consistent with the requirements of NEPA, FLPMA, NHPA, and other applicable requirements, including those in the BO and MOA. Generally, no Project adjustments will be approved if they create new significant impacts or substantially modify the use or Project footprint, and will be limited to minor Project changes that will not trigger other permit requirements or create new or greater impacts and that clearly and strictly comply with the intent of the adopted mitigation measures, as they may be amended over time. For Project changes that have the potential for creating significant environmental effects or represents a substantial change to the location or use of the Refined Project or Project site, they will be evaluated by the BLM to determine whether an amended application and/or additional analysis is required under NEPA or other authorities. In both cases, BLM will coordinate with other agencies that have jurisdiction over contemplated adjustments or changes.

In addition to Project changes, consistent with the applicable regulations, the Applicant may, with approval from the BLM, assign the whole ROW grant or portions of the ROW grant to another party in conformance with the Part 2800 ROW regulations.

1.7 Summary of Conclusions

The OWEF is expected to provide climate, employment, and energy security benefits to California and the nation. Most notably the Project will help realize important Federal Energy Policy and State energy policy goals targeted towards increasing renewable energy generation and reducing GHG emissions. It will provide clean electricity sufficient to meet the needs of 25,000 homes, while bringing much-needed jobs to the Project area. In sum, the Refined Project provides the most public benefit, while also avoiding to the greatest extent practicable potential impacts on biological, cultural, visual and other resources.

The Refined Project's 30 percent reduction in turbines compared to the Proposed Action reduces, among other things:

- Impacts to biological, visual, cultural and other resources relative to the Proposed Action;

- The risk of bird and bat collisions with turbines, including golden eagle collisions;
- Visual impacts from the various vantage points analyzed in the Final EIS/EIR;
- The number of construction sites, thus reducing the potential for construction related impacts including the inadvertent discovery of previously unknown resources; and
- Impacts to existing drainages and other hydrologic features by reducing overall disturbance on site.

The reduction in turbines reflected in the Refined Project was developed, in large part, as a result of consultation with tribal governments and representatives as part of the NHPA Section 106 process. As explained below, while the BLM recognizes that the Refined Project will still adversely affect cultural resources that are important to a number of the Indian tribes in the Project Area, the Refined Project reduces the magnitude of those effects relative to the Proposed Action by increasing the distances of Project turbines from a number of important resources, eliminating turbines entirely from the northwest corner of the Project's ROW application area, and avoiding areas where the density of known cultural resources are highest. The mitigation measures that have been imposed through this ROD minimize potential effects to cultural resources, while still permitting the construction of the Refined Project so that it can provide important climate, employment, and energy security benefits.

2. Mitigation and Monitoring

2.1 Required Mitigation

The OWEF includes the following measures, terms, and conditions:

- Terms and Conditions in the USFWS BO (Appendix A), as may be amended
- Terms and Conditions in the MOA (Appendix B), as may be amended
- Adopted Avoidance, Minimization, and Mitigation Measures (Appendix C), as may be amended
- The Project's Environmental and Construction Compliance Monitoring Plan (ECCMP) (Appendix D). The ECCMP includes requirements to verify the implementation of and compliance with mitigation measures including preparation and implementation of plans such as, but not limited to, the Avian and Bat Protection Plan, the Fire Safety Plan, and a Habitat Restoration/Revegetation Plan. The BLM will use the process described in the ECCMP to ensure that the appropriate plans are completed prior to NTP issuance for actions affecting a particular resource or area and ultimately to ensure compliance with the terms and conditions of the ROW grant and applicable plans.

For compliance purposes, the complete language of these measures, terms, and conditions is provided in Appendix C of this ROD. These measures, terms, and conditions are determined to be in the public interest pursuant to 43 CFR 2805.10(a)(1), since they ensure the Project will be constructed, operated, maintained, and decommissioned in conformity with the decisions made by the BLM.

2.2 Monitoring and Enforcement

A monitoring and enforcement program shall be adopted where applicable for any mitigation (40 CFR 1505.2(c)). Agencies may provide for monitoring to assure that their decisions are carried out. Mitigation and other conditions established in the Final EIS/EIR, as amended herein, or during its review and committed to as part of the decision shall be implemented by the lead agency or other appropriate consenting agency (40 CFR 1505.2(c), 1505.3). The lead agency shall:

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

As the Federal lead agency for the OWEF under NEPA, the BLM is responsible for ensuring compliance with all adopted mitigation measures for the OWEF. The complete language of all the measures is provided in the ECCMP, which is found in Appendix D to this ROD. The BLM will also incorporate these mitigation measures as terms and conditions of the grant. Failure on the part of the grant holder to adhere to these terms and conditions could result in administrative actions up to and including termination of the ROW grant and the removal of facilities and rehabilitation of all public land disturbances.

2.3 Mitigation Measures Not Adopted

All the mitigation measures included in the Final EIS/EIR as amended by this ROD, BO, MOA and ECCMP are adopted and provided in Appendices A-D of this ROD. All BLM identified mitigation measures have been adopted in this ROD.

2.4 Statement of All Practicable Mitigation Adopted

As required in the BLM *NEPA Handbook H-1790-1* and 40 CFR 1505.2(c), all practicable means to avoid or minimize the environmental harm from the alternative selected have been adopted by this ROD (Appendix C).

3. Management Considerations

3.1 Decision Rationale

This decision approves a ROW grant and associated CDCA Plan amendment for the OWEF consistent with the Refined Project as described above and in the Final EIS/EIR. The BLM's decision to authorize this activity is based on the rationale described throughout the ROD and as detailed in the following sections.

3.1.1 Respond to Purpose and Need

As more thoroughly described in Section 1.1.2.1, the BLM's purpose and need for the OWEF is to respond to the Applicant's externally generated application under Title V of FLPMA for a ROW grant to construct, operate, maintain, and decommission a wind energy generating facility and associated infrastructure on public lands in compliance with FLPMA, BLM ROW regulations, and other applicable Federal laws, as well as in furtherance of DOI renewable energy priorities and management objectives.

The Refined Project meets the BLM purpose and need because it responds directly to Applicant's ROW application; although the BLM declined to issue a ROW for the Applicant's Proposed Action, it determined that issuing a ROW for the smaller Refined Project will further development of environmentally responsible renewable energy and assist in meeting other management objectives, while minimizing impacts to cultural, biological, visual and other resources. As explained in the Final EIS/EIR, the construction, operation, maintenance, and decommissioning activities associated with the Refined Project, either singularly or with mitigation, are in conformance with the application regulations and following land use plans and BLM policies:

- BLM CDCA Plan of 1980, as amended
- BLM policy and guidance for issuing ROW grants.

3.1.2 Achieve BLM Goals and Objectives

The Refined Project will meet the BLM purpose and need, help meet power demand, and help achieve Federal and State objectives for renewable energy development. The Project complies with CDCA Plan objectives for the Multiple Use Class L land use designation. Additionally, the BLM consulted extensively with affected Native American tribes and other responsible parties to modify the OWEF to minimize impacts to biological, visual, cultural and other resources. The Refined Project provides the best balance between maximizing renewable energy capacity while reducing adverse impacts as compared to the other action alternatives.

3.1.3 Incorporate CDCA Plan Management Considerations

The CDCA Plan Amendment is warranted. The record indicates that the Refined Project can be constructed on BLM-administered lands, and that the Refined Project will result in fewer significant, immitigable impacts to cultural resources than would occur with the Proposed Action. The CDCA Plan amendment applies to the public lands within the boundary of the Project site for the Refined Project, as shown in Figures 2 and 3. The approval of the Project location based upon NEPA analysis satisfies the requirements of the CDCA Plan related to the approval of wind energy generation facilities on MUC Class L lands outside of existing energy generation and transmission corridors.

3.1.4 Statement of No Unnecessary or Undue Degradation

Congress declared that the public lands be managed for multiple use and sustained yield and in a manner to protect certain land values, provide food and habitat for species, and provide for

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

FLPMA specifically provides that in managing the use, occupancy, and development of the public lands, the Secretary shall take any action necessary to prevent unnecessary or undue degradation of the lands (43 U.S.C. 1732(b)). The process for siting and evaluating the OWEF has included extensive efforts on the part of BLM, the Applicant, County of Imperial, other agencies, and members of the public to identify a project that accomplishes the purpose and need and other project objectives while preventing any unnecessary or undue degradation of the lands. These efforts have included:

- Siting of the proposed facility in a location in which wind power development can be authorized (following NEPA review), and which has not been specifically designated for the protection of any other resource.
- Modification of the proposed turbine locations and boundaries of the facility to either completely avoid or minimize impacts to biological, cultural, visual and other resources.
- Evaluation of project location alternatives that could meet the purpose and need for the proposed project on BLM-managed lands, but result in the avoidance and/or minimization of impacts.

In addition, BLM ROW regulations at 43 CFR 2805.11(a)(1) to (5) require BLM to limit the grant to those lands which:

1. Will be occupied with authorized facilities;
2. Are necessary for constructing, operating, maintaining, and terminating the authorized facilities;
3. Are necessary to protect the public health and safety;
4. Will not unnecessarily damage the environment; and
5. Will not result in unnecessary or undue degradation.

The lands described in Section 3.1.4 of this ROD are necessary to accommodate the Project. All lands that originally were included under the original ROW application area that were determined not necessary for construction or operation and maintenance of the Refined Project facilities have been eliminated from the Project boundary. All temporary disturbances associated with underground utilities, access roads and turbine installation will be restored immediately to minimize erosion in accordance with approved restoration and revegetation plans. Public health and safety will not be compromised by construction of the Project as work areas will be posted and public access to those areas controlled to prevent possible injury to the public. During operation and maintenance of the OWEF, security fencing will surround the substation/utility

switchyard, operation and maintenance building, and meteorological towers. The remainder of the Project site will remain accessible to the public, subject to applicable rules and policies.

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

The OWEF meets the requirements of applicable ROW regulations inasmuch as it includes terms, conditions and stipulations that are in the public interest; prevents surface disturbance unless and until an NTP is secured; is issued for a period of 30 years, subject to potential renewal and periodic review; and contains diligence and bonding requirements to further protect public land resources. This approval provides that public land will be occupied only with authorized facilities and only to the extent necessary to construct, operate and maintain, and decommission the Project. The BLM's grant contains terms and conditions that provide for public health and safety and protect the environment and public lands. The terms and conditions include compliance with this ROD, the Final EIS/EIR, the BO, and the MOA, as may be amended.

The foregoing provides the basis for this ROD's determination that the OWEF will not unnecessarily or unduly degrade the public lands within the Project site.

3.1.5 Statement of Technical and Financial Capability

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

Ocotillo Express LLC's statement of technical and financial capability is provided in the POD and the application for a ROW. Ocotillo Express LLC is a private enterprise that is a wholly owned subsidiary of Pattern Energy Group LP. Pattern Energy has successfully developed, financed and placed into operation approximately 2,000 MW of wind power across 11 states, representing over 3 billion dollars in investment. In addition to having a full range of development capabilities, Pattern Energy provides construction management during the building phase in addition to operations management, turbine and balance of plant service and maintenance, financial management and reporting functions. The Applicant has provided information on the availability of sufficient capitalization to carry out development, including the preliminary study phase of the Project, as well as site testing, construction, and monitoring

activities. Based on information provided by the Applicant during the ROW grant and environmental review processes, the BLM has determined that the grant holder has the technical and financial capability required to construct, operate and maintain, and decommission the approved facility.

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

Federal statutes require that specific actions be completed prior to issuing a ROD for the Project. Specifically, Ocotillo Express LLC must secure a BO pursuant to the Endangered Species Act (ESA), concurrence from the USFWS on the Project's Bird and Bat Conservation Strategy, an MOA under the NHPA, and appropriate permits under the Clean Water Act (CWA).

3.2.1 Endangered Species Act Section 7

Under Section 7 of the Endangered Species Act (ESA), a federal agency that authorizes, funds, or carries out a project that "may affect" a listed species or its critical habitat must consult with USFWS. Under Section 7 consultation, the lead agency prepares a biological assessment (BA) that analyzes whether the project is likely to adversely affect listed wildlife or plant species or their critical habitat, and proposes suitable avoidance, minimization, or compensatory mitigation measures. At the end of the consultation (135 days by regulation), the USFWS issues its Biological Opinion (BO) determining whether the project is likely to jeopardize the species or result in adverse modification of critical habitat. If a "no jeopardy" opinion is provided, the project may proceed. If a jeopardy or adverse modification opinion is issued, the USFWS may suggest "reasonable and prudent measures" that would result in no jeopardy.

The BLM's authorization of the requested ROW grant for the OWEF, including the resulting consultation and coordination with the USFWS, complies with ESA Section 7 regarding potential take of peninsular bighorn sheep and least Bell's vireo. As discussed in Section 3.1.3, the USFWS has jurisdiction over threatened and endangered species listed under the ESA. Formal consultation with the USFWS concluded with the April 26, 2012, issuance of a BO (Appendix A) for the OWEF related to potential impacts to peninsular bighorn sheep and least Bell's vireo. Implementation of the discretionary conservation measures identified in the BO would reduce potential adverse impacts to both species. The BO concluded that the levels of anticipated take associated with the OWEF are not likely to jeopardize the continued existence or significantly impair the recovery of the peninsular bighorn sheep or least Bell's vireo. Implementation of terms and conditions to minimize take identified in the BO is mandatory and a condition of approval set forth in this ROD. The ROW grant for the Project contains a standard stipulation requiring compliance with the BO, as amended.

3.2.2 National Historic Preservation Act Section 106 & Government-to-Government Consultation

Section 106 of the NHPA (16 U.S.C. 470) requires Federal agencies to take into account the effects that their approvals and federally funded activities and programs have on historic

properties. “Historic properties” include those properties included in, or eligible for, the National Register of Historic Places (NRHP) (36 CFR 800.16(1)(1)).

Memorandum of Agreement

The BLM’s authorization of the requested ROW grant and associated plan amendments for the OWEF complies with NHPA Section 106 regarding potential impacts to cultural resources, as evidenced by the MOA provided in Appendix B, which documents the consultation and coordination that has occurred with respect to the Project under Section 106 and reflects the measures identified to avoid, minimize, or mitigate the adverse effects of the Project on cultural resources. The provisions contained in the MOA were the result of consultations with various consulting parties, including the State Historic Preservation Office (SHPO), Advisory Council on Historic Preservation (ACHP), Applicant, ACOE, affected Indian tribes, and other members of the public. As a result of these consultations, the Project was repeatedly redesigned to avoid any direct physical impacts to cultural resources identified during the archeological surveys conducted in connection with the Project. These redesigns included the relocation of individual turbines, as well as the wholesale elimination of turbine sites. Most notably, as reflected in the Refined Project, 43 turbine sites were eliminated altogether from the Proposed Action configuration to reduce the impact of the Project on cultural resources in the northwest corner of the Project site and the landscape where the Project is located. Similarly, the BLM decided to amend the CDCA Plan to find the area outside of the Refined Project footprint unsuitable for wind energy development in recognition of the resources there.

In total, these measures meaningfully reduce the impact of the Project on identified archeological resources. With respect to currently unknown resources, the MOA contains robust measures that respond to the potential for the post-review discovery of cultural resources during the construction, operation, or decommissioning of the Project. Specifically, the MOA includes a Historic Properties Treatment Plan, Plan for Archaeological Monitoring, Post-Review Discovery and Unanticipated Effects, and Native American Graves Protection and Repatriation Act (NAGPRA) Plan of Action. The MOA also includes stipulations for the creation of Environmentally Sensitive Areas to protect archaeological sites during construction and a provision that requires the development of a Long Term Management Plan to ensure the continued protection of cultural resources within the ROW for the life of the Project.

As a result of these measures and the various Project redesigns, the Refined Project will result in impacts to cultural resources less than or similar to the other build alternatives for the Project. However, as explained below with respect to government-to-government consultation, even after the implementation of these measures, the BLM recognizes that the Refined Project will still have an adverse effect on religious and cultural resources that are significant to many of the tribes consulting with the BLM about the Project. As explained above, having considered these impacts, the BLM has nevertheless decided to proceed with this Project.

Tribal Consultation

In connection with actions, like the OWEF, the DOI and the BLM have an obligation to consult with affected Tribes. Under Section 106, the BLM consults with the tribes in connection with its

responsibilities to identify, evaluate, and resolve adverse effects on cultural resources affected by BLM undertakings. The BLM also has an obligation to consult on a government-to-government basis about federal decisions that impact Tribes or identified Tribal resources. The scope of considerations covered by the Section 106 and government-to-government obligations are different as they are derived from different authorities. *See* Exec. Order 13084 (May 14, 1998) (describing the government-to-government relationship as deriving from “the Constitution of the United States, treaties, statutes, Executive orders, and court decisions”). The Tribes, in the context of the government-to-government consultation, focused on cultural resources and the government-to-government requirements. There was thus significant overlap in the issues discussed as part of the Section 106 and government-to-government consultations.

At the outset of the OWEF process, the BLM invited federally recognized Indian tribes and one Tribal Organization (the Kwaaymii Laguna Band of Indians) to consult on the OWEF at the earliest stages of Project planning; the former being invited to consult on a government-to-government basis pursuant to the Executive Memorandum of April 29, 1994, and other relevant laws and regulations including NHPA Section 106.

The BLM identified appropriate tribal consulting parties early in the planning process for the OWEF. It sent letters to the affected tribes and the one Tribal Organization, dated February 4, 2010, informing them about the application submitted by the Applicant for a ROW to conduct wind testing at the Project site and to develop a wind energy generation facility near Ocotillo, California. The letters also requested assistance from the tribes identifying any issues or concerns, including the identification of sacred sites and places of traditional religious and cultural significance that might be affected by the OWEF.

Following the initial invitation to consult, the BLM continued to send correspondence, added additional tribes to the consultation list, held Section 106 group meetings, and offered to meet with individual tribes on a government-to-government basis, all in an effort to obtain their input, and that of other consulting parties on all phases of the Project’s environmental review. Notably, in a letter dated July 28, 2010, wherein it reiterated its invitation to enter into government-to-government consultation, the BLM also: (i) provided an update on the environmental review process and cultural resources inventory; (ii) included a copy of the Class II & III Inventory Research Design and Work Plan; (iii) reiterated the BLM’s request for assistance identifying tribal issues or concerns, including the identification of sacred sites and places of traditional religious and cultural significance, so that the cultural resources inventory could be adapted accordingly; and (iv) notified the tribes that the archaeological contractor would be contacting them to determine if they had tribal representatives who would participate in the inventory process. Many tribes responded to the BLM and the outreach conducted by the archaeological contractor by indicating that they wanted to participate in the archaeological inventory of the Project area. Throughout all phases of the inventory, tribal participants were included.

The BLM continued its consultation with the tribes in parallel with the NEPA process. Following the publication of the DEIS, some tribes identified the project area as a Traditional Cultural Property (TCP). One tribe stated in a letter dated September 29, 2011 that the project area is a

TCP. On November 23, 2011, another one of the consulted tribes informed the BLM that, in their view, a TCP encompassed the Project site and a much larger surrounding area. They also reiterated their strong concern about the Project and potential effects to the newly recorded archaeological sites, including but not limited to trails, geoglyphs, rock features, habitation areas, previously documented ethnographic resources, the view shed from the Spoke Wheel Geoglyph and other geoglyphs and sacred sites within the Project area, and both known and unknown cremation sites. These concerns were expressed to the BLM during Section 106 consultation meetings, individual government-to-government meetings, and in correspondence. In response to these concerns, the BLM requested in writing (and in subsequent meetings) additional information about the identified TCP; specifically, information about the characteristics that make the TCP eligible for inclusion in the NRHP so that the BLM could make the applicable determinations under Section 106 and to understand its significance to the Tribes. Chapter 5.0 and Tables 5-1 and 5-2 in the Final EIS/EIR provide a detailed summary of the activities and good faith efforts that the BLM has undertaken since February 2010 as part of its tribal consultation obligations, including: written correspondence, meetings for the purposes of information and idea exchange, cultural resource site visits, and responses to information requests to consult with the affected tribes on this project.

Moreover, these consultation efforts continued after the publication of the FEIS, including:

- On March 6, 2012 the BLM sent a letter to tribes requesting continued government-to-government consultation, provided the revised draft of the archaeological inventory report for an additional 45 day review period, and invited tribes and their representatives to participate in field trips to the project area to look at archaeological sites and proposed facilities. The letter notified tribes that the BLM's third party contractor would be following up by phone call with them to determine their participation and answer any questions. The letter concluded with an offer to again meet individually with Tribes on a government-to-government basis at any time.
- On March 7, 2012 and March 12, 2012, the BLM held Section 106 consulting parties meetings to discuss and obtain input on the BLM's revised determinations of eligibility, findings of effect, and the content of the revised draft MOA.
- On March 31, 2012 and April 18, 2012, the BLM had government-to-government meetings with the Quechan Indian Tribe to discuss the Project.
- On April 2, 2012, the BLM and Secretary of the Interior officials had a government-to-government meeting to discuss the Project with the Quechan Indian Tribe, the Manzanita Band of Kumeyaay Indians and the Viejas Band of Kumeyaay Indians. A field trip to the Project area was also conducted.
- On April 3, 2012 the BLM sent a letter to tribes providing a third revised version of the draft MOA for a final 17 day consultation period. The letter requested their comments and review by April 20, 2012 and included a detailed summary of the changes that had

been made in response to the comments that had been provided on the previous draft. The letter also re-invited tribes to participate in the field trips on April 11-13, 2012.

- On April 11, 12 and 13, 2012 the BLM held Section 106 consulting parties field trips to visit requested archaeological sites within the Project area as well as proposed Project facilities.
- On April 10, 17 and 19, 2012, the BLM held Section 106 consulting parties conference calls to discuss and obtain input on the revised MOA.

Consultation with the tribes, tribal organizations and members of the public has, as noted above, revealed very strong concern about the Project and the impacts it would cause under all of the build alternatives. The BLM understands and appreciates the importance and sensitivity of cultural resources within and near the Project site. Most notably, despite its relatively late identification in the Section 106 process, the BLM has worked extensively with the tribes over the last seven months to understand the TCP (at least to the extent that information was available). The BLM held additional meetings to discuss the eligibility determinations, the BLM's findings of effect, and ways to minimize, avoid, and resolve the adverse effects as discussed in the revised draft MOA, including effects on the TCP. The BLM also repeatedly requested at these meetings (and in writing) information about the identified TCP, including the information necessary for it to make the necessary determinations under Section 106. As a result of these efforts and consultations with Tribes and other parties, including the SHPO and the ACHP, the BLM revised its original proposed determinations and findings with respect to the cultural resources on the Project and expressly assumed that the portion of the TCP within the Project area is eligible for the NRHP for purposes of its analysis of adverse effect. It also documented its understanding of the identified resource in the Final EIS/EIR and in a Draft Tribal Values Supplemental Report for the Ocotillo Wind Energy Facility that it prepared.

The relevant guidance explains that the identification and evaluation of a traditional cultural landscape, or a TCP, generally depends upon when the group to which the property may have traditional cultural significance provides sufficient information to identify the landscape. As explained in the Final EIS/EIR, the BLM did not receive sufficient information for it to fully analyze the entire TCP, or all of the characteristics that might make it eligible for the NRHP. However, based on the information it was able to obtain and consistent with the relevant guidance, the BLM has assumed that the period of significance for the TCP ranges between the creation of humans and the current era and that, for the purposes of this plan amendment, makes an assumption of NRHP eligibility for that portion of the TCP within the Project APE. More importantly, the BLM has acknowledged that the Project, or any of its action alternatives, would result in adverse effects to the TCP that cannot be completely mitigated.

The BLM recognizes that many Tribes attach religious and cultural significance to the Project site and the broader landscape, and it also recognizes that the Project being approved will adversely affect those resources. However, as with all cultural or historical resources, the identification of a

traditional cultural landscape, or a TCP, and the potential effects of an undertaking on it are one fact that goes into the decision whether to approve the undertaking. As explained above, the BLM has determined that it has, in consultation with the tribes, identified all practicable measures to avoid, minimize, or mitigate the impacts of the Project on the cultural resources identified on the Project site, and that while adverse effects remain, approval of the Project is in the public interest.

3.2.3 Bald and Golden Eagle Protection Act

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

Between August 2010 and February 2012, the USFWS, BLM, and the Applicant participated in numerous consultations and exchanged multiple working drafts of the Project’s Eagle Conservation Plan (ECP) and Avian and Bat Protection Plan (ABPP). The USFWS was briefed concerning the preferred alternative and through close consultations between USFWS and BLM, the USFWS was aware of BLM’s anticipated selection. Therefore, the Refined Project was fully evaluated as part of the ECP and ABPP. On February 29, 2012, the USFWS issued a memorandum stating that they have concluded their review of the Project’s ECP and ABPP. The memorandum acknowledged that the USFWS had worked cooperatively with the Applicant on the development of the Project’s ECP and ABPP, which are designed to avoid, minimize and monitor Project impacts to migratory birds, bats and eagles. The memorandum also stated that in the ECP, the Applicant has included experimental ACPs designed to reduce or eliminate the risk of eagle mortality from turbine operations. Specifically, the a Merlin avian radar system and full time biological monitor to observe eagles flying within the project will be used to curtail turbines when eagles are at risk of collision. If it is determined that the initial ACPs implemented are not sufficient to avoid eagle take, the memorandum states that project’s ECP could be used as the basis for a programmatic eagle take permit.

3.2.4 Clean Water Act

The ACOE has jurisdiction to protect the aquatic ecosystem, including water quality and wetland resources under Section 404 of the CWA. Implementing regulations by the ACOE are found at 33 CFR 320 through 330. Guidelines for implementation are referred to as the Section 404(b)(1) Guidelines and were developed by the EPA in conjunction with the ACOE (40 CFR 230). Under that authority, ACOE regulates the discharge of dredged or fill material into waters of the United States, including wetlands, by reviewing proposals to determine whether they may impact such resources and, thereby, are subject to Section 404’s permit requirement. The ACOE may grant authorization under either an individual permit or a nationwide permit to address operations that may affect the ephemeral washes on the Project site.

Throughout the environmental review process for the OWEF, the BLM has provided information to the ACOE to assist the agency in making a determination regarding its jurisdiction and need for a Section 404 permit. In addition, Ocotillo Express LLC conducted a site visit with resource agencies, including ACOE, to discuss the approach to jurisdictional waters in 2010. ACOE determined that the OWEF would impact approximately 5.57 acres of potential waters of the U.S. subject to ACOE Section 404 jurisdiction. Ocotillo Express LLC submitted the Section 404 permit application to ACOE on May 23, 2011, and is working closely with ACOE. Ocotillo Express LLC will be responsible for complying with all permit conditions identified in the 404 permit. All plans and compensatory lands associated with the 404 permit process will be made available prior to issuance of the NTP that would result in direct impacts to jurisdictional resources. No impacts to waters will result until habitat mitigation has been obtained by the Applicant.

3.2.5 Clean Air Act Section 309

In accordance with BLM's IM 2012-003, BLM included the EPA in the EIS process for the OWEF. EPA received the Notice of Intent (NOI) on December 13, 2010 and provided written comments on the Proposed Action and the EIS/EIR preparation during the scoping process. On March 16, 2011, a comprehensive Scoping Report was published summarizing concerns received from various agencies and the public. Comments received during the scoping process were addressed in the Draft EIS/EIR. The EPA also provided timely written comments during the review period for the Draft EIS/EIR. The BLM prepared responses to EPA's comments and included them in Appendix N of the Final EIS/EIR (response to comment letter F2).

3.2.6 United States Department of Defense

The BLM coordinates with the U.S. Department of Defense (DOD) prior to approval of ROWs for renewable energy, utility, and communication facilities to ensure that these facilities would not interfere with military training routes. On May 25, 2010, the BLM received correspondence from the Department of the Navy regarding potential military mission impacts associated with the Project. The Department of the Navy requested two mitigation measures be imposed to address DOD's concerns. The first measure was to limit total turbine height to 400 feet or less in a small area along the northern edge of the Project area, due to the existence of a low-level training route north of the Project area. The second measure relates to utilization of turbine lighting that is compatible with military night-vision goggles (see Appendix C to this ROD). Ocotillo Express LLC will be responsible for complying with these requirements.

3.2.7 National Park Service

The Secretary of the Interior is responsible for protecting units of the National Park System pursuant to the National Park Service's (NPS's) 1916 Organic Act (16 U.S.C. 1, 2, 3 and 4) which consists of the Act of August 25, 1916 (39 Stat. 535) and amendments thereto. The OWEF is located near NPS properties, including approximately 4 miles west from the Juan Bautista de Anza National Historic Trail. The NPS provided written comments on the Draft EIS/EIR that focused on visibility of the Project to trail visitors. All of the comments have been addressed in the Final EIS/EIR (response to comment letter F3).

3.2.8 Consultation with State, Regional, and Local Agencies

Section 5 of this ROD lists other Federal, state, regional, and local agencies with which the BLM and/or the Applicant have consulted as part of Project planning, scoping, and public review of the EIS/EIR. The Applicant may have to obtain permits or other authorizations from other agencies or comply with requirements of other agencies that did not provide written input during the NEPA process. Those agencies include, but may not be limited to CDFG, State Water Resources Control Board (SWRCB)/RWQCB, and Imperial County.

3.2.8.1 Governor's Consistency Review

Pursuant to 43 C.F.R. § 1610.3-2, BLM must provide an opportunity for a Governor to review a proposed resource management plan, revised plan or plan amendment. The BLM State Director is required to submit a proposed plan or amendment to the State Governor for a 60-day review period, which commences with the issuance of the proposed plan amendment and EIS to the public. Although by regulation the Governor has 60 days to identify any inconsistencies with State or local plans, policies or programs and provide written recommendations to the BLM State Director as to how to address the identified inconsistencies, the BLM and the California Governor's Office have agreed to a 30-day time period for review of renewable energy based plan amendments. The proposed CDCA Plan Amendment/Final EIS/EIR was reviewed by the Governor's Office of Planning and Research. The Governor's Office found no inconsistencies between the Plan Amendment and state or local plans, policies, or programs. The Governor's Consistency Review is available as part of the Project's administrative record.

3.2.8.2 California Department of Fish and Game

The CDFG protects fish and aquatic habitats within the State of California through regulation of modifications to streambeds under Section 1602 of the California Fish and Game Code. CDFG regulates activities that could divert, obstruct, or change the natural flow or the bed, channel, or bank of any river, stream, or lake in California that the agency has designated as one that is used by or provides benefit to a fish or wildlife resource. The agency also evaluates potential impacts to vegetation and wildlife resulting from disturbances to waterways during its permitting process. If CDFG determines that a project may substantially adversely affect fish and wildlife resources, a Streambed Alteration Agreement is required. The Agreement includes reasonable conditions necessary to protect those resources and must comply CEQA. The Applicant may proceed with the activity in accordance with the final Alteration Agreement. The BLM and the Applicant provided information to CDFG to assist the agency in its determination of the impacts of the Project to streambeds, and its identification of permit and/or mitigation requirements. A Streambed Alteration Agreement between CDFG and the Applicant for the Project was fully executed on April 27, 2012. Compliance with this Agreement is a condition of the ROW grant.

3.2.8.3 State Water Resources Control Board (SWQCB)/ Regional Water Quality Control Board (RWQCB)

The SWRCB works in coordination with the nine RWQCBs to preserve, protect, enhance, and restore water quality. The RWQCBs have authority to protect surface water and groundwater under their jurisdiction. Throughout the NEPA process, the BLM and the Applicant have invited

the SWRCB and the Colorado River Basin RWQCB to participate in public scoping and workshops and have provided information to assist the agency in evaluating the potential impacts and permitting requirements of the Project. The ACOE determined that the Project site supports potential waters of the U.S.; therefore, a CWA Section 401 Water Quality Certification from the SWRCB/RWQCB will be required. Ocotillo Express LLC submitted the permit application to the SWRCB on May 17, 2011, and the agency's consideration of it is in process. As noted above with respect to the CWA Section 404, construction of the Project phase that would impact resources regulated under the 404 permit will not be authorized until the CWA Section 401 certification is obtained.

3.3 Land Use Plan Conformance

3.3.1 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. The site proposed for the OWEF includes approximately 12,436 acres of BLM-administered land in the CDCA. Goals and actions for each resource managed by the BLM are established in the 12 Elements in the CDCA Plan. Each Plan Element provides a Desert-wide perspective of the planning decisions for one major resource or issue of public concern, as well as more specific interpretation of multiple-use class guidelines for a given resource and its associated activities.

The OWEF site is classified in the CDCA Plan as MUC L. MUC L "protects sensitive, natural, scenic, ecological, and cultural resource values." Class L lands are managed to provide for generally lower-intensity, carefully controlled multiple use of resources, while ensuring that sensitive values are not significantly diminished. However, despite that general purpose, the CDCA Plan expressly states, "...electrical generation plants may be allowed" within the MUC Class L designation. Specifically, the CDCA states that wind and solar electrical generating facilities "...may be allowed [on such lands] after NEPA requirements are met." The Final EIS/EIR for the OWEF satisfies this requirement.

To accommodate the OWEF, the CDCA Plan is being amended because "[s]ites associated with power generation of transmission not identified in the Plan will be considered through the Plan Amendment process." Since the OWEF site was not identified in the Plan a plan amendment was required. As specified in CDCA Plan Chapter 7, Plan Amendment Process, there are three categories of Plan Amendments. Approval of the OWEF would require a Category 3 amendment to the CDCA Plan to accommodate a request for a specific use or activity that will require analysis beyond the Plan Amendment Decision. The CDCA Plan Amendment to designate (identify) the site of the Refined Project for wind energy generation, and to designate the balance of the lands encompassed by the original ROW application as unsuitable for wind energy generation is presented below.

3.3.1.1 Land Use Plan Amendment Analysis

The Land Use Plan Amendment is a site identification, availability and suitability decision. All land use actions and resource management activities on public lands within an MUC designation must meet the guidelines for that class. MUC L allows electric generation plants for wind energy facilities after NEPA requirements are met. These guidelines are listed in Table 1, Multiple Use Class Guidelines, in the CDCA Plan. In Class L designations, the AO is directed to use his/her judgment in allowing for consumptive uses by taking into consideration the sensitive natural and cultural values that might be degraded. The OWEF meets the MUC L guidelines for the following reasons:

Air Quality

Class L lands are to be managed to protect their air quality and visibility in accordance with Class II objectives of the federal CAA. The worst-case emissions that would be associated with the OWEF are provided in Section 4.2, Air Resources of the Final EIS/EIR. Those values were compared to emissions objectives for air quality and visibility associated with Class II areas in 40 CFR 52.51, and are all well below the limitations required for Class II areas. Therefore, the Refined Project conforms to the Class II objectives referenced in the CDCA Plan guidelines.

Water Quality

Class L designations will be managed to provide for the protection and enhancement of surface and groundwater resources and BMPs will be used to avoid degradation and to comply with Executive Order (EO) 12088. Final EIS/EIR Section 4.19, Water Resources, evaluated the alternatives for the potential to impact groundwater and surface water resources. Construction and operation of the OWEF could result in interference with groundwater recharge, soil erosion and sediment transport offsite, as well as water quality degradation. The incorporation of the BMPs and mitigation measures listed in Appendix C to this ROD will mitigate these potential impacts. Although the BLM has not established BMPs for wind projects, it has reviewed, and agrees with the implementation of the BMPs that would be associated with the Project and its alternatives. Those BMPs were derived from a variety of sources. Implementation of these BMPs and BLM's standard terms and conditions requiring compliance with other Federal, state, and local regulations, would constitute compliance with EO 12088 and conforms to the Guidelines in Table 1 of the CDCA Plan.

Cultural and Paleontological Resources

Cultural and paleontological resources were given full consideration in BLM's decision to approve the Refined Project. The MOA, provided in Appendix B to this ROD, specifically addresses compliance with 36 CFR 800 in Project construction, operation, maintenance, and decommissioning, including identification of properties listed or eligible for listing on the NRHP. The identification of the Project site was subject to the MUC Guidelines for cultural and paleontological resource protection as is evidenced by the applicability of the Guidelines to the specific facility proposal. As such, the Project and the Project site are within the MUC Guidelines for cultural and paleontological resource protection established by the CDCA Plan based on implementation of the MOA.

Native American Values

Native American cultural and religious values were identified through consultation with appropriate tribal entities and given full consideration in BLM's decision to approve the Refined Project. Repeated efforts and opportunities were provided to allow tribal entities to raise concerns regarding the Project and, as a result, the cultural guidelines with respect to requirements for consultation were met. The concerns raised are addressed in the Final EIS/EIR and the MOA included as Appendix B to this ROD. These documents acknowledge that there will be unmitigated adverse effects associated with the Refined Project; however, consistent with the applicable MUC Guidelines regarding the protection of religious and cultural values, cultural resources are preserved and protected to the extent practicable.

Electrical Generation Facilities

Wind generation may be allowed on the Project site after NEPA requirements are met. The analysis in the Final EIS/EIR, which addresses each of the Project alternatives, documents the NEPA compliance required for the purposes of this guideline.

Transmission Facilities

Class L guidelines allow electric transmission to occur in designated ROW corridors. The OWEF meets this guideline by locating new transmission interconnection facilities within an existing corridor.

Fire Management

Fire suppression will follow specific fire management plans, subject to such conditions as the AO deems necessary. The Project site is within the area covered by the BLM California Desert District and the El Centro Field Office and their relevant fire management and suppression policies, as well as by the Imperial County Fire Department.

Vegetation

Table 1 of the CDCA Plan includes a variety of guidelines associated with vegetation. These are addressed in the Final EIS/EIR as follows:

- *Native Plants:* Removal of native plants in Class L areas is only allowed by permit after NEPA requirements are met, and after development of necessary stipulations. Approval of the ROW grant for the Refined Project would constitute the permit for such removal. The mitigation measures in the Final EIS/EIR as amended by this ROD (provided in Appendix C to this ROD) and conditions of approval described elsewhere in this ROD constitute the stipulations to avoid or minimize impacts from the removal.
- *Harvesting of Plants by Mechanical Means:* Mechanical harvesting is allowed by permit only. Although the action alternatives would include the collection of special-status plant seeds to assist with reclamation, the removal of these items would not be done for distribution to the public. Also, the guidelines for vegetation harvesting include encouragement of such harvesting in areas where the vegetation would be destroyed by other actions, which would be the case with the Refined Project. Because plants would not be distributed to the public, and harvesting would conform to the guidelines, the Refined Project conforms to this MUC guideline.

- *Rare, Threatened, and Endangered Species, State and Federal:* In all MUC areas, all state and federally listed species will be fully protected. In addition, actions that may jeopardize the continued existence of federally listed species will require consultation with the USFWS. As evaluated in Final EIS/EIR Section 4.17, Vegetation Resources, no federally or state listed plants would be impacted by the action alternatives. Therefore, the Refined Project conforms to the MUC guidelines. In addition, with implementation of adopted mitigation measures Veg-1 through Veg-3 (see Appendix C to this ROD), impacts to special status plant species would be fully mitigated.
- *Sensitive Plant Species:* Identified sensitive plant species will be given protection in management decisions consistent with BLM's policy for sensitive species management (BLM Manual 6840). The objective of that policy is to conserve and/or recover listed species, and to initiate conservation measures to reduce or eliminate threats to BLM sensitive species to minimize the likelihood of and need for listing. As described in Final EIS/EIR Section 4.17, Vegetation Resources, the Refined Project may impact land supporting California Native Plant Society-identified sensitive plants, including Harwood's milk-vetch, brown turbans, deboltia, Wolf's cholla, long-lobed four o'clock, and Thurber's pilostyles. These plants are not BLM sensitive species and, moreover, the implementation of mitigation measures, including Veg-1-1 through Veg-3, would avoid or minimize impacts on vegetation resources.
- *Unusual Plant Assemblages (UPAs):* No UPAs were identified on the Project site.
- *Vegetation Manipulation:* Manipulation of vegetation in Class L areas by mechanical control or aerial broadcasting is not permitted. Vegetation manipulation is defined in the CDCA Plan as removing noxious or poisonous plants from rangelands; increasing forage production; creating open areas within dense brush communities to favor certain wildlife species; or eliminating introduced plant species. None of these actions would be conducted as part of the Refined Project. Therefore, the OWEF would conform to the guidelines.

Motorized Vehicle Access/Transportation

Pursuant to the CDCA Plan guidelines in Class L areas, new roads may be developed under ROW grants or approved plans of operations. In areas designated as limited use area for OHV use, such as the site locations under consideration for the Project, changes to the transportation network (new routes, re-routes, or closures) in Limited areas may be made through activity-level planning or with site-specific NEPA analysis (BLM IM 2008-014). The WECO plan identifies approximately 27 open routes of travel within the Project site. The segments of these routes that are within the Project site will be temporarily closed during Project construction; however, no routes will be permanently closed (see Final EIS/EIR Section 4.12, Recreation). Therefore, the Refined Project conforms to the MUC guidelines.

Recreation

The proposed OWEF site currently is used for recreation activities, including camping, off-highway vehicle (OHV) use, and recreational shooting. The site is also within four miles of the

Juan Bautista de Anza National Historic Trail (Anza Trail). During the construction period, access to portions of the Project site would be closed to the public, which would result in a temporary disruption to recreation. The OWEF would also impact recreation by altering the visual character of the Project site and may adversely impact recreational experiences along relevant portions of the Anza Trail. Implementation of mitigation measure Rec-1, as recommended by the National Parks Service, will mitigate impacts to the Anza Trail. Therefore, the Refined Project conforms to the MUC guidelines.

Wildlife Species and Habitat

Table 1 of the CDCA Plan includes a variety of guidelines associated with wildlife. These are addressed Final EIS/EIR Section 4.21, Wildlife Resources, as follows:

- *Rare, Threatened, and Endangered Species, State and Federal:* In all MUC areas, the CDCA Plan guidelines for wildlife require that state and federally listed species and their critical habitat be fully protected. Actions that may jeopardize the continued existence of federally listed species require consultation with the USFWS. As discussed in the FEIS Section 4.21, Wildlife Resources, peninsular bighorn sheep and least Bell's vireo are federally listed. As specified in the guidelines, BLM conducted formal consultation with the USFWS in accordance with ESA Section 7. As a result of the consultation, the USFWS issued a BO (see Appendix A to this ROD). As a term and condition of the ROW grant and consistent with the CDCA Plan guidelines, Ocotillo Express LLC is required to conform to all measures outlined in the BO to minimize and mitigate impacts to peninsular bighorn sheep and least Bell's vireo. Therefore, the Refined Project conforms to this guideline.
- *Sensitive Species:* Identified species would be given protection in management decisions consistent with BLM's policy for sensitive species management (BLM Manual 6840). The objective of this policy is to conserve and/or recovered listed species, and to initiate conservation measures to reduce or eliminate threats to BLM sensitive species to minimize the likelihood of and need for listing. Sensitive wildlife species, including special-status wildlife, evaluated in Final EIS/EIR Section 4.21, Wildlife Resources, include flat-tailed horned lizard, red-diamond rattle snake, rosy boa, golden eagle, American badger, and western burrowing owl. Impacts to these species were described in the Final EIS/EIS. Specific mitigation measures are included to prevent or greatly reduce impacts to these species. Therefore, the Refined Project conforms to this guideline.
- The Refined Project includes extensive mitigation to avoid and reduce adverse impacts to wildlife species. Habitat manipulation is allowed subject to environmental analysis, as is done in the Final EIS/EIR for the OWEF. Therefore, the Refined Project conforms to this guideline.
- The Refined Project does not involve the control of depredation wildlife and pests. Therefore, this guideline is not applicable to these actions.

- The implementation of mitigation measures, including Air-1, Veg-1a, Veg-1d, Veg-2a, Veg-2b, and Wild-1a through Wild-1ii, avoids or minimizes impacts of the Project on wildlife resources.

The OWEF and the site location do not impact the following public land resources or uses: Agriculture, Communication Sites, Land Tenure Adjustment, Livestock Grazing, minerals, Waste Disposal, Wetland/Riparian Areas, Wild and Scenic Rivers, or Wild Horses and Burros. Therefore, these guidelines are inapplicable to the land use plan decision being made in this ROD.

3.3.1.2 Required CDCA Plan Determinations

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

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 Final EIS/EIR was the mechanism for evaluating and disclosing environmental impacts associated with that application. No law or regulation prohibits granting the requested CDCA Plan Amendment.

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 CDCA Plan does not currently identify any unencumbered sites as wind generating facilities. Therefore, there is no other location within the CDCA that could serve as an alternative location without requiring a plan amendment similar to the one required for the Refined Project. The Refined Project does not require a change in the Multiple-Use Class for any area within the CDCA.

Determine the environmental effects of granting and/or implementing the applicant's request. The Final EIS/EIR evaluated the environmental effects of approving the CDCA Plan Amendment and the ROW grant application for the OWEF and fully discloses those impacts.

Consider the economic and social impacts of granting and/or implementing the applicant's request. The Final EIS/EIR Section 4.13 evaluated the economic and social impacts of the Plan Amendment and the ROW grant.

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. An NOI to amend the CDCA Plan was published in the Federal Register on December 10, 2010 (75 FR 77654-01). Thirty-three comment letters were received within the 30-day scoping period, which ended on February 7, 2011. Comments received during scoping are addressed in the analysis of impacts in the Draft EIS/EIR, and were also considered in the formulation of alternatives. The Draft EIS/EIR for the OWEF was distributed for public and agency review and comment on July 8, 2011. The comment period ended on October 6, 2011. A total of 405 comment letters,

including e-mails, were received. Eight comment letters were received after the close of the comment period. Responses to the comments received on the Draft EIS/EIR were provided in the Final EIS/EIR.

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 Final EIS/EIR. 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 use of public lands within the CDCA for this purpose is recognized through the CDCA Plan's approval of wind generating facilities within MUC L. The Final EIS/EIR identifies resources that may be adversely impacted by approval of the OWEF, evaluates alternative actions which 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.

3.3.1.3 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 OWEF is described below.

Minimize the number of separate ROWs by utilizing existing ROWs as a basis for planning corridors. The generation tie line and a portion of the OWEF footprint are located within two existing utility corridors, which helps minimize the number of separate ROWs as described later in this section. Electrical transmission for the Project occurs within these existing corridors.

Encourage joint-use of corridors for transmission lines, canals, pipelines, and cables. The OWEF wind generating facilities would not be within designated corridors; ancillary facilities associated with the Project would, however, be located within a designated corridor and adjacent to an existing transmission line and a new line that is currently under construction. Placement of the OWEF gen-tie in an existing designated corridor maximizes the joint-use of these corridors for electrical transmission and locates the Project's substation, maintenance facilities, and transmission switch yard in the existing corridor and adjacent to the existing transmission lines.

Provide alternative corridors to be considered during processing of applications. This decision criterion is not applicable to the OWEF. Placement of the proposed facility adjacent to existing corridors does not require designation of alternative corridors to support the Project. Also, the proposed substation's location adjacent to the transmission line limits the amount of land disturbance, linear facilities crossing the desert, and negates the need for the designation of additional transmission corridors.

Avoid sensitive resources wherever possible. The OWEF has been planned and designed to avoid sensitive resources to the fullest extent possible and the impacts to those resources is addressed throughout the Final EIS/EIR. The BLM and other federal regulations that restrict the placement

of proposed facilities, such as the presence of designated Wilderness Areas or Desert Wildlife Management Areas, were considered in the original siting process used by Ocotillo Express LLC to identify potential sites for the Project locations. The alternatives analysis considered whether the purpose and need of the Project could be achieved with a different build alternative, but with a lesser effect on sensitive resources. That analysis indicated that the alternatives would likely result in generally similar impacts as the Project. The Refined Project was developed to further reduce or eliminate impacts to sensitive resources based on public comments and information obtained during government-to-government consultations.

Conform to local plans whenever possible. The extent to which the OWEF conforms to local plans is addressed in Section 4.6 of the Final EIS/EIR. As Discussed in the Final EIS/EIR, the OWEF conforms to the Imperial County General Plan to the extent applicable. The County as the CEQA lead agency has made its determinations as to the conformity of the Project with their plans and has worked with the BLM to ensure that measures required in their plans while not required statutorily have been addressed to the fullest extent possible and the Applicant has been required to conform with those measures shown to reduce impacts to resources. A Governor's Consistency Review (dated May 1 2012 and available as part of the project record) did not identify any inconsistencies with local plans, policies or programs.

Consider wilderness values and be consistent with final wilderness recommendations. The OWEF site is not in a designated Wilderness Area or Wilderness Study Area. Additionally, the area is not located on Lands with Wilderness Characteristics as described in Section 4.15 of the Final EIS/EIR.

Complete the delivery systems network. This decision criterion is not applicable to the OWEF.

Consider ongoing projects for which decisions have been made. This decision criterion is not applicable to the OWEF. Approval of the Project would not affect any other projects for which decisions have been made.

Consider corridor networks that take into account power needs and alternative fuel resources. This decision criterion is not applicable to the OWEF. The Project does not involve the consideration of an addition to or modification of the corridor network.

3.3.2 Western Colorado OHV Routes of Travel Designation (WECO) Plan Amendment to the CDCA Plan

The WECO Plan is an amendment to the CDCA Plan that modifies previous route designations and existing routes in approximately 475,000 acres of OHV limited areas within Imperial County. Approximately 27 OHV routes designated by the WECO Plan are located within the proposed OWEF site, and construction of the Refined Project would conflict with the routes established by this plan. However, interference with these routes would be short term and temporary, as the routes would be available for public use upon completion of construction. In addition, there are several large recreation areas in the Project vicinity where the public could visit instead of the Project site, including the Jacumba Wilderness, Yuha Basin, Coyote Mountains, and Table

Mountains which are in the immediate vicinity of the Project site and consist of thousands of acres of land available for camping, hunting, and hiking. Additionally, OHV use is allowed at the Yuha Basin and the Plaster City Open Area, which are both within 10 miles of the Project site and would not be affected by construction or operational activities.

3.3.3 Utility Corridors

Approximately 9,794 acres of the Project area lie within two utility corridors, the CDCA Designated Utility Corridor N and the Section 368 Utility Corridor 115-238. The purpose of the designated CDCA utility corridors is to implement a network of joint-use planning corridors to meet the projected utility needs and concentrate the effects of energy related projects and utilities in manageable locations. The existing and approved utilities in the Project area include a transmission line, a telecommunication line, railways, and state and County roads. A Corridor Conflict Analysis (CCA) was prepared to determine the compatibility of the Proposed Action with existing BLM utility corridors and consider potential conflicts with the existing and approved utility corridors. The first part of the analysis compared the land requirements of the Proposed Action with the existing/proposed utility projects, which found a substantial amount of land available for future use. The second part of the study considered routing constraints for utilities like electrical lines and roadways. From a routing standpoint, there is a potential for spatial constraints within the two designated corridors as a result of the Proposed Action and the 481-foot setback distances from the WTGs. If these buffers are considered, they could limit options for routing of future overhead/aboveground facilities within the corridor. As such, the CCA includes the following suggestions to address the constraints within the corridors: revise the orientation of turbines to allow for linear corridors; spread out some of the turbines so they are greater than 1,100 feet apart; remove certain turbines to allow for linear corridors; and create additional, extended, or revised utility corridors. In response to the CCA, Ocotillo Express LLC revised the layout of the WTGs to provide space for future linear utility alignments adjacent to the existing Southwest Powerlink and the Sunrise Powerlink transmission lines. The revised layout, which was used to develop the Refined Project, moves the wind turbines farther away from the transmission lines and provides adequate space to allow for additional utility alignments through the Project site and, therefore, does not conflict with CDCA Designated Utility Corridor N or Section 368 Utility Corridor 115-238.

4. Public Involvement

4.1 Scoping

The BLM solicited internal and external input on the issues, impacts, and potential alternatives to be addressed for the Proposed Action, as well as the extent to which those issues and impacts would be analyzed in the EIS/EIR. Internal input was provided by BLM and cooperating agency staff through an interdisciplinary process to help define issues, alternatives, and data needs. External scoping involved notification and opportunities for feedback from other agencies, organizations, tribes, local governments, and the public. The BLM published the NOI to prepare

a land use plan amendment and an EIS for the OWEF in the Federal Register on December 13, 2010 (75 FR 77654-01),¹⁰ which began a 45-day scoping period that ended on February 7, 2011.

During that period, the BLM held public scoping meetings on January 5 and 6, 2011 in El Centro and Ocotillo, California. Approximately 170 people attended these meetings including representatives from local and state agencies, organizations, and private citizens.

In March 2011, a scoping report was released summarizing concerns raised during the public scoping meetings and summarizing comments received on the Project during the scoping period. BLM received 33 comment letters: 3 from Federal, state, and local agencies and organizations and 30 from individuals. These comments were addressed in the Draft EIS/EIR, and were considered in the formulation of alternatives. Six general categories of comments were received.

- Comments related to the Project description
- Human environment issues, including the following key issues:
 - Aesthetics/visual resources
 - Wildfire hazard
 - Wilderness and recreation
 - Land use compatibility
 - Noise
 - Cultural resources
 - Public health and safety
 - Transportation hazards
 - Public services and utilities
 - Social and Economic Conditions
 - Environmental Justice
- Biological , water, air and soils resource impacts
- Indirect and cumulative impacts, including those of other proposed energy projects in the region, in addition to all past, present, and reasonably foreseeable projects or actions within the geographic range of the Project area
- Project Alternatives
- EIS/EIR administrative and permitting issues.

4.2 Draft EIS Public Comment Period

The EPA published a NOA for the OWEF Draft EIS/EIR on July 8, 2011, in the Federal Register (76 FR 40354-02), which began a 90-day comment period that ended on October 6, 2011. A total of 405 comment letters, including e-mails, were received. Eight comment letters were received after the close of the comment period and were considered to the extent possible. In connection with the Section 106 and government-to-government processes, the Lead Agencies committed to

¹⁰ BLM issued a press release regarding the NOI on December 16, 2010. The NOI and press release also were made available to the public on BLM's website for the OWEF Project at: http://www.blm.gov/ca/st/en/fo/elcentro/nepa/ocotillo_express_wind.html.

fully consider any additional comments on the OWEF Draft EIS/EIR submitted by federally recognized Indian tribes through November 4, 2011. At their request, this commitment was extended to the Viejas Band of Kumeyaay Indians until December 9, 2011.

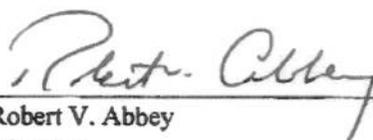
A number of the comments received on the Draft EIS/EIR discussed the same issues as those received during scoping. Additional human environment issues raised during Draft EIS/EIR review included: noise, shadow flicker, health concerns associated primarily with the operation of the wind turbines as well as loss of property values. Additional biological issues included golden eagle and condors, bats, flat tailed horned lizard, big horn sheep, and wildlife corridors. Comments also were received regarding water quantity and quality, visual impacts, and climate change. Further, commenters raised concerns regarding sacred cultural, historic, religious, and archaeological sites within the Project area and the Section 106 consultation process. All public comments on the Draft EIS/EIR were considered and addressed in the Final EIS/EIR. Responses to comments are provided in Appendix N of the Final EIS/EIR, and recurring comments common to many commenters were addressed in the common responses presented in Chapter 5 of the Final EIS/EIR.

5. Final Agency Action

5.1 Land Use Plan Amendment Decisions

It is the decision of the BLM to approve the following Amendments to the CDCA Plan to: (1) identify the Refined Project site as suitable for wind energy development; and (2) identify the remainder of the land analyzed in the 155-turbine proposed action alternative but not included in the Refined Project site as unsuitable for wind energy development. The Proposed Plan Amendment was published in the Federal Register (76 FR 21402) on March 3, 2012 as a component of the Final EIS/EIR. I have resolved all protests and, in accordance with BLM regulations 43 CFR 1610.5-2, my decision on the protests is the final decision of the DOI. Based on the recommendation of the State Director, California, I hereby approve the above described plan amendments. This approval is effective on the date this ROD is signed.

Approved by:



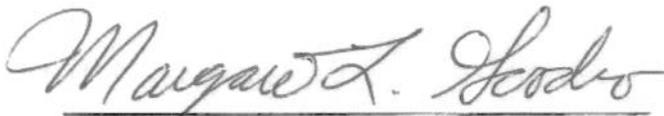
Robert V. Abbey
Director
Bureau of Land Management

5-9-12
Date

5.2 Right-of-Way Authorization

It is my decision to approve a wind energy ROW lease/grant to the Applicant, subject to the terms, conditions, stipulations, POD, and environmental protection measures developed by the DOI and reflected in this ROD. It is my further decision to temporarily close routes, as described above within the Project area subject to limited exceptions. The timing and location of specific route closures will be announced by the BLM based on the detailed construction schedule for each portion of the Project. These decisions are effective on the date this ROD is signed.

Approved by:



Margaret L. Goodro
El Centro Field Office Manager
Bureau of Land Management

5-9-12
Date

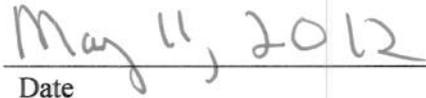
5.3 Secretarial Approval

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

Approved by:



Ken Salazar
Secretary
U.S. Department of the Interior



Date