Comment Letter C1

STATE OF CALIFORNIA — Arnold Schwarzenegger, Governor

NATIVE AMERICAN HERITAGE COMMISSION
915 CAPITOL MALL, ROOM 364
SACRAMENTO, CA 95814
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December 28, 2010

Mr. Iain Fisher
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Mr. Greg Thomsen
United States Department of the Interior
BUREAU OF LAND MANAGEMENT
22835 Calle San Juan De Los Lagos
Moreno Valley, CA 92553

RE: SCH#2009121079 Joint NEPA/EQA Notice of Completion; draft Environmental Impact Statement / Draft Environmental Impact Report (DEIS/DEIR) for the **East County Substation, Tule Wind, and Energia Sierra Juarez Gen-Tie Projects;** located in the Jacumba, Manzanita-Boulevard, Campo & Manzanita Indian Reservations Mountain Empire Region about 70 miles east of the City of San Diego; San Diego County, California

Dear Mssrs. Fisher and Thomsen

The Native American Heritage Commission (NAHC) is the state 'trustee agency' pursuant to Public Resources Code §21070 for the protection and preservation of California's Native American Cultural Resources. (Also see *Environmental Protection Information Center v. Johnson (1985) 170 Cal App. 3rd 604).* The NAHC wishes to comment on the above-referenced proposed project. C1-1

The California Environmental Quality Act (CEQA - CA Public Resources Code §21000-21177, amendment effective 3/18/2010) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the California Code of Regulations §15064.5(b)(c)(f) CEQA guidelines). Section 15382 of the CEQA Guidelines defines a significant impact on the environment as "a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ...objects of historic or aesthetic significance. The lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE), and if so, to mitigate that effect. State law also addresses Native American Religious Expression in Public Resources Code §5097.9.

The Native American Heritage Commission did perform a Sacred Lands File (SLF) search in the NAHC SLF Inventory, established by the Legislature pursuant to Public Resources Code §5097.94(a) and Native American Cultural Resources **were identified** within the Areas of Potential Effect (APE), particularly in the Jacumba area, and on and near the Campo and Manzanita Indian Reservations. Also, it is important to understand that the absence of archaeological, Native American cultural resources in an area does not C1-2

indicate that they are not present, or will be present once ground-breaking activity begins. The best way to determine whether or not the proposed project might adversely impact on Native American cultural resources is to conduct early consultation with Native American tribes and interested Native American individuals on the attached NAHC list for that purpose, in order to avoid unanticipated discoveries once a project is underway and to learn of any sensitive cultural areas. C1-2 Cont.

Enclosed a list with the names of the culturally affiliated tribes and interested Native American individuals that the NAHC recommends as 'consulting parties,' for the purpose of the project. The individuals on the attached list may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APEs). A Native American Tribe or Tribal Elder may be the only source of information about a cultural resource.. Also, the NAHC recommends that a Native American Monitor or Native American culturally knowledgeable person be employed whenever a professional archaeologist is employed during the 'Initial Study' and in other phases of the environmental planning processes. C1-3

Furthermore the NAHC recommends that you contact the California Historic Resources Information System (CHRIS) of the Office of Historic Preservation (OHP), for information on recorded archaeological data. This information is available at the Information Center at San Diego State University (619-594-5682.. C1-4

Consultation with tribes and interested Native American tribes and interested Native American individuals, as consulting parties, on the attached NAHC list, should be conducted in compliance with the requirements of federal NEPA (42 U.S.C. 4321-43351) and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 [f]*et seq.),* 36 CFR Part 800.3, .4 & .5, the President's Council on Environmental Quality (CSQ; 42 U.S.C. 4371 *et seq.*) and NAGPRA (25 U.S.C. 3001-3013), as appropriate. The 1992 *Secretary of the Interior's Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including *cultural landscapes.* Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e). C1-5

Lead agencies should consider avoidance, as defined in Section 15370 of the California Environmental Quality Act (CEQA) when significant cultural resources could be affected by a project. Also, Public Resources Code Section 5097.98 and Health & Safety Code Section 7050.5 provide for provisions for accidentally discovered archeological resources during construction and mandate the processes to be followed in the event of an accidental discovery of any human remains in a project location other than a 'dedicated cemetery'. Discussion of these should be included in your environmental documents, as appropriate. C1-6

The authority for the SLF record search of the NAHC Sacred Lands Inventory, established by the California Legislature, is California Public Resources Code §5097.94(a) and is exempt from the CA Public Records Act (c.f. California Government Code §6254.10). The results of the SLF search are confidential. However, Native Americans on the attached contact list are not prohibited from and may wish to reveal the nature of identified cultural resources/historic properties. Confidentiality of "historic properties of religious and cultural significance' may also be protected the under Section 304 of the NHPA or at the Secretary of the Interior' discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C, 1996) in issuing a decision on whether or not to C1-7

disclose items of religious and/or cultural significance identified in or near the APE and possibly threatened by proposed project activity. C1-7 Cont.

CEQA Guidelines, Section 15064.5(d) requires the lead agency to work with the Native Americans identified by this Commission if the initial Study identifies the presence or likely presence of Native American human remains within the APE. CEQA Guidelines provide for agreements with Native American, identified by the NAHC, to assure the appropriate and dignified treatment of Native American human remains and any associated grave liens. Although tribal consultation under the California Environmental Quality Act (CEQA; CA Public Resources Code Section 21000 – 21177) is 'advisory' rather than mandated, the NAHC does request 'lead agencies' to work with tribes and interested Native American individuals as 'consulting parties,' on the list provided by the NAHC in order that cultural resources will be protected. However, the 2006 Senate Bill 1059 the state enabling legislation to the Federal Energy Policy Act of 2005, does mandate tribal consultation for the 'electric transmission corridors. This is codified in the California Public Resources Code, Chapter 4.3, and §25330 to Division 15, requires consultation with California Native American tribes, and identifies both federally recognized and non-federally recognized on a list maintained by the NAHC C1-8

In the case of inadvertent discoveries of human remains, during project construction, and there are Native American burial sites within the APEs identified that have previously been reported; such discoveries must be reported to the San Diego County Medical Examiner (858-694-2905) pursuant to California Government Code §27491. Also, Health and Safety Code §7050.5, Public Resources Code §5097.98 and Sec. §15064.5 (d) of the California Code of Regulations (CEQA Guidelines) mandate procedures to be followed, including that construction or excavation be stopped in the event of an accidental discovery of any human remains in a location other than a dedicated cemetery until the county coroner or medical examiner can determine whether the remains are those of a Native American. Note that §7052 of the Health & Safety Code states that disturbance of Native American cemeteries is a felony. C1-9

Please feel free to contact me at (916) 653-6251 if you have any questions.

Sincerely,

Dave Singleton
Program Analyst

Attachment: List of Culturally Affiliated Native American Contacts

Cc: State Clearinghouse

DUDEK
605 Third Street
Encinitas, CA 92024

Native American Contacts
San Diego County
December 28, 2010

Barona Group of the Capitan Grande
Edwin Romero, Chairperson
1095 Barona Road Diegueno
Lakeside , CA 92040
sue@barona-nsn.gov
(619) 443-6612
619-443-0681

Sycuan Band of the Kumeyaay Nation
Danny Tucker, Chairperson
5459 Sycuan Road Diegueno/Kumeyaay
El Cajon , CA 92021
ssilva@sycuan-nsn.gov
619 445-2613
619 445-1927 Fax

La Posta Band of Mission Indians
Gwendolyn Parada, Chairperson
PO Box 1120 Diegueno/Kumeyaay
Boulevard , CA 91905
gparada@lapostacasino.
(619) 478-2113
619-478-2125

Viejas Band of Kumeyaay Indians
Bobby L. Barrett, Chairperson
PO Box 908 Diegueno/Kumeyaay
Alpine , CA 91903
jrothauff@viejas-nsn.gov
(619) 445-3810
(619) 445-5337 Fax

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San Pasqual Band of Mission Indians
Allen E. Lawson, Chairperson
PO Box 365 Diegueno
Valley Center, CA 92082
allenl@sanpasqualband.com
(760) 749-3200
(760) 749-3876 Fax

Kumeyaay Cultural Historic Committee
Ron Christman
56 Viejas Grade Road Diegueno/Kumeyaay
Alpine , CA 92001
(619) 445-0385

Iipay Nation of Santa Ysabel
Virgil Perez, Spokesman
PO Box 130 Diegueno
Santa Ysabel, CA 92070
brandietaylor@yahoo.com
(760) 765-0845
(760) 765-0320 Fax

Campo Kumeyaay Nation
Monique LaChappa, Chairperson
36190 Church Road, Suite 1 Diegueno/Kumeyaay
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(619) 478-9046
miachappa@campo-nsn.gov
(619) 478-5818 Fax

This list is current only as of the date of this document.

Distribution of this list does not relieve any person of statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code. Also, federal National Environmental Policy Act (NEPA), National Historic Preservation Act, Section 106 and federal NAGPRA. And 36 CFR Part 800.

This list is only applicable for contacting local Native Americans for consultation purposes with regard to cultural resources impact by the proposed SCH#2009121079; CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for the East County Substation / Tule Wind / Energia Sierra Juarez Gen-Tie Projects; draft Environmental Impact Statement / Environmental Impact Report (EIS/EIR); Lead Agencies: CPUC and BLM; San Diego

Native American Contacts
San Diego County
December 28, 2010

Jamul Indian Village
Kenneth Meza, Chairperson
P.O. Box 612
Jamul , CA 91935 Diegueno/Kumeyaay
jamulrez@sctdv.net
(619) 669-4785
(619) 669-48178 - Fax

Inaja Band of Mission Indians
Rebecca Osuna, Spokesperson
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(760) 747-8568 Fax

Mesa Grande Band of Mission Indians
Mark Romero, Chairperson
P.O Box 270 Diegueno
Santa Ysabel, CA 92070
mesagrandeband@msn.com
(760) 782-3818
(760) 782-9092 Fax

Kumeyaay Cultural Repatriation Committee
Steve Banegas, Spokesperson
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(619) 742-5587 - cell
(619) 742-5587
(619) 443-0681 FAX

Kumeyaay Cultural Heritage Preservation
Paul Cuero
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Campo , CA 91906
(619) 478-9046
(619) 478-9505
(619) 478-5818 Fax

Ewiiaapaayp Tribal Office
Will Micklin, Executive Director
4054 Willows Road Diegueno/Kumeyaay
Alpine , CA 91901
wmicklin@leaningrock.net
(619) 445-6315 - voice
(619) 445-9126 - fax

Kwaaymii Laguna Band of Mission Indians
Carmen Lucas
P.O. Box 775 Diegueno -
Pine Valley , CA 91962
(619) 709-4207

Ewiiaapaayp Tribal Office
Michael Garcia, Vice Chairperson
4054 Willows Road Diegueno/Kumeyaay
Alpine , CA 91901
michaelg@leaningrock.net
(619) 445-6315 - voice
(619) 445-9126 - fax

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Cont.

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Native American Contacts
San Diego County
December 28, 2010

Clint Linton
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cjlinton73@aol.com

Manzanita Band of the Kumeyaay Nation
Leroy J. Elliott, Chairperson
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(619) 766-4930
(619) 766-4957 - FAX

Kumeyaay Diegueno Land Conservancy
M. Louis Guassac, Executive Director
P.O. Box 1992 Diegueno/Kumeyaay
Alpine , CA 91903
guassacl@onebox.com
(619) 952-8430

Frank Brown
Viejas Kumeyaay Indian Reservation
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Alpine , CA 91901
FIREFIGHTER69TFF@AOL.
619) 884-6437

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Cont.

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Comment Letter C2

From: willie.m88@gmail.com [mailto:willie.m88@gmail.com] **On Behalf Of** William Micklin
Sent: Wednesday, January 19, 2011 2:10 PM
To: Greg Thomsen
Cc: Iain Fisher; John Rydzik; jerry.pell@hq.doe.gov; Jesse Bennett; Rica Nitka; Michael Garcia
Subject: DEIR-EIS Setbacks on Tribal Lands

Greg,

Analysis of the DEIR-EIS for the portion on the Ewiiaapaayp Indian Reservation of the Tule Wind Project and the DEIR-EIS recommendations for setbacks (see attachments) shows that the effect of the setbacks would be to eliminate 9 or the 17 turbines on tribal lands. This proposed reduction is unacceptable to the Tribe would occur even if we were to resolve the DEIR-EIS recommendation that all turbines on the tribal lands be eliminated as a conservation restriction to mitigate the potential for take of golden eagles (which is unacceptable to the Tribe as well). Although the setbacks are nominal, because the turbine site locations are on a steep and narrow ridge of the Reservation, any such setback would be impractical and would eliminate the 9 turbines. C2-1

The NEPA environmental analysis has not adequately or reasonably considered the unique governmental rights or interests of the Tribe. The Tribe is requesting the this setback be eliminated for the tribal lands. C2-2

--
Will Micklin, CEO
Ewiiaapaayp Band of Kumeyaay Indians

Legend

- Proposed Turbine
- Proposed Met Tower
- Alternate Met Tower
- Proposed Sunrise Powerlink Transmission ROW
- McCain Valley Road ROW (100ft)
- Sunrise ROW Setback (453.75 ft)
- Public Road Setback (453.75 ft)
- Property Setback (453.75 ft)
- Met Tower Property Setback (220 ft)
- Private
- State
- BLM
- USFS
- Other Federal

N

0 0.25 0.5 0.75
Miles

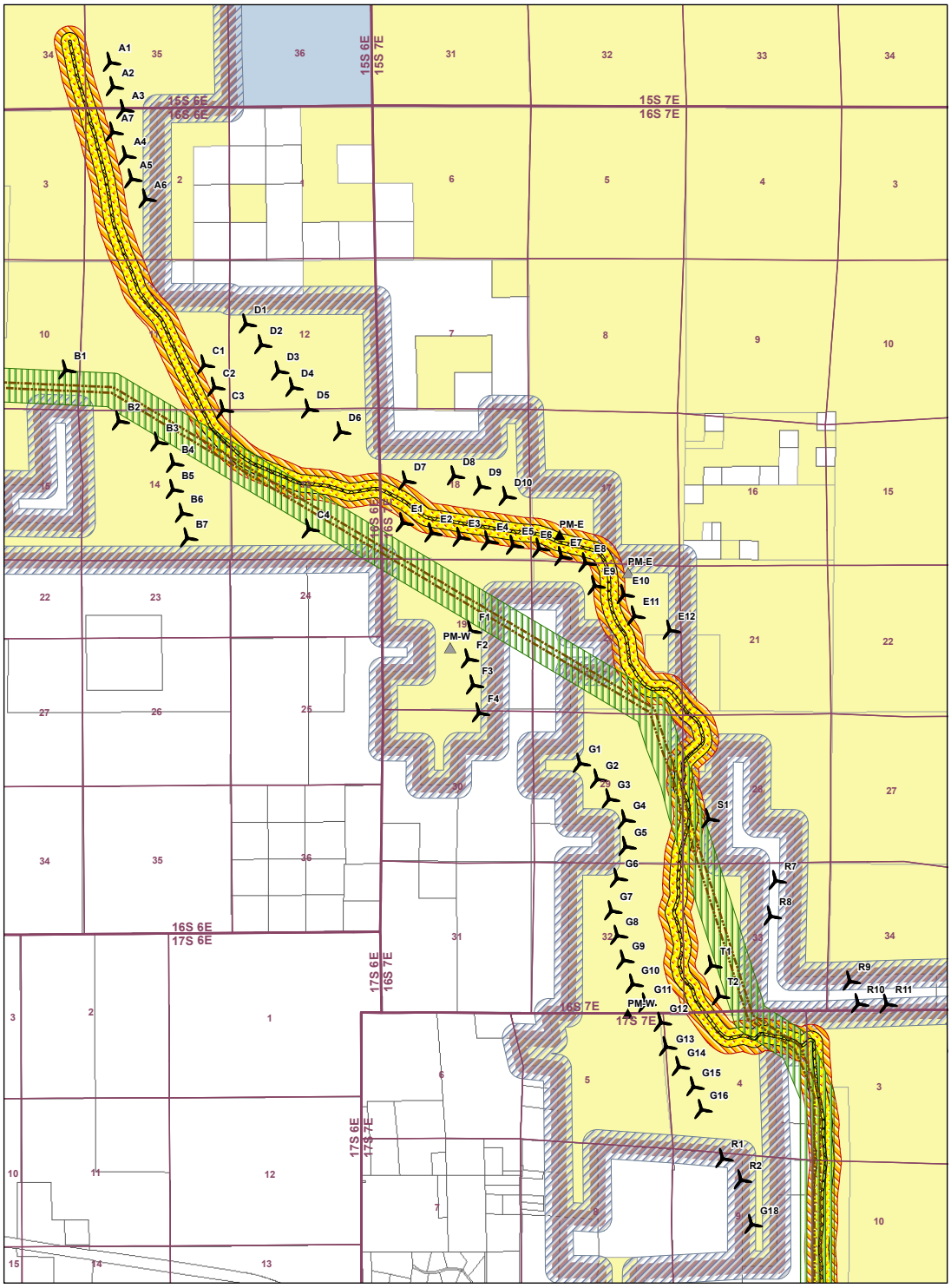
EIR Required Setbacks on the Ridge

Tule Wind Project

IBERDROLA RENEWABLES

File Name: Z:\Projects\CA\Tule\MapDocuments\O-Drive\Meetings\Setback Analysis\BLM\EIR Setbacks - Ridge.mxd

Modified Date: 1/19/2011



Legend

- Proposed Turbine
- Proposed Met Tower
- Alternate Met Tower
- Met Tower Public Road Setback (263 ft)
- Proposed Sunrise Powerlink Transmission ROW
- McCain Valley Road ROW (100ft)
- Sunrise ROW Setback (501.25 ft)
- Public Road Setback (501.25 ft)
- Property Setback (501.25 ft)
- Met Tower Property Setback (263 ft)
- Private
- State
- BLM
- USFS
- Other Federal

N

0 0.5 1 Miles

EIR Required Setbacks in the Valley

Tule Wind Project

IBERDROLA RENEWABLES

File Name: Z:\Projects\CA\Tule\MapDocuments\O-Drive\Meetings\Setback Analysis\BLM\EIR Setbacks - Valley.mxd

Modified Date: 1/19/2011

C2-3
Cont.

1.25 times the total height for wind turbines

Turbine ID	Tip Height (ft)	Setback (ft)	Conflict	Needs to Move (ft)
A1	401	501.25	No	
A2	401	501.25	No	
A3	401	501.25	No	
A4	401	501.25	No	
A5	401	501.25	No	
A6	401	501.25	No	
A7	401	501.25	No	
B1	401	501.25	No	
B2	401	501.25	No	
B3	401	501.25	No	
B4	401	501.25	No	
B5	401	501.25	No	
B6	401	501.25	No	
B7	401	501.25	No	
C1	401	501.25	No	
C2	401	501.25	No	
C3	401	501.25	No	
C4	401	501.25	No	
D1	401	501.25	No	
D2	401	501.25	No	
D3	401	501.25	No	
D4	401	501.25	No	
D5	401	501.25	No	
D6	401	501.25	No	
D7	401	501.25	No	
D8	401	501.25	No	
D9	401	501.25	No	
D10	401	501.25	No	
E1	401	501.25	No	
E2	401	501.25	Yes	30
E3	401	501.25	Yes	35
E4	401	501.25	Yes	50
E5	401	501.25	Yes	50
E6	401	501.25	Yes	50
E7	401	501.25	Yes	50
E8	401	501.25	Yes	35
E9	401	501.25	Yes	20
E10	401	501.25	Yes	60
E11	401	501.25	No	
E12	401	501.25	No	
F1	401	501.25	No	
F2	401	501.25	No	
F3	401	501.25	No	
F4	401	501.25	No	
G1	401	501.25	No	
G2	401	501.25	No	
G3	401	501.25	No	
G4	401	501.25	No	
G5	401	501.25	No	
G6	401	501.25	No	
G7	401	501.25	No	
G8	401	501.25	No	
G9	401	501.25	No	
G10	401	501.25	No	
G11	401	501.25	No	
G12	401	501.25	No	
G13	401	501.25	No	
G14	401	501.25	No	
G15	401	501.25	No	
G16	401	501.25	No	
G18	401	501.25	No	
H1	363	453.75	No	
H2	363	453.75	No	
H3	363	453.75	No	
H4	363	453.75	No	
H5	363	453.75	No	
I1	363	453.75	No	
I2	363	453.75	No	
I3	363	453.75	No	
I4	363	453.75	No	
I5	363	453.75	No	
I6	363	453.75	No	
I7	363	453.75	No	
J1	363	453.75	No	

1.0 times the total height for towers that do not contain moving parts

Met ID	Tip Height (ft)	Setback (ft)	Conflict	Needs to Move (ft)
PM-E	263	263	Yes	50
PM-W	263	263	No	
PM-X	220	220	No	
PM-X (Alt)	220	220	No	
PM-E (Alt)	263	263	No	
PM-W (Alt)	263	263	No	

C2-3
Cont.

J2	363	453.75	No
J3	363	453.75	No
J4	363	453.75	No
J5	363	453.75	No
J6	363	453.75	No
J7	363	453.75	No
J8	363	453.75	No
K1	363	453.75	No
K2	363	453.75	No
K3	363	453.75	No
K4	363	453.75	No
K5	363	453.75	No
K6	363	453.75	No
L1	363	453.75	No
L2	363	453.75	No
L3	363	453.75	No
L4	363	453.75	No
L5	363	453.75	No
L6	363	453.75	No
L7	363	453.75	No
L8	363	453.75	No
L9	363	453.75	No
L10	363	453.75	No
L11	363	453.75	No
M1	363	453.75	No
M2	363	453.75	No
M3	363	453.75	No
M4	363	453.75	No
M5	363	453.75	No
M6	363	453.75	No
M7	363	453.75	No
M8	363	453.75	No
M9	363	453.75	No
M10	363	453.75	No
M11	363	453.75	No
N1	363	453.75	No
N2	363	453.75	No
P1	363	453.75	No
P2	363	453.75	No
P3	363	453.75	No
P4	363	453.75	No
P5	363	453.75	No
Q1	363	453.75	No
Q2	363	453.75	No
R1	401	501.25	No
R2	401	501.25	No
R7	401	501.25	No
R8	401	501.25	No
R9	401	501.25	No
R10	401	501.25	No
R11	401	501.25	No
S1	401	501.25	No
T1	401	501.25	No
T2	401	501.25	No

C2-3
Cont.

Comment Letter C3

MAR 04 2011

Manzanita Band of the Kumeyaay Nation

March 2, 2011

Iain Fisher, CPUC
Greg Thompson, BLM
C/O DUDEK
605 Third Street
Encinitas, CA 92024

RE: SCH#2009121079 Joint NEPA/CEQA Joint DEIR/DEIS Public Comments for the East County Substation/Tule Wind. Energia Sierra Juarez Gen-Tie Projects

Dear Mr. Fisher and Mr. Thompson,

In response to the Draft EIR/EIS for the Tule Wind project and SDG&E East County Sub-Station, the Manzanita Band of the Kumeyaay Nation respectfully requests that the following comments and observations be duly noted in the record and taken under serious consideration prior to any action on the projects by the California Public Utilities Commission (CPUC), the Bureau of Land Management (BLM), or the United States Department of the Interior (DOI).

C3-1

As a sovereign nation, the Manzanita Tribal Government is generally in favor of renewable energy projects and understands the need for infrastructure such as transmission lines, substations, and switchyards to facilitate the delivery of renewable energy to consumers. In fact, Manzanita has, as noted in the draft EIR/EIS, a renewable energy project in the research and planning stage of development itself.

However, Manzanita takes exception to the inference in the Tule Wind / East County Sub-Station draft EIR/EIS that the CPUC has any standing whatsoever regarding the Manzanita project which is on Tribal land and therefore completely

C3-2

PO Box 1302 Boulevard California 91905 Phone (619) 766-4930 Fax (619) 766-4957

out of the jurisdiction of the CPUC. Our project will be evaluated under an EIS with the Bureau of Indians Affairs (BIA) as the lead agency.

C3-2 Cont.

With this said, the Manzanita Government would also like to read into the record that it will not support any project, and this includes but is not limited to renewable energy, transmission lines, sub-stations, and switchyards that endangers the Golden Eagle population in the region or promotes the likelihood of any negative impact on any significant cultural, historic, religious, or archaeological Kumeyaay ancestral sites in the region. This position of the Manzanita Government includes our own Manzanita wind energy project and is accorded one of our highest priorities. We will place all available resources toward defending the Golden Eagles and protecting our sacred ancestral grounds.

Based on the Tule Wind draft EIR/EIS we object to any approval or furtherance of the process toward approval of the environmental document because it lacks adequate protection for the Golden Eagle and lacks protective measures for the significant ancestral Kumeyaay sites in the project areas.

The Golden Eagle is an essential religious and spiritual co inhabitant of the land with the Kumeyaay people. This relationship dates back to before recorded time. Over the past several decades the total population of the eagles in the region has been documented as significantly declining.

C3-3

The primary reason for the decline in eagle population is due to the influx of human disturbance to and around the core nesting areas and foraging territories necessary to sustain a healthy eagle population. With development of the Tule Wind project this will further exacerbate the decline of the golden eagles not only by the proximity of the turbines to the core nesting areas, and not only by dramatically reducing the necessary foraging territory, but also by significantly increasing the access humans have into the area. All factors will further endanger an already declining eagle population. We see no viable or acceptable mitigation that will eliminate this risk. Additionally, no Avian Protection Plan is proposed or developed in conjunction with the proposed project.

We encourage the CPUC, BLM, and DOI to reject the application of the proposed project on this basis alone. The protection of the Golden Eagle as a primary cultural and religious symbol of the Kumeyaay Nation outweighs any potential benefits a wind project would provide.

In addition, the proposed projects also have no plan in place to avoid the significant and sacred cultural, historic, religious, and archaeological Kumeyaay ancestral sites in the region and doesn't address the effects of the total desecration

C3-4

of this highly important and significant cultural landscape of the Kumeyaay People.

The Kumeyaay people once roamed from the ocean to the desert of Southern California and into Northern Baja California, Mexico. Due to the development of most of this region there are few Kumeyaay ancestral sites left undisturbed. McCain Valley and the Jacumba are the last of such critically important sites.

Both McCain Valley and Jacumba have such a concentration of sites that they are to be considered archaeological districts, which are interconnected.
The proposed projects do not take into consideration the negative impacts on these last of the Kumeyaay ancestral and sacred grounds.

The proposed draft EIR/EIS has no adequate provisions to avoid the Kumeyaay ancestral districts and no mitigation will be acceptable other than complete avoidance. These are the last of the critically important areas to the original Native American inhabitants and stewards of this land. Many of these locations contain cremation of human remains as well as ceremonial and religious tribal gathering sites that date back thousands of years. There is no replacing these, which represent the last of their kind.

C3-4 Cont.

As such the Manzanita Government request that no further action by the CPUC, BLM, or DOI that would move these projects toward approval based on the fact that the detrimental impact to the Kumeyaay ancestral districts would produce irreversible harm should the proposed projects be allowed to proceed to construction.

No potential benefit of the proposed project would in any way shape or form come close to measuring up to the harm they would create, and no mitigation is acceptable other than complete avoidance of the Kumeyaay ancestral districts.

In summary, The Manzanita Band of the Kumeyaay Nation stands against any and all projects that endanger the Golden Eagles of the region and stands against any project that negatively impacts any of the last significant Kumeyaay ancestral districts left on earth.

We encourage our Kumeyaay brothers and sisters as well as other Tribal Governments to stand with us to protect the last of these sacred grounds of our forefathers. We ask you to stand with us in not only protecting the primary symbol of our cultural and religious practice, our Golden Eagles, but also encourage you to actively get involved in developing a plan to promote and increase a viable and sustainable Golden Eagle and California Condor population as the responsible stewards of the land our Creator endowed us with thousands of years ago.

C3-5

We are requesting that the Department of Interior including the Bureau of Land Management and the Bureau of Indian Affairs honor their Trust responsibility to the Kumeyaay People to protect the Golden Eagles and our ancestral, cultural, and archaeological heritage in the McCain Valley, San Diego County California.

The proposed Tule Wind project will both decimate the ancestral Kumeyaay sites in the last remaining Kumeyaay archaeological district left and create an unacceptable risk for a significant decline in an already downward spiral for a healthy golden eagle population. As such the project should summarily be rejected in its entirety. There are other viable wind energy sites that provide the same benefits without the deplorable and irreversible impacts Tule Wind creates for the Golden Eagles and the Kumeyaay Nation.

C3-5
Cont.

Sincerely,

Leroy J. Elliott

Leroy J. Elliott, Tribal Chairman
Manzanita Band of the Kumeyaay Nation

cc: Honorable Barbara Boxer Senator
Honorable Dianne Feinstein Senator
Honorable Bob Filner Congressmen
Honorable Duncan D. Hunter Congressmen
Larry Echo Hawk, Assistant Secretary of Indian Affairs
Amy Dutschke, BIA Pacific Regional Director
Bob Abbey, Director BLM
Jim Abbot, Acting Regional Director
John M Fowler, Executive Director ACHP
Nancy Brown, BLM Liaison ACHP

Comment Letter C4

From: Erlinda Paniagua <epaniagua@campo-nsn.gov>
Sent: Friday, March 04, 2011 4:05 PM
To: ECOSUB; catulewind@blm.gov
Cc: 'Monique LaChappa'; 'Melissa Estes'
Subject: Tule Wind/ECO Substation Draft EIS/EIR, CBOMI Comments
Attachments: 030311 LTR, FISHER-THOMSEN, CBOMI COMMENTS.pdf

Hello

Attached is the Tule Wind/ECO Substation Draft EIS/EIR, Campo Band of Mission Indians Comments. Thank you. C4-1

Erlinda Paniagua, Executive Assistant
Campo Band of Mission Indians

Campo Band of Mission Indians

March 3, 2011

Iain Fisher, California Public Utilities Commission
Greg Thomsen, Bureau of Land Management
c/o Dudek and Associates
605 Third Street
Encinitas, California 92024
ecosub@dudek.com
catulewind@blm.gov

RE: Tule Wind/ECO Substation Draft EIS/EIR

Dear Mr. Fisher/Mr. Thomsen:

The Campo Band of Mission Indians thanks you for providing the opportunity to comment on the Tule Wind and ECO Substation Draft EIS/EIR. This is a very large document that comprehensively address a complex project. We support the approach utilized in the document to address the Campo Band of Mission Indians (Campo Band) Wind Development Project on the Campo Indian Reservation at the programmatic level. We have very few comments about the document but do want to direct your attention to some areas. We also have substantive comments regarding the tribal cultural resource consultation process utilized by the BLM for this project. C4-1 Cont.

1. Please update your map, Figure D-2.9 to comply with the critical habitat designations finalized by the U.S. Fish and Wildlife Service identifying no critical habitat on the Campo Indian Reservation (Fed. Reg. June 17, 2009 (Volume 74, Number 115); Rules and Regulations; Page 28775-28862). The U.S. Fish and Wildlife Service (FWS) has no jurisdiction to designate critical habitat on Indian Reservation lands. C4-2

2. In several sections the document refers to the possibility that Campo Band's Environmental Protection Agency regulations (Campo EPA), statutes and codes, and the Bureau of Indian Affairs (BIA) guidance and regulations would apply to a wind development project on the Campo Indian Reservation. In 1994 the Campo Band promulgated statutes and regulations governing activities that may affect the natural environment on the Campo Indian Reservation. These environmental statutes and regulations are administered by the Campo Band Environmental Protection Agency (CEPA). The Campo Wind Energy Project would be regulated under these statutes and regulations, as well as applicable BIA regulations, policies and guidance. C4-3

3. In Table A-1 the document identifies land areas as state, private, federal, tribal. The CPUC has jurisdiction and authority over state, county, and private lands. This table should be corrected to reflect that only state, county, private, and some federal lands with a nexus to California public utilities, fall within CPUC jurisdiction. C4-4

36190 Church Rd., Suite 1 Campo, CA 91906 Phone: (619) 478-9046 Fax: (619) 478-5818

Our more substantive comments address the consultation process that the BLM utilized for tribal consultation for cultural and historic properties on federal land under the BLM's jurisdiction. We do appreciate the recent efforts by the BLM staff to discuss this issue with tribes affected by development in the project area, however we do not agree with the BLM's overall tribal consultation process. Because the BLM is the land management agency which has stewardship over a large amount of acreage historically occupied by Native American Tribes, the Campo Band of Mission Indians, as well as many of our sister tribes from the Southwestern United States and Northern Mexico, have looked to the BLM to serve as stewards of sacred ancestral sites and burial grounds. Ancestors of the Kumeyaay Indians, including the Campo Band of Mission Indians, occupied these lands for 1000's of years and many generations. Current generations of Kumeyaay still visit these sacred sites to perform spiritual ceremonies, worship their ancestors, and practice their religion. Without adequate notice, the BLM must have carried out a process to change the designation of these lands to allow for rapid economic development. We were unaware that the stewardship of these lands had drastically changed, and were shocked and dismayed to learn of the number of renewable energy development projects currently identified for construction on BLM lands. The number of projects and the speed at which these projects are proceeding through the review process has overwhelmed our ability to adequately review the impacts of the projects and their accompanying destruction of sacred sites.

C4-5

We are requesting that the BLM develop and perform a more adequate consultation process with all the Indian Tribes who have an interest in the cultural and sacred sites located on all the BLM lands in the United States. For many generations, Indian Tribes believed the BLM would be suitable stewards of Indian ancestral lands, allowing access for spiritual and religious purposes, protecting sacred gravesites, and minimizing destruction and disruption of these sacred sites. Instead, the BLM has proceeded hastily to make changes in its land use policies and designations, leading to massive construction and subsequent destruction of many sacred sites. These sites will be lost forever, after generations of preservation and spiritual and religious use. We request that the BLM re-consider its renewable energy portfolio on all BLM lands, and initiate a more comprehensive consultation process with all Indian Tribes, especially with all Tribes specifically affected by this project. We look forward to renewing our trust in the BLM as suitable stewards of historic ancestral lands.

Once again, thank you for the opportunity to provide comments on this document. We look forward to seeing the Final EIS/EIR.

Best regards,

Monique LaChappa
Chairwoman
Campo Band of Mission Indians

Comment Letter C5

From: William Micklin <wmicklin@leaningrock.net>
Sent: Thursday, March 03, 2011 2:05 PM
To: ECOSUB; catulewind@blm.gov
Cc: William Micklin; Iain Fisher; Greg Thomsen; Michael Garcia
Subject: Ewiiaapaayp Comments to DEIR/EIS
Attachments: Ewii Comments1 Tule DEIR-EIS 030311.pdf; Ewii Comments2 Tule DEIR-EIS 030311.pdf

Importance: High

Please find the attached comments of the Ewiiaapaayp Band of Kumeyaay Indians to the Tule Wind (DOI-BLM-CA-D070-2008-0040-EIS) portion of the DEIR/EIS East County Substation/Tule Wind/Energia Sierra Juarez Gen-Tie Projects. The Tribe's comments are to the Joint DEIR/DEIS that addresses Pacific Wind Development's application to build and operate the Tule Wind Project. The Tribe's comments are submitted as two PDF files.

Will Micklin, CEO
Ewiiaapaayp Band of Kumeyaay Indians
4054 Willows Road
Alpine, CA 91901
Tel: (619) 368-4382
Email: wmicklin@leaningrock.net

Ewiiaapaayp Tribal Office

Ewiiaapaayp Band of Kumeyaay Indians

4054 Willows Road
Alpine, CA 91901
TEL: (619) 445-6315
FAX: (619) 445-9126
E-mail: wmicklin@leaningrock.net

VIA Email & USPS:
ecosub@dudek.com (CPUC project email)
catulewind@blm.gov (BLM project email)

March 3, 2011

Iain Fisher, CPUC/Greg Thomsen, BLM
c/o Dudek
605 Third Street
Encinitas, California 92024

SUBJECT: Comments to Joint Draft Environmental Impact Report, Draft Environmental Impact Statement (DEIR/DEIS), East County Substation/Tule Wind/Energia Sierra Juarez Gen-Tie Projects

The following are the comments of the Ewiiaapaayp Band of Kumeyaay Indians to the Joint Draft Environmental Impact Report/Draft Environmental Impact Statement (DEIR/DEIS) under the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) for consideration of Pacific Wind Development's application to build and operate the Tule Wind Project, referred to collectively with the ECO Substation Project and ESJ Gen-Tie Project as the Proposed PROJECT in the Joint DEIR/DEIS.

The Tribe shares the goals of the Department of Interior and the Bureau of Land Management and the Fish and Wildlife Service to responsibly site renewable energy projects while implementing necessary and reasonable measures to protect the human and natural environment in accordance with the intent of applicable regulation. The Tribe's historical and cultural, and successful, stewardship of its environment is evidences by its unspoiled tribal lands. Our tribal government once more, as in times past, re-balances the needs of our tribal residential community and our need to establish a tribal economy through development of the Tribe's only commercially viable natural resource, its wind. While few governments have matched our resolve to protect our tribal environment, as evidenced by the beauty of the Ewiiaapaayp Indian Reservation, our community has no employers, no commercial taxpayers and no jobs to offer our tribal citizens. The Tribe's participation in the Tule Wind Project is essential to our tribal citizen's welfare. We have been proactive in seeking solutions to common issues and improving siting practices with federal agencies who are also stakeholders in the Tule Wind Project.

C5-1

In response to the Joint Draft Environmental Impact Report, Draft Environmental Impact Statement (DEIR/DEIS) Tule Wind Project documents released by the Bureau of Land Management, the Tribe reviewed the details and herein provides comments. Based on our review, we strongly disagree with critical elements of the DEIR/EIS. In particular, we are

shocked that our trustee, who is charged with protected our interests as trust beneficiary arising from the federal-tribal trust relationship established by the U.S. Constitution, treaties, public laws, regulations and court precedent, in the DEIR/EIS preferred alternative 5 proposes to remove the Project from the Tribe's Reservation lands and thereby reduce the benefit to the Tribe to zero. We are further concerned this alternative's removal of the most productive of the wind turbines may likely make the Project financially infeasible. The Tribe is concerned that flawed analyses result in the misapplication of type I impacts to direct and indirect effects, and conservation measures proposed are so costly as to jeopardize the commercial viability of the overall Project. These measures are unreasonable for a project that has few, and we contend no, Class 1 significant adverse environmental impacts, and none that cannot be mitigated.

Because this DEIR/EIS is likely to serve as a precedent for other similar projects, and unless a rationale response is provided by the forthcoming record of decision, the current severe regime of conservation restrictions will become a standard that would remove the flexibility necessary to allow governments and the renewable energy industry to site wind projects in a manner that is both effective in protecting the environment while continuing to achieve the shared national goal of promoting the responsible yet financially feasible goal of developing clean, renewable wind energy benefitting the American rate-payer. Further, the Tribe is concerned that a precedent would be established for the inappropriate imposition of unreasonable conservation restrictions on sovereign tribal governments and their tribal lands by agencies of the federal government who have no jurisdiction over tribal lands. The end result for the general public would be fewer, smaller and more expensive renewable energy projects, and for the Tribe, the loss of its sole economic opportunity.

C5-1 Cont.

All human activity has an impact on the natural environment. The governments of the Tribe, the United States and the state of California government have established a goal of renewable energy production and associated environmental processes intended to find a balance in protecting the human environment in a way that responds to and balances the energy and environmental needs of our citizens. These governments' voters and legislators have established a policy that wind energy represents the best solution for achieving that goal. Current post-construction survey data collected from wind facilities in this and other countries, and ensuing scientific studies, clearly shows that today's modern wind industry is not having an adverse significant impact on sensitive wildlife or their habitats, and that the impacts that are documented are not only mitigated and offset by the benefits of wind energy, but are insignificant when compared to other forms of energy production. Indisputably, wind energy is the most environmentally-friendly means of generating electricity. Wind energy projects displace emissions of air toxins, greenhouse gases, and other pollutants from fossil fuel energy projects that threaten wildlife and the natural environment and are a far greater threat to wildlife and their critical habitats than any potential impact of wind energy projects, including the Tule Wind Project.

As a final comment, the Tribe wishes to plainly state that the California Public Utility Commission ("CPUC") or the State of California has no jurisdiction over the Tribe's tribal lands within the context of this Project or its environmental review. The language of the DEIR/EIS

was somewhat careless is mixing references to the CEQA EIR and the Tribe's tribal lands, so we thought best to alleviate any potential confusion with this plain statement of fact.

The Tribe requests the record of decision arising from the DEIR/EIS permit the Tule Wind Project proponent to construct this project as proposed by the Project proponent without reduction in wind turbines or further delay.

Please find attached the Tribe's detailed comments to the draft document. Should you have any questions, please contact the Tribe's Chief Executive Officer, Mr. Will Micklin. Thank you.

C5-1 Cont.

Sincerely,

Robert Pinto Sr

Robert Pinto, Sr. Tribal Chairman
Ewiiaapaayp Band of Kumeyaay Indians

EWIIAAPAAYP BAND OF KUMEYAAY INDIANS COMMENTS TO THE JOINT DRAFT DEIR/EIS

The Ewiiaapaayp Band of Kumeyaay Indians (the "Tribe") hereby submits its comments to the Joint Draft Environmental Impact Report/Draft Environmental Impact Statement (DEIR/DEIS) under the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA) for consideration of Pacific Wind Development's application to build and operate the Tule Wind Project, referred to collectively with the ECO Substation Project and ESJ Gen-Tie Project as the Proposed PROJECT in the Joint DEIR/DEIS.

The Ewiiaapaayp Band of Kumeyaay Indians is a federally recognized tribal government. The Tribe's Ewiiaapaayp Indian Reservation was reserved from original tribal lands in 1891 with additions that established today's 4,542-acre East area and the 10-acre West area of the Reservation.

The Tribe cannot support the Project alternative 5 recommended by the Bureau of Land Management referring to Tule Wind Project Tule Reduction in Turbines Alternative or the adaptive management plan, turbine setback or fire guidance.

Unfortunately, the preferred alternative and conservation restriction guidance recommended in the draft documents by the BLM deviates significantly from the consensus recommendations in wind project environmental studies. Among other problems with the alternatives and guidance as recommended, it would:

C5-2

- Terminate the portion of the Tule Wind Project beneficial to the Ewiiaapaayp Band of Kumeyaay Indians by reducing all turbines on the Ewiiaapaayp Indian Reservation, and possibly the entire Tule Wind Project by reducing approximately half of the proposed turbines.
- Delay construction of Tule Wind Project by up to three years, and require operating projects to retroactively conduct post-construction wildlife studies for five years, adding unforeseen costs to the operating budgets of these facilities.
- Accept golden eagle impacts as type 1 and unmitigable despite the facts that the project area is not suitable foraging or nesting habitat.
- Requires golden eagle baiting with animal carcasses for the purpose of capture and release with monitoring devices that has the potential to lure golden eagles to the project area that would otherwise not be in the area (despite the baiting, no golden eagles have been sighted in the project area despite persistent attempts).
- Require "adaptive management", which could include operational changes, such as shutting off turbines at certain times of the year, which will add further unquantifiable costs and severely diminish operating revenues.
- Accept noise and vibration impacts as type 1 and unmitigable without any peer-reviewed scientific evidence that sound related to the construction and operation of wind farms has the potential to impact wildlife.

- Accept fire and fuels management impacts as type 1 and unmitigable without any peer-reviewed scientific evidence that the project reduces firefighter effectiveness and that ignores the improvements to firefighter effectiveness provided by the project.
- Greatly expand applicability under the National Environmental Policy Act (NEPA) to projects built on tribal lands under tribal jurisdiction, adding time and costs to developing wind projects, when there is insufficient federal staff to perform this vastly increased amount of administrative work.

The draft document's preferred alternatives effects severe environmental constraints on the backs of the Ewiiaapaayp Band of Kumeyaay Indians, a Tribe without other economic development opportunities on a Reservation without electricity, community water or waste water systems, telephone or cellphone or radio, or adequate roads. In establishing this inappropriate standard as a precedent, the BLM threatens the nation's ability to meet the renewable energy targets set forth by the President and the Congress.

Indian tribes have a long history of being proactive on environmental issues. Indian reservations are often islands of environmental purity surrounded by polluted lands bereft of wildlife that have been ravaged by residential and commercial development. Environmental regulatory agencies, like the BLM, often attempt to constrain development on Indian reservations as mitigation for non-tribal development. The Ewiiaapaayp Band of Kumeyaay Indians' east area of its Reservation scale has tipped 100% towards environmental preservation simply because it has had no resources for development until a wind energy project became feasible. Now that the Tribe wishes to re-balance towards economic develop for the benefit of its citizens, the BLM wishes to sacrifice the Tribe's welfare by preventing development on tribal lands in order to mitigate the impact of development on non-tribal lands.

C5-2 Cont.

Pacific Wind, the project proponent, volunteered to fund millions of dollars worth of wildlife research and mitigation, and agreed to fund a habitat conservation plan. The Tribe contributes to this through its diminished share of revenues lessened by expense of these costly, if not excessive, mitigation measures. Mitigation should be based upon science and not simply be recommended as the most restrictive and costly environmental measures available without considering the cost to the renewable energy benefits of this project and others that will use this project as a benchmark.

Wind energy projects are far less harmful to birds than communication towers, tall buildings, airplanes, vehicles, cats, and numerous other human-caused threats including the conventional energy sources that wind power displaces (http://www.fws.gov/habitatconservation/windpower/wind_turbine_advisory_committee.html). Wind turbines are estimated to cause fewer than three out of every 100,000 human-related bird deaths in the U.S., and will never cause more than a very small fraction of bird deaths no matter how extensively wind power is used in the future ("A Summary and Comparison of Bird Mortality from Anthropogenic Causes with an Emphasis on Collisions," USDA Forest Service, 2005, http://www.fs.fed.us/psw/publications/documents/psw_gtr191/Asilomar/pdfs/1029-1042.pdf).

According to a study by the New York State Energy Research and Development Authority (NYSERDA), non-renewable energy sources "pose higher risks to wildlife" in the New York/New England region than renewable sources, and coal "is by far the largest contributor" to wildlife risks ("Comparison Of Reported Effects And Risks To Vertebrate Wildlife From Six Electricity Generation Types In The New York/New England Region," NYSERDA, March 2009, http://www.nyserda.org/publications/executive summary report.pdf). The study, which examined coal, oil, natural gas, nuclear, hydroelectric and wind power, found that wind was the only source that did not present population-level risks to birds.

C5-2 Cont.

The Tribe cannot support the draft document's preferred alternatives as currently drafted. The Tribe requests that the record of decision permit the Tule Wind Project to be constructed as proposed by the Project proponent without any reduction in wind turbines or delay.

C5-3

The Tribe's detailed comments follow below.

DETAILED COMMENTS

Executive Summary

Tule Wind Project (page ES-6).
The Tule Wind Project should be permitted to proceed as proposed by Pacific Wind Development.

C5-3 Cont.

Project Alternatives
ES.5.2.2 Tule Wind Project Alternatives, Tule Wind Alternative 5, Reduction in Turbines (page ES-16).
This Tule Wind Alternative 5 should be eliminated. It would eliminate all turbines on the Ewiiaapaayp Indian Reservation, and therefore all benefits, and likely threaten the financial viability of the entire project.

Summary of Environmental Analysis
ES.6.2 Tule Wind Project (page ES-20-21).
The proposed elimination of 17 turbines would be on tribal land, and of the total reduction of 62 turbines only 11 turbines would be removed from state of California lands. Section ES.6.2's application of California Environmental Policy Act ("CEQA") to tribal and federal lands is inappropriate as such lands are subject to tribal environmental law and the National Environmental Policy Act ("NEPA") respectively.

The draft document inappropriately determines as significant and unmitigable (Class I) impacts the following issues areas: biological resources (bird/golden eagle strikes with turbines), visual resources (impacts to scenic vistas, existing visual character, light/glare, and inconsistency with policies/plans), cultural resources (potential adverse change to traditional cultural properties), short-term construction noise and air emissions, and wildland fire and fuels management. These impacts are Class II and mitigable to less than significant impacts; and are, in fact, mitigated by measures proposed by the project applicant, Iberdrola (see D.2.3.2 Applicant Proposed Measures, Tule Wind Project).

C5-4

The Table ES-4, the Tule Wind Alternative 5, Reduction in Turbines, is combined by BLM with the Tule Wind Alternative 2, Gen-Tie Route 2 Underground with Collector Substation/O&M Facility on Rough Acres Ranch, as the alternative that "would cause the least environmental impact." (page ES-21, ¶ 1). There is no peer-reviewed scientific study offered to support this claim, and it should be replaced with the development of the project as proposed by the applicant.

The BLM claims, again without support, that "Class I impacts to golden eagles would be reduced with the removal of turbines within areas considered high risk of any known active golden eagle nest…the risk of mortality due to collision with operating turbines by golden eagle remains adverse and unmitigable due to the fact that the remaining turbines would continue to present

C5-5

risk, albeit with lower risk of collision to golden eagles foraging in the vicinity of the project." BLM should re-classify the project's impact as Class II for the project as proposed by the applicant without any reduction in turbines in recognition of the mitigation measures offered by the project applicant.

The draft document recognizes that the Reduction in Turbines Alternative "would remove the 17 turbines proposed on the Ewiiaapaayp Indian Reservation; thereby affecting the Ewiiaapaayp Band of Kumeyaay Indians' wind and solar energy resources policies to develop renewable energy projects to serve economic and social needs of the reservation." Yet this devastating impact on the Tribe is nothing more than a footnote and viewed as acceptable to the BLM. Such a cursory disposal of the Tribe's interests is unconscionable and should not be the policy of the Department of the Interior, who is the trustee of the Tribe's interests.

The Reduction in Turbines Alternative also means "27 turbines would be removed from lands administered by the BLM, 7 turbines would be removed from lands administered by the CSLC, and 11 from lands under the jurisdiction of the County of San Diego." Yet the BLM does not consider that this reduction in turbines may well mean the project is not financially feasible for the applicant, Iberdrola, and could cause its termination. Yet the draft documents determines the No Project Alternative as undesirable because "[w]ithout the Tule Wind Project, approximately 200 MW of proposed renewable energy production would not be developed on lands in the southeastern portion of San Diego County… thereby negatively affecting the region's ability to meet California's renewable portfolio standard (RPS) program and associated Executive Order requirements to increase renewable energy and reduce greenhouse emissions, [therefore] it was determined not to be environmentally superior or preferable." (ES.6.2, page ES-22, ¶ 1). The BLM apparently cannot connect the dots that a reduction of the project by 62 of 134 turbines, including the 17 turbines on the Tribe's Reservation that produce approximately 25% of the total electricity produced by the Tule Wind Project, may well cause the termination of the project. If the No Project Alternative is determined by BLM "not to be environmentally superior or preferable", then the Reduction in Turbines Alternative that may well cause there to be no project is also not environmentally superior or preferable.

C5-5 Cont.

ES.7.2 BLM-Preferred Alternative

The BLM's preferred alternative per NEPA requirements and pending public comment on the Draft EIS for the Tule Wind Project component is the Tule Wind Alternative 5, Reduction in Turbines, combined with Tule Wind Alternative 2, Gen-Tie Route 2 Underground with Collector Substation/O&M Facility on Rough Acres Ranch, which conclusion is based on the analysis presented in Sections D.2 through D.18. The Tribe's recommendation and request is the record of decision instead permit the full construction of the Tule Wind Project as proposed by its applicant, Iberdrola, as described on page ES-6.

ES.8 Issues to be Resolved

The Tribe proposes the U.S. Fish & Wildlife Service (USFWS) consultation under Section 7 of the Endangered Species Act for the Tule Wind Project be deemed satisfied by the EIS, as well as

the USFWS determination of consistency with the Bald and Golden Eagle Protection Act, the Section 106 consultation with the Office of Historic Preservation, and federal fire agency approval of applicant prepared Fire Protection Plans. The Tribe also requests the record of decision accept the project proponent's Applicant Proposed Measures (APMs) TULE-BIO-1 through TULE-BIO-21 to reduce impacts to biological resources (see Section B.4.4, Tule Wind Project Applicant Proposed Measures) instead of the BLM's adaptive management plan. C5-5 Cont.

B. Introduction

A.4.2 Statement of Objectives

The Statement of Objectives (A.4.2), which includes the project applicant's objectives (A.4.2.2 Proponents' Objectives) for the Tule Wind Project, fails to include the Ewiiaapaayp Band of Kumeyaay Indians' objectives. The Tribe is both a governmental entity with legal/regulatory jurisdiction and a stakeholder in the project as a lessor of tribal lands to the project applicant and proponent. While the California Public Utility Commission (CPUC) is provided project objectives (A.4.2.1), as well as Iberdrola (A.4.2.2), the Tribe is inequitably denied inclusion of its governmental objectives. These objectives should be included in this section and included as defined goals and objectives to be considered under the NEPA process. These objectives are vaguely described in Section A.3.2 Ewiiaapaayp Band of Kumeyaay Indians Project Purpose. A proper description would be: Accommodate delivery of renewable energy to meet tribal (i) renewable energy goals and (ii) economic development goals from wind and solar sources on the West area of the Ewiiaapaayp Indian Reservation. C5-6

C. Alternatives

C.1 Alternatives Development and Screening Process, NEPA Requirements.

NEPA's rule of reason is not satisfied by the Reduction in Turbines Alternative. It is not an alternative "necessary to permit a reasoned choice" (C.1, page C-1, ¶ 2) when it is without the support of peer-reviewed scientific studies in determining Class I impacts and is inconsistent with the objectives of the Tribe and the state and federal governments, including the potential to terminate the Tule Wind Project when the BLM determined a no project alternative is not preferred or desirable.

These potential outcomes resulting from the Reduction in Turbines Alternative violates the alternatives screening methodology described in C.2 as the alternative does not "meet most of the Proposed PROJECT's basic objectives and fulfill the BLM's project purpose and need as provided in Section A of this EIR/EIS", especially if the Tribe's objectives are included as should be; the alternative is not feasible as it removes so many turbines as to make the project infeasible, including the Tribe's 17 turbines that produce approximately 25% of the projects total electricity production; and the alternative does not "avoid or substantially lessen environmental effects of the Proposed PROJECT" as not peer-reviewed scientific studies support the Class I impact determination and the project area, including the tribal lands, are not suitable foraging or C5-7

nesting habitat for the golden eagle, and, even though takes are unlikely, any potential take will not jeopardize the species.

C.2.1 Consistency with Project Objectives
The Tribe's project objectives should be included in the list of project objectives as: Accommodate delivery of renewable energy to meet tribal (i) renewable energy goals and (ii) economic development goals from wind and solar sources on the West area of the Ewiiaapaayp Indian Reservation.

C.4.2.5 Tule Wind Alternative 5, Reduction in Turbines
The BLM presents no analysis for its brazen conclusion that "[a] reduction in turbines as proposed would meet project objectives criteria, is considered feasible, and is consistent with the purpose and need as set forth in Section A; therefore, this alternative is considered a reasonable alternative in this EIR/EIS." There is no financial analysis that a reduction in 62 of 134 turbines leaves a financially viable project. Nor any analysis that eliminating the 17 turbines on the Tribe's lands that produce 25% of the electricity projected to be produced by the 134 turbines results in a financially viable project. That means that the project proponent's revenues would be only 75% or the projected total, yet the expenses are reduced to only 87.32% of the projected total. This mismatch of revenues and expenses is excessive. Nor does BLM consider that the elimination of the Tribe's entire interest in the project meets the Tribe's objectives. Nor does BLM consider the excessive and costly environmental conservation restrictions and excessive studies add a disproportionate cost burden for the project proponent while significantly reducing project revenues by the reduction in turbines. Overall, this alternative has the potential to result in no project, which the BLM determined is not desirable or preferable.

C5-7 Cont.

D. Biological Resources

The following determination of the BLM is the foundation for the draft document's Reduced Turbine Alternative and its proposed Adaptive Management Plan regarding golden eagles: "Although golden eagle use of the Tule Wind Project area was very low based on point count surveys, the presence of an active golden eagle nest at the Canebrake location indicates that golden eagles are using a foraging area in the vicinity of the northern portion of the project area. Therefore, there would be an increased risk of collision for golden eagle in the northern portion of the project area than would be estimated from the bird use data alone. [emphasis added] A low risk of collision for golden eagle in the southern portion of the project area would be estimated based on increased distance to active nests and low bird use. (page D.2-177-178, ¶ 1) The Tribe is extremely concerned that the preceding statements of fact do not support this determination, as follows:

C5-8

"Typically, the denser forms of chaparral habitat [as found on the Tribe's Reservation] are not suitable for foraging of golden eagle. Suitable nesting habitat (i.e., cliffs) is not known within the Proposed PROJECT area;…" (Page D.2-45, ¶ 2)

Golden Eagle. There were three observations of golden eagles during the avian survey in fall 2007 and spring 2008 (Tetra Tech EC, Inc. 2009). Two of the observations were during point count and one was an incidental observation. No nests were observed during that survey and overall the observations of golden eagles were low relative to the survey effort. (Page D.2-88, ¶ 5).

"The Canebrake location is approximately 0.1 mile west of the northern portion of the Tule Project. The Moreno Butte location is approximately 10 miles southwest of the project. The Glenn Cliff/Buckman Springs location is approximately 8 miles west of the central portion of the project. The other active territories, located at Garnet Mountain, Monument Peak, and Thing Valley, are approximately 8, 5, and 5 miles west or northwest of the Tule Wind Project, respectively. There are no CNDDB records of this species within the Mount Laguna, Sombrero Peak, Live Oak Springs, and Jacumba quadrangles where the project area is located. The San Diego County Bird Atlas corroborates the above description with active breeding locations located southwest and northwest of the project site as well as nesting locations located farther east within the Carrizo Gorge area (Unitt 2004)." (Page D.2-89, ¶ 2-3)

"Golden Eagle. This species has high potential for foraging based on suitable foraging habitat in the project area. [This conclusion is not supported by studies nor by the succeeding findings] This species is not expected to nest in the ESJ Gen-Tie Project area due to lack of habitat; however, there could be territories located within the vicinity. This species was not observed during the 2008 surveys (EDAW 2009) and there are no CNDDB records within the In-Ko-Pah Gorge quadrangle. In spring 2010, Wildlife Research Institute conducted a golden eagle helicopter survey within a 10-mile radius of the proposed Tule Wind portion of the project, which also included the ESJ Gen-Tie Project area (WRI 2010). Within 10 miles of the ESJ Gen-Tie project area, the survey found three golden eagle territories, none of which were currently active. The territories are generally located at Table Mountain with five nests, Carrizo Gorge with four nests, and Boundary Peak, which, as a historical territory, had no nests. The Table Mountain location is approximately 3 miles north of the project. The Carrizo Gorge location is approximately 8 miles north of the project. The Boundary Peak territory is approximately 10 miles west of the western portion of the project. All of these territories, except Boundary Peak, were documented to be active within the past 2 to 3 years. Because the survey was conducted at the end of March, some of the eagle pairs may have already attempted and failed at nesting for the 2010 breeding season (WRI 2010)." (Page D.2-105, ¶ 3)

C5-8 Cont.

"Collision risk is the number of collision fatalities for a species or group of species divided by the number of individuals of that species or group in the zone of risk (area where the species can travel through and be exposed to the collision factor) (USFWS 2009a). USFWS acknowledges that direct, quantitative estimates of individual, group, or population collision risk is difficult and—usually beyond the scope of wind energy project studies due to the difficulties in evaluating these metrics (2009a); therefore, collision risk estimates are typically qualitative and utilize comparisons among existing wind energy projects and/or design alternatives. USFWS states that the —assessment of risk should synthesize sufficient data collected at a project to

estimate exposure and predict impact for individuals and their habitat for the species of concern, with what is known about the population status of the species, and in communication with the relevant wildlife agency and industry wildlife experts‖ (2009a)." These statements regarding collision risk are erroneous. Collision risk is quantifiable. The Tribe previously provided the BLM with material regarding the High Probability of Collision Avoidance for the Tule Wind Project for the turbines on tribal lands, as follows:

> In the unlikely event that the nest abandonment or displacement of golden eagles due to unsuitable foraging habitat or windfarm operation is less than 100% then golden eagles may be at an unquantified risk of colliding with the proposed turbines. Previous studies on golden eagles the scale and causes of mortality elsewhere, e.g. at Altamont Pass Wind Resource Area (WRA)(Thelander et al. 2003, Smallwood & Thelander 2004, 2008), Tehachapi Pass WRA (Anderson et al. 2004, Erickson et al. 2002), San Gorgonio WRA (Anderson et al. 2005, Erickson et al. 2002) and Foote Creek Rim (Johnson et al. 2000, Erickson et al. 2002, Young et al. 2003a, b). Whitfield (2009) found that golden eagles' ability to avoid collisions with turbine rotors was similar to that of other raptor species (Whitfield & Madders 2006a, b) but lower than estimates for geese (Fernley et al. 2007) and waders (shorebirds) (Whitfield 2007). However, there is evidently much variation in risk between windfarms, presumably as a result of differences in eagle abundance, flight behaviour and the technical specification of turbines.
>
> The "Proposed Windfarm at Volovja Reber - An independent appraisal of the likely effects on golden eagles", Dr Michael Madders, Natural Research Ltd, 01 June 2009, states, "Quantitative assessment of golden eagle collision risk demands empirical data on flight activity per unit area and time. These data can only be generated from time-budget data gathered during systematic surveys covering the entire turbine array over the calendar year. In other words, to construct a collision risk model one must first be able to reliably estimate how many seconds per year eagles spend flying within the volume of air swept by the turbine rotors." No such information is presented in the Draft EIR/EIS Study to suggest that such surveys have been undertaken as part of the baseline assessment. While collision risk is assumed to be proportional to the amount of flight activity at turbine rotor height, there is a large discrepancy in the levels of activity, and this conclusion is consistent only with the expectation that the proposed development site provides critical resources, and is located close to nesting sites. The area of turbines closest to the Thing Valley GOEA nest does not provide critical resources (i.e., suitable foraging habitat) and is not close to the nest. Therefore, one cannot conclude that flight activity is high near the Project turbines or that collision risk is high, which collision risk is proportional to the (unknown) amount of flight activity at rotor turbine height. Therefore, based on the information currently available, it is not possible to undertake a meaningful evaluation of collision likelihood.
>
> However, a comparative study of previous golden eagle collision studies and collision risk models is available in "Collision Avoidance of Golden Eagle at Wind Farms under

C5-8 Cont.

the "Band" Collision Risk Model", D.P. Whitfield, March 2009), states, "Avoidance rate estimates for golden eagles varied between 98.64 % and 99.89 % depending on site and uncertainty associated with observed mortality rates before and after adjustment for potential biases. An overall 'worst case' estimate weighted by the scale of study was 99.33 % and the mean unweighted 'worst case' (lowest) avoidance rate for the four wind farms was 99.19 %. A precautionary value of 99.0 % is therefore recommended for use in predictive assessments of wind farm proposals. Other recommendations include the need for further research which avoids the biases inherent in many existing studies of wind farm effects on birds… The estimated avoidance rates, and the means of their derivation, documented by the present study, are contrasted with those calculated for golden eagle by Fernley (2008), which are higher. Several discrepancies are identified which would lead to elevated estimates of avoidance rates by Fernley (2008), such as not accounting for some eagle deaths or relatively high inactivity of turbines at some sites, or using inflated measures of eagle activity."

Other factors may indicate a higher percentage for avoidance rates for the Tule Wind Project turbines on the Ewiiaapaayp Indian Reservation. Weather, notably wind speed, can influence collision risk and low wind speed may be more problematic than high wind speed (Barrios & Rodriguez 2004, de Lucas et al. 2008) because birds are less able to use wind energy in evading blades (Whitfield, March 2009). The Project turbines on the Ewiiaapaayp Indian Reservation would be sited on the Reservation's eastern ridge, which features the highest of all wind resource ratings, a class 7 wind resource, aiding golden eagles in evading turbine blades.

C5-8 Cont.

In "Collision fatality of raptors in wind farms does not depend on raptor abundance", Manuela de Lucas, Guyonne F. E. Janss, D. P. Whitfield and Miguel Ferrer, Journal of Applied Ecology 2008, 45, 1695–1703 states, "Bird mortality and bird abundance varied markedly between seasons. Although numbers of dead birds, and especially dead griffon vultures, were higher during winter, bird abundance, and especially griffon vulture abundance, was higher during the pre-breeding season. This is not consistent with the proposal of Barrios & Rodríguez (2004) that bird mortality increases with bird density but supports the results reported by Fernley, Lowther & Whitfield (2006) and Whitfield & Madders (2006) of no relationship between collision mortality and abundance. It is frequently assumed that collision mortality should increase with bird abundance because more birds are 'available' to collide (e.g. Langston & Pullan 2003; Smallwood & Thelander 2004), but our study adds to mounting evidence that such an assumption may be too simplistic. This result has important implications when attempting to predict the impacts of wind- farm proposals. For example, a direct positive relationship between mortality and abundance is an implicit assumption of predictive collision risk models (CRMs) (e.g. Band, Madders & Whitfield 2007). If this assumption is wrong, the utility of current CRMs as predictive tools is severely weakened…differences in mortality are equally or more likely to be related to species-specific flight behaviour and morphology, weather and topography around the wind farm…We suggest that others factors, related to

species-specific flight behaviour, weather, and topography around the wind farm, might be equally or more important in explaining differences in mortality rates. The different vulnerability of species to collision with turbines is well known and has been linked to species-specific flight behaviour (Orloff & Flannery 1993; Thelander, Smallwood & Rugge 2003; Barrios & Rodríguez 2004; Drewitt & Langston 2006)…High wing loading is associated with low manoeuvrability in flight and a low capability for powered flight is typical of some soaring birds like griffon vultures (Tucker 1971). This relationship has been linked with an elevated risk of collision with objects other than turbine blades (Pennycuick 1975; Janss 2000). With only weak-powered flight, griffon vultures rely heavily on wind for flying (Pennycuick 1975) and to lift them above turbines, whereas other species can use powered flight to avoid collisions with turbine blades. This increases their risk of collision with turbine blades compared with species that have a greater capability for powered flight. Winds that provide lift and assist griffon vultures in cross-country soaring flights will come from two main sources: declivity updrafts from wind deflected upwards by ground slopes, and thermals (Pennycuick 1998). We expect, therefore, that collisions will be more likely when uplift winds are weaker. … All else being equal, more lift is required by a griffon vulture to fly over a taller turbine at a higher elevation and we found that such turbines killed more vultures compared to shorter turbines at lower elevations. Vulture mortality was also greatest in winter, when thermal updrafts are less common due to lower soil temperatures and lower insolation. Updrafts from gentle slopes are weaker than those from steeper slopes, and so turbines situated on the top of gentle slopes should pose a greater risk to vultures than those atop steep slopes."

C5-8 Cont.

The conclusion for the Tule Wind Project turbines on the Ewiiaapaayp Indian Reservation is clear, that the combination of power flight by the golden eagle and the presence of strong winds and updrafts and precipitous ridgelines makes the probability of collision avoidance very high.

Reservation topographic features, especially attractive to raptors (McLeod et al. 2002), are absent from these ridgelines (Hoover & Morrison 2005, de Lucas et al. unpubl. data), as suitable foraging habitat is absent from these sites for the Project turbines. In addition, the often poor visibility on these Reservation ridgelines also reduce collisions in that during fog birds take flight actions which compensate for the reduced visibility (e.g. don't fly or fly close to the ground: Moyle & Heppner 1998, Richardson 2000, Piersma et al. 2002), so in foggy conditions birds may actually be at less risk of collision.

In addition, the previously cited "Birds and Bird Habitats: Guidelines for Wind Power Projects" provides best management practices (see Appendix A) for evaluating bird significant habitat (see Appendix B: Methods for Evaluating Bird Significant Wildlife Habitat) and for Bird Mortality Surveys (see Appendix C: Post Construction Monitoring Methods).

"All other raptors detected in the project area (i.e., Cooper's hawk, American kestrel (Falco

sparverius), northern harrier, sharp-shinned hawk (Accipiter striatus), golden eagle, prairie falcon, osprey (Pandion haliaetus), and an unidentified falcon and raptor) had very low encounter rates and would be at relatively low risk of collision according to these two studies (Tetra Tech EC, Inc. 2008, 2009)." (Page D.2-174, ¶ 4)

"Based on studies of the flight behavior of golden eagles, they are at lower risk than species such as red-tailed hawks because only 15% of their flight behaviors put them in a vulnerable position to turbine collisions (flying at the height of the rotor plane), and they did not spend significant time within the close proximity (within 50 meters or 164 feet) to the turbines (Thelander et al. 2003). In addition, the collision risk for golden eagles is dependent on avoidance ability, flight behavior and use in the turbine area, and weather. A study by de Lucas et al. (2008) describes certain bird species that have high wing loading for flight (i.e., turkey vulture), which have a resulting lower maneuverability and thus are at a greater risk of collision with objects; however, species with higher maneuverability, such as golden eagle, may be able to use their highpowered flight to avoid collisions with turbines. Although golden eagles are thought to have the same ability to avoid collision with turbines as other raptors, the collision risk is assumed to be proportional to the amount of activity at the turbine rotor height (Madders 2009)." (Page D.2-174-175).

"Therefore, golden eagle flight behavior at Altamont does not conclusively provide evidence of flight behavior relative to ridgelines and the proposed RSA in the Tule Wind area." (Page D.2-175, ¶ 2).

C5-8 Cont.

"Golden eagles can be sensitive to changes in their environment (e.g., wind farms). Madders (2009) describes a home range use change in a pair of resident golden eagles after a wind farm was constructed in their territory. Madders (2009) also indicates that it is unlikely that golden eagles would nest within the immediate vicinity (i.e., 500 meters or 1,640 feet) of the proposed wind turbines, likely constraining the eagles from occupying nests within their existing territory. Currently, the Canebrake eagle pair is nesting within the 500-meter (1,640-foot) area; thus, if the pair changes its nesting location to avoid the Tule Wind Project area, that territory may be lost from use." (Page D.2-175, ¶ 2)

The BLM has ignored the historical testimony provided by the Tribe supported by San Diego County golden eagle expert Mr. Dave Bittner that this tribal lands are unsuitable foraging and nesting habitat for the golden eagle. The Tribe has informed the BLM that it believes this one nest will be unsuccessful and will be abandoned due to the lack of these critical factors; yet the BLM continues to use this one nest as the sole foundation for its Reduction in Turbines Alternative and its Adaptive Mitigation Plan with regard to golden eagles. The next reference to golden eagles again fails to support the BLM's conclusions:

"· Golden eagle was not observed within either RSA elevation range during 2005–2006 surveys. For the 2007–2008 surveys, the overall encounter rate for both RSA elevation ranges was 0.00. During fall 2007, one golden eagle was seen flying in a northwest direction, and in spring 2008

one was seen flying north." (Page D.2-176)

"Collision risk can also be increased from idling turbines, which provides increased perching opportunities for birds in the project area. Although it is not clear that perching would increase the risk of collision, Erickson et al. 2001, suggests that a lack of perching and nesting opportunities may discourage some birds from utilizing these areas. Idling of turbines is a potential adaptive management option that could be employed, if determined appropriate under the adaptive management program as triggered by substantial bird mortality. The adaptive management program will address the potential increase in perching opportunities if turbines are idled." (Page D.2-177)

The Tribe previously submitted evidence to the BLM that idling of turbines was ineffective in preventing collisions and, in fact, encouraged such, as follows:

> Inactive Turbines
> Manuela de Lucas, et al (see above) concluded that raptor collisions with turbine blades are insensitive to the raptor population (abundance), therefore, the number of turbines is an ineffectual method to reduce turbine collisions. In fact, inactive turbines provide perching opportunities that would increase the risk of collision. "Avian Collisions with Wind Turbines: A Summary of Existing Studies and Comparisons to Other Sources of Avian Collision Mortality in the United States", August 2001, Wallace P. Erickson, Gregory D. Johnson, M. Dale Strickland, David P. Young, Jr., Karyn J. Sernka, Rhett E. Good, Western EcoSystems Technology Inc., states, "Newer generation windplants incorporate improvements in site planning and changes in the design of the wind turbines … many of the newer generation turbines are designed to provide little perching and no nesting structure (tubular towers, enclosed nacelle). Although it's not clear that perching increases risk of collision, the lack of perching and nesting opportunities may discourage some bird species from using the [area]." Inactive turbines would increase perching opportunities for raptors and place them at added risk, therefore, the reasonable and effective approach would be to keep the turbines in operation as much as possible.

C5-8 Cont.

Again, the BLM ignored the Tribe's information and chose to include turbine idling as a part of its adaptive management plan.

All of the above citations from the draft document do not support the BLM's conclusion that "there would be an increased risk of collision for golden eagle in the northern portion of the project area than would be estimated from the bird use data alone." [emphasis added] There are no facts, peer-reviewed scientific studies, or even reasonable interpretations available that the northern portion of the project area would not present a low risk of collision for golden eagle as the BLM determines for the southern portion of the project area. The BLM's sole premise, and only foundation for this conclusion, is based on distance to one nest. This is despite the Tribe's contention that this nest will be unsuccessful because it is in an area of unsuitable foraging and nesting habitat and low use for golden eagles, which is supported by the BLM, the San Diego

County golden eagle expert, and historical records. (page D.2-177-178, ¶ 1) Without a foundation, the Reduction in Turbines Alternative must be removed.

"Based on the use data, encounter rate index, nest survey information, and the species' population and regulatory status, the operation of wind turbines proposed by the project would result in an adverse impact to golden eagle and therefore, Mitigation Measures BIO-10a through BIO-10i have been provided. However, the identified impact cannot be mitigated. Under CEQA, the risk of collision to golden eagle in the western portion of the project area, would be significant and cannot be mitigated to a level that is considered less than significant (Class I). The proximity of active golden eagle nests to the proposed turbines in the western portion of the project area makes it probable that an adult or juvenile eagle could collide with the turbines at some point within the lifetime of the project. In the worst case, this western area of the project could become a continuing sink for golden eagles attempting to use nesting sites west of the project area. There is no established buffer distance from active nests deemed high risk for golden eagle collision with wind turbines, and golden eagle use and foraging areas around active nests are not uniform and will vary from territory to territory. Although territory size and shape is not known for the golden eagle territories around the Tule Wind Project, circular foraging areas with a 4-mile radius around each of the active nest locations shows overlap of potential golden eagle use area with the western half of the proposed turbine strings." (Page D.2-178-179) Despite evidence to the contrary, the BLM bases its conclusions of "adverse impact" that "cannot be mitigated to a level less than significant" solely on the proximity of one nest to the project area, and, therefore, concludes it "probable" that an adult or juvenile eagle "could collide" with the turbines at some point within the 30-year lifetime of the project. These conclusions stretch the credibility of the BLM's environmental interpretations to the breaking point. The proximity of a single nest is not sufficient to overturn the facts. The facts are: (1) all those who possess expertise agree this one nest is likely to be unsuccessful due to unsuitable foraging and nesting habitat; (2) on-site studies prove low use by golden eagles (3 sightings in two years); (3) the inability to capture by carcass baiting or even see golden eagles in the tribal lands project area; (4) the high probability of collision avoidance by golden eagles under any circumstances; (5) the presence of factors that increase the already high probability of collision avoidance by the few golden eagles that may overfly the project area; (6) the high importance for achieving the objectives of renewable energy production through wind projects. All of these facts known to the BLM should have prevented its proposal for the Reduction in Turbines Alternative. The Tribe requests this alternative be eliminated.

C5-8 Cont.

The Tribe requests the elimination of MM BIO-10f in its entirety.

The Tribe requests the elimination of MM BIO-10h and MM BIO 10-I in their entirety, and replaced by measures proposed by the project proponent (see D.2.3.2 Applicant Proposed Measures, Tule Wind Project).

C5-9

In accordance with the Bald and Golden Eagle Protection Act, (16 U.S.C. 668a–d), the Tribe recommends the Secretary of the Interior permit the taking of golden eagle nests that interfere

with resource development provided by the Tule Wind Project. (Page D.2-117-118, Bald and Golden Eagle Protection Act). The Tribe recommends the Secretary permit takes according to guidance provided by the document, "Birds and Bird Habitats: Guidelines for Wind Power Projects", developed by the Ontario Ministry of Natural Resources, October 2010, Section 4.1 Mortality Thresholds. This document provides:

> A threshold approach will be used to identify and mitigate potential negative environmental effects resulting from the operation of wind turbines (i.e. significant bird mortality).
>
> Bird and raptor mortality is considered by this Guideline to be significant when a threshold of annual bird mortality exceeds:
>
> - 18 birds/ turbine/year at individual turbines or turbine groups;
> - 0.2 raptors/turbine/year (all raptors) across a wind power project;
> - 0.1 raptors/turbine/year (raptors of provincial conservation concern) across a wind power project; or
> - 2 raptors/wind power project (<10 turbines)
>
> Studies indicate that turbine-related mortality maintained below these thresholds is unlikely to affect bird populations. Thresholds have been established based on the highest reported bird mortality at wind power projects in North America, outside California. Post-construction mortality reports from wind power projects in Ontario have shown that approximately two birds per year are killed by individual wind turbines.
>
> A significant bird mortality event is defined by this Guideline to have occurred when bird mortality during a single mortality monitoring survey exceeds:
>
> - 10 or more birds at any one turbine; or
> - 33 or more birds (including raptors) at multiple turbines.
>
> The distribution and species composition (e.g. provincial conservation concern species) of bird fatalities should be considered when developing contingency plans. MNR's Natural Heritage Information Centre (Appendix E) is a useful source for identifying and considering birds of provincial conservation concern.
>
> These thresholds are not intended to replace any species-specific approaches that may be needed to comply with the Endangered Species Act.

C5-9 Cont.

MM HAZ-6: Wind Turbine Safety Zone and Setbacks. (Page D.10-66)
As proposed in the EIR in Mitigation Measure H-6, which affects the H and J strings, the mitigation measure would eliminate 9 turbines on Tribal land. Due to the location of the ridge in

C5-10

relation to the BLM/Ewiiaapaayp boundary, the seemingly nominal setback is impractical due to topography.

1.25 times the total height for wind turbines

Turbine ID	*Tip Height (ft)*	*Setback (ft)*	*Conflict*	*Needs to Move (ft)*
A1	401	501.25	No	
A2	401	501.25	No	
A3	401	501.25	No	
A4	401	501.25	No	
A5	401	501.25	No	
A6	401	501.25	No	
A7	401	501.25	No	
B1	401	501.25	No	
B2	401	501.25	No	
B3	401	501.25	No	
B4	401	501.25	No	
B5	401	501.25	No	
B6	401	501.25	No	
B7	401	501.25	No	
C1	401	501.25	No	
C2	401	501.25	No	
C3	401	501.25	No	
C4	401	501.25	No	
D1	401	501.25	No	
D2	401	501.25	No	
D3	401	501.25	No	
D4	401	501.25	No	
D5	401	501.25	No	
D6	401	501.25	No	
D7	401	501.25	No	
D8	401	501.25	No	
D9	401	501.25	No	
D10	401	501.25	No	
E1	401	501.25	No	
E2	401	501.25	Yes	30
E3	401	501.25	Yes	35
E4	401	501.25	Yes	50
E5	401	501.25	Yes	50
E6	401	501.25	Yes	50
E7	401	501.25	Yes	50
E8	401	501.25	Yes	35
E9	401	501.25	Yes	20
E10	401	501.25	Yes	60
E11	401	501.25	No	
E12	401	501.25	No	
F1	401	501.25	No	
F2	401	501.25	No	
F3	401	501.25	No	

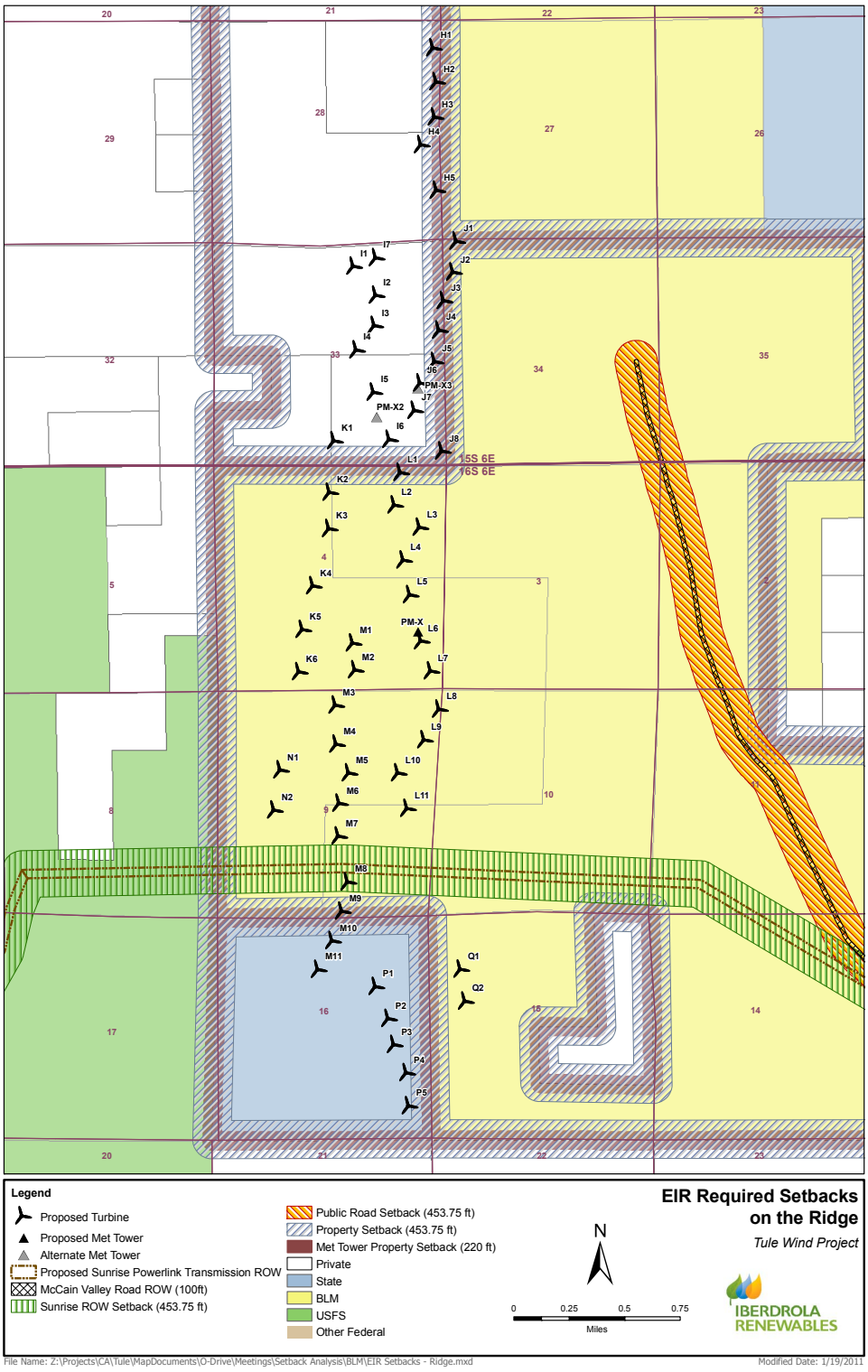
C5-10 Cont.

F4	401	501.25	No
G1	401	501.25	No
G2	401	501.25	No
G3	401	501.25	No
G4	401	501.25	No
G5	401	501.25	No
G6	401	501.25	No
G7	401	501.25	No
G8	401	501.25	No
G9	401	501.25	No
G10	401	501.25	No
G11	401	501.25	No
G12	401	501.25	No
G13	401	501.25	No
G14	401	501.25	No
G15	401	501.25	No
G16	401	501.25	No
G18	401	501.25	No
H1	363	453.75	No
H2	363	453.75	No
H3	363	453.75	No
H4	363	453.75	No
H5	363	453.75	No
I1	363	453.75	No
I2	363	453.75	No
I3	363	453.75	No
I4	363	453.75	No
I5	363	453.75	No
I6	363	453.75	No
I7	363	453.75	No
J1	363	453.75	No
J2	363	453.75	No
J3	363	453.75	No
J4	363	453.75	No
J5	363	453.75	No
J6	363	453.75	No
J7	363	453.75	No
J8	363	453.75	No
K1	363	453.75	No
K2	363	453.75	No
K3	363	453.75	No
K4	363	453.75	No
K5	363	453.75	No
K6	363	453.75	No
L1	363	453.75	No
L2	363	453.75	No
L3	363	453.75	No
L4	363	453.75	No
L5	363	453.75	No

C5-10 Cont.

L6	363	453.75	No
L7	363	453.75	No
L8	363	453.75	No
L9	363	453.75	No
L10	363	453.75	No
L11	363	453.75	No
M1	363	453.75	No
M2	363	453.75	No
M3	363	453.75	No
M4	363	453.75	No
M5	363	453.75	No
M6	363	453.75	No
M7	363	453.75	No
M8	363	453.75	No
M9	363	453.75	No
M10	363	453.75	No
M11	363	453.75	No
N1	363	453.75	No
N2	363	453.75	No
P1	363	453.75	No
P2	363	453.75	No
P3	363	453.75	No
P4	363	453.75	No
P5	363	453.75	No
Q1	363	453.75	No
Q2	363	453.75	No
R1	401	501.25	No
R2	401	501.25	No
R7	401	501.25	No
R8	401	501.25	No
R9	401	501.25	No
R10	401	501.25	No
R11	401	501.25	No
S1	401	501.25	No
T1	401	501.25	No
T2	401	501.25	No

C5-10 Cont.


Legend
Proposed Turbine
Proposed Met Tower
Alternate Met Tower
Proposed Sunrise Powerlink Transmission ROW
McCain Valley Road ROW (100ft)
Sunrise ROW Setback (453.75 ft)
Public Road Setback (453.75 ft)
Property Setback (453.75 ft)
Met Tower Property Setback (220 ft)
Private
State
BLM
USFS
Other Federal
EIR Required Setbacks on the Ridge
Tule Wind Project
N
0 0.25 0.5 0.75
Miles
IBERDROLA RENEWABLES
15S 6E
16S 6E
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Modified Date: 1/19/2011

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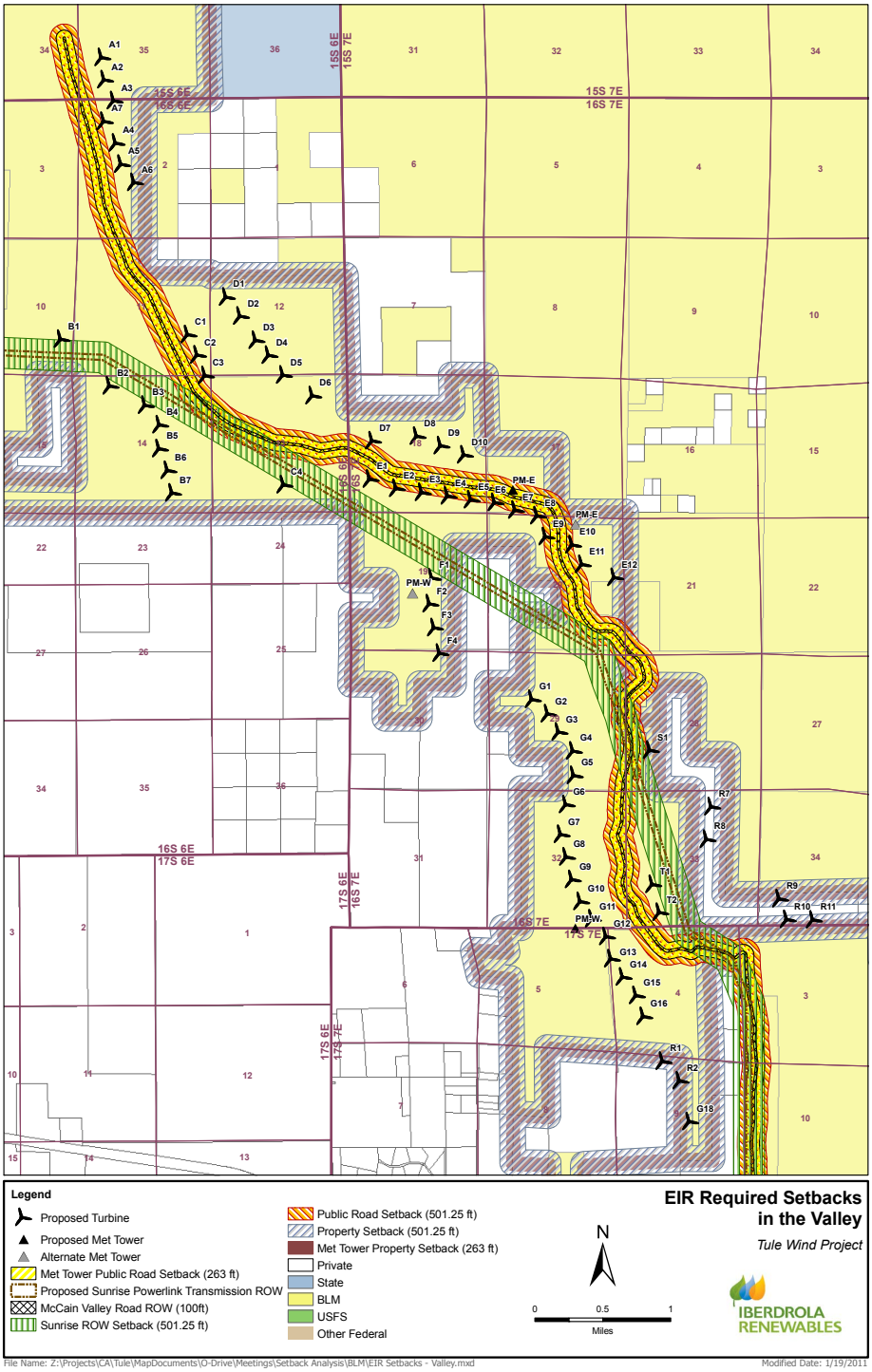
Cont.


Legend
Proposed Turbine
Proposed Met Tower
Alternate Met Tower
Met Tower Public Road Setback (263 ft)
Proposed Sunrise Powerlink Transmission ROW
McCain Valley Road ROW (100ft)
Sunrise ROW Setback (501.25 ft)
Public Road Setback (501.25 ft)
Property Setback (501.25 ft)
Met Tower Property Setback (263 ft)
Private
State
BLM
USFS
Other Federal
N
0
0.5
1
Miles
EIR Required Setbacks in the Valley
Tule Wind Project
IBERDROLA RENEWABLES
File Name: Z:\Projects\CA\Tule\MapDocuments\O-Drive\Meetings\Setback Analysis\BLM\EIR Setbacks - Valley.mxd
Modified Date: 1/19/2011

C5-10 Cont.

The Tribe proposes the setback (Tule MM HAZ-6) not apply when the adjacent landowner is a participant in the project. The Tribe also suggests the record of decision permit a waiver by the neighboring landowners.

The topography of the site makes application of the 1.25 ROW setback inappropriate because the ridge is very narrow and the turbines can't be moved because of the precipitous terrain.

C5-10 Cont.

D. 15 Fire and Fuels Management
The Tribe believes the approved Fire Protection Plan and mitigation measures provide adequate safety measures and justify a conclusion that impacts should be categorized as Class II, not Class I.

C5-11

The Tribe has had few funds to develop and maintain firebreaks in order to reduce the risk of catastrophic wildland fire on the Ewiiaapaayp Indian Reservation. The Project will create and maintain firebreaks and thin ladder fuels, which will increase wildfire prevention and suppression – not increase it.

Also called a fireroad, fire line or fuel break, a firebreak is a gap in vegetation or other combustible material that acts as a barrier to slow or stop the progress of a bushfire or wildfire. The high density of thick brush and prolonged drought, along with the elapse of 20 years since the last wildfire, makes the likelihood of catastrophic wildfire in the Project area extremely high if the fire prevention measures proposed by the Project proponent are not implemented. Firebreak management is a particularly effective, efficient and low-cost method of simultaneously addressing the issues of wildfire hazards to wildlife habitats, residential communities and property.

In the construction of a firebreak, the primary goal is to remove deadwood and undergrowth down to mineral soil. Various methods may be used to accomplish this initially and to maintain this condition. The Project development will act as a firebreak as defined according to the established practices of sustainable forestry and fire protection engineering also known as best management practices (BMP). The Project will effect a firebreak and slow the spread of wildfire, and will be of sufficient size and density to reduce the ultimate size of future wildfires. The result would be to maintain the ecology of the high mountain desert habitat, to reduce the impact of wildfires on air pollution and the global climate, and to protect lives, residences and property.

These goals would be more likely to be achieved through the full development of the Project, less likely through a reduced Project, and unlikely should the Project not be constructed.

The Project would result in a permanent firebreak, with reduced density, reduced ladder fuels, and improved herbaceous ground cover. The Project area will also be much less likely to support crown fire spread, and resistance to fire control and risk to fire suppression personnel will be greatly reduced.

C5-12

Please find below the Tribe's requested edits to D.15.

C5-13

Section D.15: Fire and Fuels Management

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	Fire and Fuels Management	**Subsequent to submittal of the September 2010 Fire Protection Plan (FPP) to the CPUC, based on comments from the fire agencies, Tule Wind LLC revised the FPP (November 2010, attached) to identify the substantial number of project design features (PDFs) that reduced the potential for fire ignition and mitigation measures that reduce the potential for fire ignition associated with the project to cause a wildland fire. The revised FPP was approved by the San Diego Rural Fire District (SDRFP) Board of Directors on November 2, 2010. The SDRFP also issued an approval letter for the FPP (attached). In addition, Tule Wind LLC is currently in discussions with the San Diego County Fire Authority (SDCFA) regarding a separate fire services agreement.** **Tule Wind LLC requests that the CPUC update the Fire and Fuels Management section of the FPP to reflect the content, analysis, and conclusions of the November 2010 FPP. For your convenience, the Tule Wind LLC project team has revised the Draft EIR/EIS Fire and Fuels Management section to reflect the content, analysis, and conclusions of the SDRFP approved FPP.**			C5-13 Cont.
	Fire and Fuels Management	**[Insert revised, "track changes" version of the Fire and Fuels Management section] – After project description is updated based on Modified Project Layout]**			
	Fire and Fuels Management	D.15-6	Consider adding a Table like Table 5, at pg. 42, from the San Diego Rural Fire Protection District (SDRFPD)-approved Fire Protection Plan, dated November 3, 2010, which describes the fire suppression resources available to respond to the area. "Between these agencies, there are significant firefighting resources to serve the area's wildfire	Table 5 documents and supports the Draft EIR/EIS's statement that, "Between these agencies, there are significant firefighting resources to serve the area's wildfire potential, especially with CAL FIRE's air attack capabilities that can reach the area within 20 minutes." Add USFS air attack capabilities for consistency with statement at pg. D.15-7.	C5-14

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			potential, especially with CAL FIRE~~'s~~ and USFS air attack capabilities that can reach the area within 20 minutes."		
	Fire and Fuels Management	D.15-7	Consider adding a Table like Table 5, at pg. 42, from the San Diego Rural Fire Protection District (SDRFPD)-approved Fire Protection Plan, dated November 3, 2010, which describes the fire suppression resources available to respond to the area.	Table 5 documents and supports the Draft EIR/EIS's statement that, "These agencies include significant firefighting resources to serve the area's wildfire potential, especially with the combined CAL FIRE and USFS air attack capabilities that can reach the area within 20 minutes or less."	C5-14 Cont.
	Fire and Fuels Management	D.15-9	"~~Fires Caused by~~ Potential Ignition Sources From Equipment Use Equipment that may cause a fire hazard includes:"	Use of equipment types listed will not necessarily result in a fire. Please consider revising the text accordingly.	
	Fire and Fuels Management	D.15-9	"~~Compost~~Debris piles–large piles that are allowed to dry and are left on-site for extended periods may pose a risk of ignition~~result in combustion and potential for embers landing in adjacent vegetation~~"	To our knowledge, composting is not anticipated as part of the Proposed Project.	C5-15
	Fire and Fuels Management	D.15-9	"Transformers—in turbines with a down-tower transformer design, where the transformer is pad-mounted outside the turbine housing, the transformer is filled with flammable oils and are subject to occasional failure and explosion, sending sparks, hot materials out in all directions. Transformers are constructed with a metal containment housing. Transformer failure would only create a risk of ignition if the explosion breaches the metal containment housing of the transformer and ignitable vegetation is within range." "Capacitors–may overheat, fail, and cause a spark, which may result in combustion of flammable materials, such as vegetation, if	Please consider adding additional information about the fire risk posed by transformers and capacitors, which are constructed with containment. See Figure B-24, pg. B-101, which shows that the maximum hub height for the nacelle is between 201 and 328 feet.	C5-16

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			nearby. Capacitors are normally contained within a substation that separates them from flammable materials." "Wind turbines–include various components inside the nacelle as well as transformers that may ignite and cause heated or flaming debris/embers from as high as ~~400~~328 feet above ground"		C5-16 Cont.
	Fire and Fuels Management	D.15-10	"Potential Ignition Sources From ~~Fires Caused by~~ Power Lines"	Use of equipment types listed will not necessarily result in a fire. Please consider revising the text accordingly.	
	Fire and Fuels Management	D.15-11	"voltage line, and, on average, annual low-voltage and high-voltage line ignitions, on a per-mile basis, are similar within SDG&E's territory. Per CPUC GO 95 "Rules For Overhead Electric Line Construction" and the current edition of the NESC, the Proposed Project are required to ensure sufficient clearance between conductors and vegetation to prevent contact."	CPUC GO 95 is a requirement. Please consider including it and revising the text according.	C5-17
	Fire and Fuels Management	D.15-13	Potential Ignition Sources From ~~Fires Caused by~~ Wind Turbines "Iberdrola Renewables independently analyzed data from the California State Fire Marshal's Office, and was only able to identify four (4) confirmed wind turbine-related fire incidents in the period between January 1, 2008 and Fall 2010 – a rate of approximately 1.3 turbine fires per year. To place this number in context, the California Wind Energy Association calculates that there are approximately 11,000 wind turbines currently in operation in California. *See* http://www.calwea.org/bigPicture.html.	See Letter from Harley McDonald to James Pine, dated October 25, 2010. The wind industry is at the nascent stages of adopting fire suppression technology in the wind turbine nacelle. See the Fire Protection Plan prepared for the San Diego Rural Fire Protection District, approved on November 3, 2010, pg. 2.	C5-18

No.	Section/ Appendix	Page	Draft EIR/EIS Text Revision	Justification	
			However, most modern turbines are equipped with lightning arresters and automatic fire detection ~~and suppression systems~~ (CPUC and BLM 2007a). Fire suppression systems installed in the wind turbine nacelle are in the early adoption phase, and are not widely utilized in the wind industry. (RC Biological, Inc. 2010."		
	Fire and Fuels Management	D.15-13	Potential Ignition Sources From ~~Fires Caused By~~ Transformers. "Transformers located at the base of each wind turbine tower may cause fires through arcing that occurs following failure of insulation within the transformer. Transformers are constructed with a metal containment housing. Industry statistics indicate that one in five transformer failures result in a fire (USDI 2005). The extremely hot arc may cause oils to combust, metals to be vaporized, and molten copper to be thrown into the air (USDI 2005). Explosions sometimes occur from the vaporization of mineral oils and release of carbon monoxide."	Use of equipment types listed will not necessarily result in a fire. Please consider revising the text accordingly.	C5-18 Cont.
	Fire and Fuels Management	D.15-13	"Iberdrola Renewables independently analyzed data from the California State Fire Marshal's Office, and was only able to identify four (4) confirmed wind turbine-related fire incidents in the period between January 1, 2008 and Fall 2010 – a rate of approximately 1.3 turbine fires per year. To place this number in context, the California wind Energy Association calculates that there are approximately 11,000 wind turbines currently in operation in California. *See* http://www.calwea.org/bigPicture.html. However, most modern turbines are equipped	See Letter from Harley McDonald, Iberdrola Renewables, to James Pine, San Diego County Fire Marshal (dated October 25, 2010), pgs. 6-7.	C5-19

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			with lightning arresters and automatic fire detection and suppression systems (CPUC and BLM 2007a), which are likely to reduce the risk even further."		C5-19 Cont.
	Fire and Fuels Management	D.15-19	San Diego Rural Fire Protection District Please add a section including a discussion of the San Diego Rural Fire Protection District from the Fire Protection Plan, November 3, 2010.	The San Diego Rural Fire Protection District is an agency with jurisdiction over a substantial portion of the Proposed Project, and will be a first responder.	C5-20
	Fire and Fuels Management	D.15-20	ISSUE: confirm Tule Wind Project "Project Area Vegetation Fuel Types" after modified project layout defined.		
	Fire and Fuels Management	D.15-21	Tule Wind Project "Given the steep terrain and fuel bed throughout this project area combined with the potential ignition sources associated with wind turbines, the potential for wildfire ~~ignition and~~ spread is higher than associated with the ECO Substation Project." Discusses ignition sources associated with Turbines. EIR should list what those are. The turbines are enclosed systems, and will have fire suppression system, so there shouldn't be ignition sources. Revise text to reflect actual safeguards provided.	Enclosed turbine and fire suppression system. All ignition sources have been reasonably mitigated.	C5-21
	Fire and Fuels Management	D.15-22 Table D.15-3	ISSUE: confirm Tule Wind Project "Project Components for Each Project Area Fire Environment Interface"		
	Fire and Fuels Management	D.15-24	Regional Assets at Risk "From a regional wildfire perspective, the Proposed PROJECT is located in an area designated by		C5-22

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			the County of San Diego as a wildfire corridor based on fuel ages, topography, and climate. Based on this designation, it is feasible that communities and individual structures beyond the arbitrary 0.5-mile distance from the Proposed PROJECT may be impacted should a wildfire ignite from a Proposed PROJECT-related source. As such, County fire estimates that over 2,000 residences (not including other structures) may be at risk of loss during a wind driven wildfire (Miller et al. 2009). <u>According to the CALFIRE San Diego Unit, CALFIRE can contain 90-95% of all wildland fires in its jurisdiction, should they occur, to 10 acres or less in size. (Hunt Research Corp., personal communication with Chief Nick Schuler, January 10, 2011).</u>"		C5-22 Cont.
	Fire and Fuels Management	D.15-26	"Created by the International Code Council, the International Fire Code addresses a wide array of conditions hazardous to life and property including fire, explosions, and hazardous materials handling or usage. <u>Although it is not a federal regulation, but rather the product of the International Code Council, . . .</u>"	The International Fire Code is not a Federal Regulation. Please consider revising the text accordingly.	C5-23
	Fire and Fuels Management	D.15-28	"Similar to the International Fire Code, the California Fire Code and the California Building Code use a hazards classification system to determine the appropriate measures to incorporate to protect life and property. <u>There is not a Hazard Classification System in the Fire Code that includes Wind Turbines, in fact the Fire Code does not address Wind Turbines.</u>"		

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	Fire and Fuels Management	D.15-39	"APMs TULE-Project Design Feature (PDF)-1 through TULE-PDF-26 are proposed by ~~Pacific Wind Development~~Tule Wind, LLC to reduce impacts related to fire safety" Table D.15-4 – change title to "~~Pacific Wind Development~~Tule Wind, LLC Tule Wind – Fire and Fuels Management Impacts"	Global change: Tule Wind, LLC owns the project assets, and is a wholly owned subsidiary of Iberdrola Renewables.	C5-24
	Fire and Fuels Management	D.15-46	San Diego County FPP Content Requirements (http://www.~~co.sandiego.ca.us~~sdcounty.ca.gov/dplu/docs/Fire-Report-Format.pdf)	Incorrect webpage citation.	C5-25
	Fire and Fuels Management	D.15-48	"The presence of up to 134 wind turbines, up to 400 feet tall presents a ~~unique~~ potential ignition source for burning embers/materials in a~~n~~ high wildland fire hazard area ~~with receptive fuel beds~~. ~~Wind turbines in~~ California does not track annual wind turbine fires, although Iberdrola Renewables independently analyzed data from the California State Fire Marshal's Office, and was only able to identify four (4) confirmed wind turbine-related fire incidents in the period between January 1, 2008 and Fall 2010 – a rate of approximately 1.3 turbine fires per year. To place this number in context, the California wind Energy Association calculates that there are approximately 11,000 wind turbines currently in operation in California. *See* http://www.calwea.org/bigPicture.html. An IAEI article previously claimed that wind turbines in California annually result in 35 turbine generator related fires (IAEI 2010). The article cited an anti-wind power website maintained by the Keepers of the Blue Ridge to document this assertion. The Keepers of the Blue Ridge website	Please consider removing the word "unique." There are over 11,000 operating wind turbines in California, and the wind industry has been operating in California for decades. The IAEI article's claims are based on an information source that has been shown to be faulty. See Letter from Harley McDonald, Iberdrola Renewables, to James Pine, San Diego County Fire Marshal (dated October 25, 2010), pgs.1-3. There is no evidence to support the Draft EIR/EIS claim that most wind turbine fires occur in the nacelle.	C5-26

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			did not provide attribution for the figure, and the figure was removed when challenged by the California State Fire Marshal's Office. Fire causes are related to short-circuits and lightning. ~~The~~A fire in the elevated nacelle~~, where most wind turbine fires occur, results in~~has the potential for burning, heated or flaming material to be liberated from the turbine. Under worst-case wind conditions, with wind gusts in excess of 50 mph, burning material (embers) may travel a mile or more, held aloft by the wind (Dudek 2010). However, most debris from a failed turbine drops within 500 feet of the turbine (Iberdrola Renewables, Inc. 2010b)."		C5-26 Cont.
	Fire and Fuels Management	D.15-48	Decommissioning "When the facility is retired or decommissioned, the turbine towers will be removed from the site and the materials will be reused or sold for scrap. Decommissioning activities are anticipated to have similar types of construction-related activities, and, therefore, all procedures, management plans, mitigation measures, and ~~BMP~~APMs developed for the construction phase of the project would be applied to the decommissioning phase of the project."	Please consider clarifying the decommissioning phase to indicate what MMs and APMs will be applied to the project.	C5-27
	Fire and Fuels Management	D.15-49	"~~Initial attack for a nacelle fire that is up to 400~~328 ~~feet in the air may be limited through conventional firefighting strategies. In the absence of~~ Tule Wind, LLC, will install built in fire suppression systems in the wind turbine nacelle. In the event of an ignition in the wind turbine nacelle, the fire suppression system would be activated and the fire agencies would be immediately notified. In addition, each wind	See Fire Protection Plan, November 3, 2010, pg. 35, see PDF-16.	C5-28

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			turbine nacelle will be equipped with smoke detectors, arc flash sensors, and over-current sensing transducers that can detect conditions that could lead to a fire prior to ignition. Should any of these devices register an out-of-range condition, the device immediately commands a shutdown of the turbine and will disengage it from the electrical collection system. The entire turbine is electrically protected by current-limiting switchgear that is installed inside the base of the tower.~~, fire~~ The fire agencies would provide ground-based fire suppression, in the event that ~~fighters would likely focus on monitoring the nacelle fire and focusing ground suppression efforts on~~ ember or debris created spot fires. A 200-foot-wide fuel modification zone (in all directions) will be provided around each wind turbine. As previously discussed, during worst-case wind conditions, embers/debris may travel a mile or more, but most debris falls near the tower base with proportionally less debris the further from the tower (Iberdrola Renewables, Inc. 2010b). Based on the typical debris pattern in a tower failure, larger fuel modification zones around each tower are not warranted due to the fact that under normal conditions, 200 feet would be adequate to capture the majority of debris and under worst case conditions, fuel modification zones that are 1,000 feet or greater would not guarantee capture of all potential embers. The impacts associated with increasing the fuel modification areas are not directly proportional	C5-28 Cont.

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			to the anticipated benefits."		C5-28 Cont.
	Fire and Fuels Management	D.15-50	"Implementation of Mitigation Measures FF-1 and FF-2, which augment and clarify APMs TULE-PDF~~E~~-1 through TULE-PDF-26, along with incorporation of Mitigation Measures FF-3 (development agreement) and FF-4 (customized fire protection plan incorporating APMs), would mitigate the increased probability of a wildfire during construction operation and maintenance and decommissioning of the Tule Wind Project. Under CEQA, this impact with implementation of mitigation would be less than significant (Class II)."	Please consider correcting typo.	C5-29
	Fire and Fuels Management	D.15-54	Tule Wind Project "The presence of over 100 wind turbines and related electrical transmission lines would result in potential ignition sources adjacent to wildland fuels in an area with a history of wildfires and over 2,000 inhabited structures in the vicinity, especially "down wind" to the east and west during a Santa Ana wind-driven fire. Pre-planning and personnel fire awareness and suppression training not only results in lower probability of ignition, but also in higher probability of fire control and extinguishment in its incipient stages. Data indicate that 95% of all wildfire ignitions are controlled during initial attack (Smalley 2008). Turbines and electrical transmission lines include potential for sparks, heat, and flammable liquids, and they require ongoing maintenance procedures for the life of the project. Ongoing maintenance activities and the inclusion of ~~five~~up to twelve permanent ~~and~~	Tule Wind, LLC anticipates employing up to 12 permanent employees at the project.	C5-30

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			~~five part-time employees~~ at the facility will also increase the possibility of a vegetation ignition." ISSUE: can Jim Hunt provide comment letter disputing that 2,000 occupied structures are at risk?		C5-30 Cont.
	Fire and Fuels Management	D.15-56	"~~Pacific Wind Development~~Tule Wind, LLC will implement this technology through the wind turbine manufacturer or an aftermarket supplier…." [please consider inserting the following paragraph following MM FF-5] "These PDFs and MMs have been proposed to minimize the potential for an ignition, including automatic fire suppression systems in the wind turbine nacelle(s), various design features such as arc flash relays, fuel management around project features (i.e., 100' clearance around turbines with fire-safe vegetation and annual fuel management), five (5) 10,000 gallon water storage tanks installed throughout the project area that can be utilized for regional fire suppression support, training of both construction and operational personnel, provide training to Firefighters on an ongoing basis as to the facility and electrical hazards and handling of such emergencies on site, both new and improved access roads through an area that currently does not have improved access, and funding for both the SDCFA and the SDRFPD. Not only has the project minimized the risk of a potential ignition resulting from the project, but it will also improve	See FPP approved by SDRFPD, dated November 3, 2010; Letter from Robin Church to Patrick Brown, dated January 10, 2011.	C5-31

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			access and response time and provide water for wildland firefighting within the large expanse of BLM lands that do not currently have access or water but contain the baseline conditions that make the area a high fire hazard area. ~~Although,~~ Implementation of APMs PDF-1 through PDF-26, and Mitigation Measures FF-1 through FF-4 along with Mitigation Measure FF-5, which provides ignition resistance, warning, and extinguishing measures, will mitigate the increased probability of wildfire ~~provide a proactive plan for ongoing operation and maintenance of the Tule Wind Project with reduced fire threat, this impact remains adverse due to the impact~~ created by the presence of the wind turbine facility and the corresponding increase in the probability of a wildfire. Under CEQA, this impact~~s~~ would be ~~significant and cannot be mitigated to a level that is~~ considered less than significant (Class II)."		C5-31 Cont.
	Fire and Fuels Management	D.15-58	ISSUE: discuss with ESJ and SDG&E whether they agree that this is an impact that can be mitigated. EIR states sources of ignition can be managed but cannot be controlled to the point of excluding the potential for ignition and subsequent wildfire. Response: no fire risk anywhere can be totally eliminated. Unrealistic. Delete statement.	The goal in Fire Protection should be reasonable fire and life safety. All risks in the world cannot be eliminated and all fire risks cannot be totally mitigated; otherwise nothing would ever be built.	
	Fire and Fuels Management	D.15-59	Aerial Firefighting "The presence of the 138 kV transmission line in an area where fire history indicates fires are likely to recur and where there are currently limited aerial obstructions would have the potential of significantly impacting aerial firefighting efforts. Introducing transmission lines	See Fire Protection Plan, approved November 3, 2010, pg. 75.	C5-32

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			to the area could affect firefighting operations and endanger the safety of aerial-based responders to a wildfire in the area. The transmission lines are spaced far enough apart to not restrict aircraft maneuverability, however, or to significantly increase the risk of contact by aircraft or water buckets. Water drops are performed at 150 feet above the ground otherwise known as the "150 foot drop zone". The 138kV transmission towers are proposed to be 75 feet in height, less than half the height of the drop. The proposed electrical transmission line would create a north–south aerial feature in an area that currently does not include this potential barrier for several miles to the east and is void of aerial barriers to the west. The presence of the line represents various aerial fire attack hazards including increasing the risk of transmission line direct contact by aircraft or water buckets, resulting in a "no fly" zone or restricting aerial water or retardant drop effectiveness in areas with transmission lines. Limiting the effectiveness of aerial fire containment activities is considered significant since this form of fire attack has proven to be an especially effective means of slowing or containing fires, particularly in areas where there is limited access or longer response times." The transmission lines are spaced far enough apart to not restrict aircraft maneuverability and significantly increase the risk of contact by aircraft or water buckets. Water drops are performed at 150 feet above the ground otherwise known as the "150 foot drop zone". The transmission towers are proposed to be 75 feet in	C5-32 Cont.

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			height, less than half the height of the drop.		C5-32 Cont.
	Fire and Fuels Management	D.15-60	"Volunteer firefighters in the area may not have the latest training for this type of condition. Regardless, even trained firefighters have accidents as indicated by the number of deaths related to electrical transmission lines over the last 40 years."	Please provide a source for deaths associated with trained firefighters being killed by electrical transmission lines.	
	Fire and Fuels Management	D.15-60-61	~~"Indicative of the difficulty of fighting fires related to these facilities is the Draft Boulevard Subregional Plan that states, —There is uncertainty in how Boulevard's volunteer fire and rescue department will be able to handle a fire or other emergency event at the top of new industrial turbines which now stand between 400 and 600 feet tall. The plan goes on to state that —fires at an industrial wind energy facility represents a new and significant health and safety issue that needs to be fully and properly addressed ‖ (County of San Diego 2010b)."~~	The Draft Boulevard Subregional Plan has not adopted, and therefore, it is inappropriate for to quote it as a statement of risk. Tule Wind, LLC has committed to working closely with relevant fire agencies to make sure they are appraised on the Tule Wind Project's features. As noted in MM FF-5, each wind turbine nacelle will be equipped with a fire suppression system that will provide immediate fire suppression in the event of an ignition in the wind turbine nacelle. Furthermore, there is no confusion as to whether firefighters responding to a nacelle fire would attempt to fight the fire because they will not enter the turbine, but develop a perimeter and verify that no ground fires are started. Also, the wind turbines contemplated by the Tule Wind Project are at maximum 328 feet tall at the nacelle, not the 400 to 600 feet tall claimed in the draft plan.	C5-33
	Fire and Fuels Management	D.15-61	"The presence of the nearly 400-foot wind turbines and the 138 kV Transmission Line in an area where there is currently no aerial obstructions would have the potential of significantly impacting aerial firefighting efforts. Introducing		C5-34

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			these vertical features to the area could affect firefighting operations and endanger the safety of firefighters responding to a wildfire in the area (CAL FIRE 2010a). However, the 138 kV Transmission Line will only be XX feet tall, and minimum drop distance for helicopters is XX feet. Furthermore, the wind turbines are spaced on average XX miles apart, providing a corridor that an aircraft pilot could navigate through, if not above."		C5-34 Cont.
	Fire and Fuels Management	D.15-61	Ground Based Firefighting "Wildland firefighters working around energized transmission lines may be exposed to electrical shock hazards including the following: direct contact with downed power lines, contact with electrically charged materials and equipment due to broken lines, contact with smoke that can conduct electricity between lines, and the use of solid-stream water applications around energized lines. Between 1980 and 1999 in the U.S., there were 10 firefighter fatalities due to electrical structure contact during wildfire suppression (NFPA 2001). Maintaining a minimum 500-foot safety buffer greatly reduces the risk of electrical structure contact, and it reduces the effectiveness of ground-based frontal attacks. Most, if not all, firefighting organizations employ a similar safety buffer around electrical structures. Depending on the fire circumstances, the presence of the electrical transmission line may result in the decision to let a fire burn through the area before attacking with ground and aerial firefighting resources."	Please provide a source for the use of a minimum 500-foot safety buffer around electrical transmission lines. The International Fire Service Training Association (IFSTA) Fire Department Training manual "Fundamentals of Wildland Fire fighting" 3rd edition, states on page 304 that Firefighters should stay a distance away from downed power lines a distance equal to one span between poles (the reason is that this distance is typically the longest distance that a wire would fall, and then they typically only fall at one end) until they are sure the power is off. And then, use fine spray fog streams for any firefighting. The modern highly trained, well equipped, Firefighter and Fire Agency needs to be given credit in the EIR for their ability to evaluate the risks and intelligently and properly handle a fire at the property. Public Fire Protection has vastly improved in San Diego County, to the point that a fire at this facility should be a fairly routine fire, rather than a catastrophic event.	C5-35
	Fire and Fuels	D.15-61-62	Aerial Firefighting	Fire Protection Plan, dated November 3, 2010, pg.	

No.	Section/ Appendix	Page	Draft EIR/EIS Text Revision	Justification
	Management		"The presence of ~~the nearly 400-foot~~ wind turbines and the 138 kV Transmission Line ~~in an area where there is~~ are ~~currently no aerial obstructions~~ would have the potential of significantly impacting aerial firefighting efforts in the project area. Introducing these vertical features to the area could affect firefighting operations and endanger the safety of firefighters responding to a wildfire in the area (CAL FIRE 2010a). The turbines are located approximately one-quarter mile apart, which would allow helicopters to navigate around the towers. Furthermore, the turbines and towers will be equipped with safety lighting as required by the FAA. The proposed electrical transmission lines are spaced far enough apart to not restrict aircraft maneuverability, however, or to significantly increase the risk of contact by aircraft or water buckets. Water drops are performed at 150 feet above the ground, otherwise known as the "150 foot drop zone". The 138kV transmission towers are proposed to be 75 feet in height, less than half the height of the "150 foot drop" zone. Furthermore, the Tule project's 138kV transmission line will be adjacent to and overlap with the Sunrise Powerlink, which will be approximately 130 to 160 feet in height. Accordingly, the Tule project will not add to any additional aerial firefighting risk to what is already in construction in the project area.~~would create a substantial number of north–south trending aerial features in an area that currently does not include this potential barrier for several~~	75. The Sunrise Powerlink is under construction, and should be included as the baseline condition for the Proposed Project.

C5-35 Cont.

No.	Section/ Appendix	Page	Draft EIR/EIS Text Revision	Justification	
			~~miles to the east and is void of aerial barriers to the west~~. . . . ~~Even w~~With implementation of these mitigation measures, ~~the source of potential conflict (i.e., the presence of the 400-foot-tall wind turbines and overhead transmission line) would remain, and~~ the potential for reduced aerial and ground firefighter effectiveness would be ~~adverse and cannot be~~ reliably mitigated. Under CEQA, impacts would be ~~significant and cannot be mitigated to a level that is~~ considered less than significant (Class II).”		C5-35 Cont.
	Fire and Fuels Management	D.15-64	ISSUE: discuss with ESJ and SDG&E whether they agree that this is an impact that can be mitigated. Regarding the potential for reduced aerial and ground effectiveness of firefighters, due to additional facilities and aerial features.: Response: firefighters are trained, equipped, and able to work around facilities and deal with this type of issue frequently. Any development has “facilities” and may have “aerial Features” such as a tall building would have, for example. This should not effect and aerial and ground effectiveness. Revise text.	Fire risks have been reasonably mitigated due to built in protection and fuel modification. On site access roads have been provided. Any new development has facilities and may have aerial features, such as a tall building, It is unclear why this is raised as an issue. The modern fire service and firefighter should be given more credit in the EIR for their knowledge and skills, towards being able to respond to, and mitigate, incidents at this facility.	
	Fire and Fuels Management	D.15-66	Tule Wind Project “~~E~~If invasive plants become established~~ment~~ and ~~corresponding~~ spread ~~of invasive plants~~ within the proposed project ROW, such growth would adversely influence fire behavior by altering fuel beds . . . ”	Existing phrasing makes it appear that the Tule Wind project will be establishing invasive plant species, which is not the case. Please consider revising the text to clarify.	C5-36
	Fire and Fuels	D.15-66	ISSUE: confirm after modified project layout		

No.	Section/ Appendix	Page	Draft EIR/EIS Text Revision	Justification	
	Management		determination that, "The project is anticipated to disturb a total of 762.5 acres, with approximately 230 acres of temporary disturbance during construction."		C5-36 Cont.
	Fire and Fuels Management	D.15-74-75	For the reasons set forth in Comments [insert comment numbers], above, all Impacts Tule-FF-2 and Tule-FF-3 should be changed from Class I to Class II.	Please see comments [insert comment numbers] above.	
	Fire and Fuels Management	D.15-91	Regarding statement that the project presents a significant source of ignitions and obstruction to firefighting effectiveness and operations. The reason for this statement is unclear. Also, ignition sources have been mitigated. Statements should be deleted.	See comment 14 above	C5-37
	Fire and Fuels Management	D.15-97-99	MM FF-1, MM FF-2, MM FF-4, and MM FF-6 have different text in the summary table than initially presented in the body of the Draft EIR/EIS. Compare to MM FF-1 (D.15-44), MM FF-2 (D.15-45), MM FF-4 (D.15-46-47), and MM FF-6 (D.15-60) with the same mitigation measures at pages D.15-97-101.	Mitigation Measure text should be uniform and consistent.	C5-38
	Fire and Fuels Management	D.15-97-99	ISSUE: discuss with SDCFA and SDRFPD whether they agree with proposed mitigation measures, and how they would amend them.		
	Fire and Fuels Management	D.15-99 D.15-46	Table D.15-8; Mitigation Measure FF-3. "FF-3: Development Agreement with Rural Fire Protection District and San Diego County Fire Authority (SDCFA). Provide funding for the training and acquisition of necessary firefighting equipment and services to Rural Fire Protection District/SDCFA to improve the response and firefighting effectiveness near wind	Fire agencies respond statewide via the state Mutual Aid system. This includes emergencies in Federal land or BLM land, reservations, etc. Fire agencies also respond nationwide and into Mexico upon request. The same change to text should be made to MM FF-3, at pg. D.15-46.	C5-39

No.	Section/ Appendix	Page	Draft EIR/EIS Text Revision	Justification
			turbines, electrical transmission lines, and aerial infrastructure. ~~Although not implementable on BLM or other federal land, t~~The local fire ~~authority~~agency will respond to wildfires within its jurisdiction, along with support through mutual aid~~to wildfires within its jurisdiction~~, regardless of land ownership designation."	
	Fire and Fuels Management	D.15-101	FF-6: Funding for FireSafe Council [get input from fire agencies; MM appears to lack concreteness]	

C5-39 Cont.

Comment Letter C6

From: Denise Strobridge-Elwell <DStrobridge@VIEJAS.com>
Sent: Friday, March 04, 2011 9:55 AM
To: ECOSUB
Subject: Comment Ltrs: Tule Wind Project & Round Potrero
Attachments: ltr_TuleWindProject_Comment_2011-0303.pdf; Ltr_AddtlComments_SupportofManzanita_11-0303.pdf

Please find the attached comment letters.

Thank you!

Denise

Denise E. Strobridge-Elwell
Paralegal
Viejas Office of Legal Affairs
619-659-5792

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viejas.com

March 3, 2011

Mr. Iain Fisher, California Public Utilities Commission
Mr. Greg Thomsen, Bureau of Land Management
c/o Dudek
605 Third Street
Encinitas, CA 92024

Re: DEIS Comments-- ECO Substation; Tule Wind Project; ESJ Gen-Tie Project

Dear Mr. Fisher and Mr. Thomsen:

Please accept this letter on behalf of the Viejas Band of Kumeyaay Indians as our comments to the record for the Draft Environmental Impact Statement ("DEIS") for the East County Substation ("ECO Substation"); Tule Wind Project ("Tule Wind"; and the Energia Sierra Juarez Gen-Tie Project ("ESJ Gen-Tie"), collectively referred to as the project.

First, Viejas appreciates the opportunity to comment, and emphasizes the importance of meaningful consultation on a government-to-government basis with local Indian tribal governments. Unfortunately, however, BLM appears to begin its consultation much later in the process than it should, and fails to conclude the consultations prior to making decisions on the projects. As a result, tribal concerns are not given the level of consideration that is required by federal statutes or policies. As Viejas has stated in our Sunrise Powerlink comments, we strongly recommend that meaningful consultation occur before project approvals are given so that tribal concerns can be addressed through project design, and mitigation measures acceptable to the tribe can be developed with their input.

C6-1

Second, while it may not be appropriate in the DEIS to inform the tribes as to the results of the ongoing consultation, periodic updates from the lead agency on the results of the consultation would be helpful. We understand that the Project is not part of the Sunrise Powerlink Project, about which we have extensively commented, but we do understand that the Project will interface with it. That Sunrise Powerlink is not a component of the current Project does not excuse its impacts from being considered as a part of the cumulative impacts of the Project, and we recommend that the DEIS be revised to better reflect this analysis.

Cultural resource studies that have been completed so far on this and the Sunrise Powerlink project have revealed the existence of thousands of recorded archaeological sites in San Diego and Imperial Counties. The cultural resources inventory report for the Project alone included approximately 200 "new" (previously unrecorded) sites, and confirm the existence of the Kumeyaay people in what is now San Diego and Imperial Counties for at least 10,000 years. The report notes a number of village sites, with at least one containing possible cremated human remains.

Missing from the DEIS analysis are maps (which should be confidential and provided only to interested tribes) that show the location of each of the sites identified in the report and, most importantly, their relationship to one another. As confirmed by the cultural resource inventories for all the planned energy projects, these sites lie within an extensive corridor utilized by Kumeyaay peoples to travel throughout their aboriginal homelands. Individual recorded sites cannot be adequately understood if viewed as discrete and isolated from another; rather, the sites must be considered in relationship to one another. If viewed from the tribal perspective, these sites will likely be seen as larger village sites and the village sites as part of larger cultural complexes and should be evaluated accordingly. Without this information, tribes cannot make informed comments or recommendations. C6-2

Also missing from the cultural resources information in the DEIS is information about the presence and the extent of participation of Native American monitors in the studies. Neither the Draft Cultural Resources Inventory Report, nor the information in the DEIS appear to include any input by monitors who may have been present, nor do they appear to incorporate any tribal cultural values in the assessment of the sites. While we understand that the requirements of National Register of Historic Places (NRHP) and C6-3

California Registry of Historic Resources (CRHR) criterion for evaluating archaeological sites for significance are specific, Viejas nonetheless believes and encourages archaeology professionals to include in their significance and eligibility assessments under criterion A/1 tribal cultural values, which would only serve to enhance the analysis and evaluation of any given site. Often times, such assessment can be done by examining existing collections and information, without the need for additional excavation that could disrupt the site.

C6-3 Cont.

Viejas notes in the DEIS that a number of sites are potentially eligible for listing. We recommend that those sites be evaluated for significance and listed on both the NRHP and CRHR and that the research design should be developed in consultation with tribes. We further strongly recommend avoidance of all sites that are either potentially significant or are significant because these sites are irreplaceable and no acceptable mitigation exists other than complete avoidance.

The mitigation, monitoring, compliance and reporting measures ("MMCR") in the DEIS for cultural resources are inadequate. Currently a Historic Properties-Cultural Resources Treatment Program ("HPCP-CRTP") is to be developed among all federal, state, and local agencies. The development of the HPCP-CRTP should occur in meaningful and timely consultation with the tribes, rather than be developed and then presented to the tribes for comment as is presently stated. Additionally, as stated in the MMCR, Native American monitors would be required only at culturally-sensitive locations specified by the lead agency. Viejas' recommendation is that, given the number of "new" sites discovered during the initial survey, qualified, knowledgeable Native American monitors should be present during any additional surveying and any ground disturbing activities to ensure the proper documentation and treatment of inadvertent cultural resource discoveries. Given the cultural resources survey information, it appears highly likely that additional sites will be found.

C6-4

The MMCR also requires monitoring by a qualified archaeologist in areas of the Project deemed sensitive for cultural resources, because significant portions of the Project site contain sedimentary deposits that have the potential to contain buried cultural resources. We agree that monitoring should take place, but that a qualified,

C6-5

knowledgeable Native American monitor should be on site as well. We further recommend that the archaeologist, in consultation with the Native American monitor, evaluate and determine the appropriate treatment for the inadvertent discovery of cultural resources during construction.

C6-5 Cont.

Finally, given the large scale of the Project and the significant impacts it will have on natural and cultural resources, Viejas recommends that biological components of the Project be inventoried, and that a photo recordation of the landscape be made. The landscape and its individual components are inextricable features to the tribal cultural resources found at each place, and the landscape itself is of significance to the cultural and historical understanding of the Kumeyaay heritage. If it has not been done, a cultural landscape assessment for the project area should be completed before project approval.

C6-6

Thank you for your attention to the matter. We would appreciate a response to this letter to inform us of the mitigation measures you will adopt. If you have any questions or concerns, please contact either Lisa Haws at 619-659-2341 or Kimberly Mettler at 619-659-2441.

Sincerely,

Anthony R. Pico, Chairman
Viejas Band of Kumeyaay Indians

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Anthony R. Pico, Chairman
Robert Cita Welch, Vice Chairman
Anita R. Uqualla, Tribal Secretary
Samuel Q. Brown, Tribal Treasurer
Greybuck S. Espinoza, Councilman
Victor E. Woods, Councilman
Raymond "Bear" Cuero, Councilman

March 3, 2011

Iain Fisher, CPUC
Greg Thompson, BLM
C/O DUDEK
605 Third Street
Encinitas, CA 92024

RE: Additional Comments by the Viejas Band in Support of the Manzanita Band of the Kumeyaay Nation Concerns for Protection of the Golden Eagle and Protection of Kumeyaay Ancestral Sites.

Dear Mr. Fisher and Mr. Thompson,

The Viejas Band of Kumeyaay Indians, (appearing in the U.S. Federal Register at Vol. 75, No. 190, p. 60810 as the Viejas (Baron Long) Group of the Capitan Grande Band of Mission Indians of the Viejas Reservation, California) is a self-governing federally recognized Indian Tribe exercising sovereign authority over the lands of the Viejas Indian Reservation.

The Viejas Band supports the Manzanita Government's request concerning the protection of the Golden Eagle population in the region and protecting significant cultural, historic, religious, or archaeological Kumeyaay ancestral sites in the region from negative impacts. C6-7

The Viejas Band supports the Manzanita Government's request for additional study prior to the approval of the EIR/EIS as the current environmental documents lacks adequate protection for the Golden Eagle and lacks protective measures for the significant ancestral Kumeyaay sites in the project areas.

The Viejas Band agrees "the Golden Eagle is an essential religious and spiritual co inhabitant of the land with the Kumeyaay people. This relationship dates back to before C6-8

recorded time. Over the past several decades the total population of the eagles in the region has been documented as significantly declining." In addition, "the primary reason for the decline in eagle population is due to the influx of human disturbance to and around the core nesting areas and foraging territories necessary to sustain a healthy eagle population."

C6-8 Cont.

The Viejas Band supports the Manzanita Governments request for the development of an Avian Protection Plan in conjunction with the proposed project and supports the Manzanita Band of the Kumeyaay Nation stands against any and all projects that endanger the Golden Eagles of the region and stands against any project that negatively impacts any of the last significant Kumeyaay ancestral districts left on earth.

Sincerely,

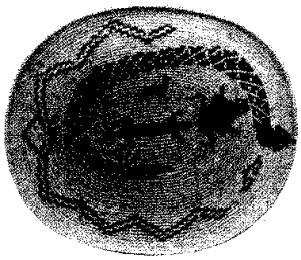
Anthony R. Pico, Chairman
Viejas Tribal Council

cc: Manzanita Band of the Kumeyaay Nation

Comment Letter C7

Mission Statement

To protect and preserve ancestral remains, sacred lands and sacred objects under the Native American and Graves Protection Act (NAGPRA) for today and future generations.



Member Tribes

Barona • Campo • Ewiiaapaayp • Inaja • Jamul
La Posta • Manzanita • Mesa Grande
San Pasqual • Santa Ysabel • Sycuan • Viejas
Steve Banegas, Spokesman

Kumeyaay Cultural Repatriation Committee

March 4, 2011

Mr. Iain Fisher, CPUC
Mr. Greg Thomsen, BLM
C/O Dudek
605 Third Street
Encinitas, CA 92024

RE: Draft EIR/EIS Comments for Tule Wind, ECO Substation, Energia Sierra Juarez.

Dear Sirs:

On behalf of the Kumeyaay Cultural Repatriation Committee (KCRC) I would like to take this opportunity to comment on the above projects.

It is the mission of the Kumeyaay Cultural Repatriation Committee to preserve and protect ancestral remains, sacred lands and sacred objects under the Native American Graves Protection and Repatriation Act (NAGPRA) for today and future generations and develop ways to achieve this goal.

C7-1

As Spokesman and Most Likely Descendent (MLD) for the 12 Kumeyaay Bands (by resolution) in regards to repatriation of human remains and artifacts, I would like my office to be contacted and information be provided via email when human remains are discovered. Please provide information to KCRC Secretary Bernice Paipa at bpaipa@lptribe.net.

Sincerely,

Steve Banegas

Steve Banegas
Spokesman