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Assistant Secretary Washburn Issues Record of Decision to Tribe to Lease 720 Acres to the Tule Wind Energy Project

WASHINGTON - Assistant Secretary -Indian Affairs Kevin K. Washburn issued a Record of Decision this week to approve an application submitted by the Ewiiapaayp Band of Kumeyaay Indians to lease up to 720 acres of reservation land to Tule Wind, LLC, for a portion of the Tule Wind Energy Project located near San Diego, California.

The lease approval will allow the Ewiiapaayp Band, which is located in Alpine, California, to move forward with the construction, maintenance, and operation of up to 20 wind turbines and related facilities on the tribe's trust lands.

The Tule Wind Project is a significant renewable energy project involving several governmental actors in addition to the Ewiiapaayp tribal government. A total of 128 wind turbines are proposed for the entire project. In addition to turbines on the reservation land, additional turbines would be sited on lands of the Bureau of Land Management (BLM), the State of California, and San Diego County. These federal, state and county lands are all located in the McCain Valley.

The tribe submitted the lease agreement in 2010 for approval by the Bureau of Indian Affairs (BIA), which has jurisdiction over Federal Indian trust lands. An Environmental Impact Report / Environmental Impact Statement (EIR/EIS) was prepared pursuant to both the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). The BLM served as the Lead Federal Agency in drafting the Tule Wind Energy Project EIR/EIS and the California Public Utilities Commission (CPUC) served as the Lead State Agency. The project proponent/applicant must comply with all applicable federal laws and will apply for an eagle take permit under the Bald and Golden Eagle Protection Act.

Assistant Secretary Washburn issued the Record of Decision on Monday, December 16, 2013. The Assistant Secretary-Indian Affairs oversees the Office of Indian Energy and Economic Development (IEED), which implements the Indian Energy Resource Development Program

under Title V of the Energy Policy Act of 2005. IEED's mission is to foster stronger American Indian and Alaska Native communities by helping federally recognized tribes developing their renewable and non-renewable energy and mineral resources. For more information about IEED programs and services, visit the Indian Affairs website at <http://www.indianaffairs.gov/WhoWeAre/AS-IA/IEED/index.htm>.

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Record of Decision

Approval of Lease

For

**Tule Wind LLC on a portion of the Ewiiapaayp Indian
Reservation in San Diego County, California,
for the Ewiiapaayp Band of Kumeyaay Indians**

U.S. Department of the Interior

Bureau of Indian Affairs

2013

U.S. DEPARTMENT OF THE INTERIOR

AGENCY: Bureau of Indian Affairs

ACTION: Record of Decision (ROD) for the approval of a lease application for the portion of the Tule Wind Energy Project on up to 720 acres on the Ewiiapaayp Indian Reservation in San Diego County, California, pursuant to 25 Code of Federal Regulations (C.F.R.) Part 162, Subpart F (2010) for the Ewiiapaayp Band of Kumeyaay Indians (Tribe).

SUMMARY: In February 2010, Tribe submitted a lease application to the Bureau of Indian Affairs (BIA), requesting the approval of a lease for a wind energy project within a 720 acre area of the Ewiiapaayp Indian Reservation in San Diego County, California. The wind energy project would be constructed and operated by Tule Wind, LLC, the lease applicant. The parties amended a portion of the lease on April 9, 2013. Because the lease was submitted to the BIA before January 4, 2013, the effective date of new BIA leasing regulations (77 Fed. Reg. 72440 (Dec. 5, 2012)), the lease and the amendment were reviewed pursuant to the leasing regulations in effect at the time of submission. *See* 25 C.F.R. 162.008(b)(1). Once the lease is approved by the Department of the Interior (Department), provisions of the new BIA leasing regulations will govern, except where there is a conflict with the approved lease, in which case the provisions of the lease will govern pursuant to 25 C.F.R. §162.008(b)(2).

The use of tribal land for wind turbine development was contemplated as a part of the proposed Tule Wind Energy Project for which an Environmental Impact Report/Environmental Impact Statement (EIR/EIS) was prepared pursuant to both the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). The Bureau of Land Management (BLM) El Centro Regional Office, served as the Lead Federal Agency in drafting the Tule Wind Energy Project EIR/EIS and the California Public Utilities Commission (CPUC) served as the Lead State Agency. The BIA and Tribe served as cooperating agencies.

The Tule Wind Energy Project EIR/EIS analyzed the potential development of 128 wind turbines. As contemplated in the EIR/EIS, approximately half of the proposed turbines would be sited on BLM, State, and San Diego County lands in the McCain Valley (valley), while the other half of the proposed turbines would be sited on tribal, BLM, and California State Land Commission (CSLC) lands on the ridgeline adjacent to the valley (ridgeline). Under Tule Wind Projects Alternatives 1 through 4 in the EIR/EIS, approximately 65 wind turbines were proposed for the entire ridgeline area. The project proponent has proposed a reduced intensity project on the ridgeline – on both tribal and CSLC lands (with access to the entire project site via CSLC lands). As part of this reduced-intensity project, up to twenty turbines are proposed on ridgelines lands within the

Ewiiapaayp Indian Reservation. While the Final EIR/EIS (FEIR/EIS) identified only 18 turbines as being located on the trust land, the FEIR/EIS analyzed the impact of siting 2 additional turbines in areas straddling BLM and trust lands, and therefore, this ROD anticipates that the final placement of those two turbines, which the EIS/EIR depicted as being located on BLM land directly adjacent to the trust land, may actually be on trust land within the area analyzed in the EIR/EIS after final engineering of the project is completed. Therefore, this ROD approves up to 20 wind turbines which may be sited on trust land, and which are consistent with the environmental evaluation completed as part of the NEPA process for the Project. This ROD will address potential impacts of the reduced intensity ridgeline project that directly implicate tribal lands.

The BIA has jurisdiction over tribal lands and has a role in the approval of leases of tribal lands. Consistent with the Tule Wind Energy Project FEIR/EIS, the BIA is relying on that document for decisionmaking purposes for approval of the lease with the Tribe. (*Section ES 2.3*; Dudek, 2011). With the issuance of this ROD, the BIA approves the lease agreement between the Tribe and Tule Wind, LLC. This agreement will allow for the construction, maintenance, operation, and decommissioning of up to 20 wind turbines and related facilities on tribal trust lands as identified and analyzed in the BLM Final EIR/EIS as a component of Alternatives 1 through 4. The FEIR/EIS included an analysis of all environmental issues associated with the construction and operation of all the turbines on the ridgeline site including those sited on trust land.

The BIA has determined that the Proposed Action would not create significant impacts after the implementation of mitigation measures contained in this ROD and the acquisition of all permits required by law. This decision is based on the BIA's thorough review and consideration of the Tribe's lease application and materials submitted therewith; the applicable statutory and regulatory authorities governing non-agricultural land uses of trust properties; the Draft EIR/EIS; the FEIR/EIS; the Cultural Resources Memorandum of Agreement (MOA) signed by BIA, BLM, and the Tribe; the overall administrative record, including the Project-Specific Avian and Bat Protection Plan for the Tule Reduced Ridgeline Wind Project (PSABPP); the Tule Wind Project Multi Agency Construction Fire Prevention/Protection Plan (Fire Plan); other required supporting documents; and the BIA's mission to foster economic development for tribes. To ensure that the public has had an opportunity to review all of the key documents on which this ROD is based, the PSABPP and the Fire Plan were made available for public comment from September 19, 2012, to October 19, 2012, and the responses to those comments are included as part of this ROD.

With respect to the PSABPP, the Project Proponent/Applicant has agreed to comply with all applicable Federal laws, including the requirement for an eagle take permit under the BGEPA. The Applicant understands that any operation undertaken without all applicable Federal permits and approvals is done so at the Applicant's own risk. In this particular instance, the Tribe has agreed to direct the Applicant to apply for an eagle take permit. Based on consultation with the

Service and the BIA, the Applicant will apply for an eagle take permit using the Service's 2013 Eagle Conservation Plan Guidance including the risk assessment model contained in the 2013 guidelines, prior to initiating operation of the project. *See* Section 1.2.2 below for more information. Submitting a take permit application to the U.S. Fish and Wildlife Service (FWS) will satisfy this requirement and enable the applicant to move forward with construction and operation of the project; any delays due to the processing of the application will not affect this requirement.

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Attachment A	Figure 1: Regional Location Figure 2: Site and Vicinity Figure 3: Project Features
Attachment B	Adopted Mitigation Measures for the Proposed Action
Attachment C	Tribal Resolution, Ewiiapaayp Band of Kumeyaay Indians, Resolution No. 11-02, Approvals for Tule Wind Project Agreement
Attachment D	Project-Specific Avian and Bat Protection Plan (PSABPP) for the Tule Reduced Ridgeline Wind Project
Attachment E	Biological Opinion issued by the U.S. Fish and Wildlife Service (USFWS)
Attachment F	Section 106 Draft Memorandum of Agreement (MOA)
Attachment G	Wind Lease Agreement between Ewiiapaayp Band of Kumeyaay Indians and Tule Wind, LLC (being amended, will be attached when available)
Attachment H	Multi-Agency Construction Fire Prevention/Protection Plan for the Tule Wind Project (Fire Plan)
Attachment I	Agreement for Provision of Fire and Emergency Protection Services
Attachment J	Comments on the PSABPP and the Fire Plan
Attachment K	Response to Comments on the PSABPP and the Fire Plan

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1.0 INTRODUCTION

1.1 SUMMARY

The Bureau of Indian Affairs (BIA) is the Federal agency charged with reviewing and approving tribal lease applications pursuant to 25 Code of Federal Regulations (C.F.R.) Part 162, Subpart F (2010). The lease application at issue in this ROD will allow Tule Wind, LLC to lease up to 720 acres of the Ewiiapaayp Indian Reservation for the operation of wind turbine facilities. Refer to the maps in **Attachment A**, which show the regional location of the project site (Figure 1) and the site and vicinity (Figure 2).

The use of tribal land for wind turbine development was contemplated as a part of the proposed Tule Wind Energy Project for which an Environmental Impact Report/Environmental Impact Statement (EIR/EIS) was prepared pursuant to both the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA). The Bureau of Land Management (BLM) El Centro Regional Office, served as the Lead Federal Agency in drafting the Tule Wind Energy Project EIR/EIS and the California Public Utilities Commission (CPUC) served as the Lead State Agency. The BIA and Tribe served as cooperating agencies.

The Tule Wind Energy Project EIR/EIS analyzed the potential development of 128 wind turbines. As contemplated in the EIR/EIS, approximately half of the proposed turbines would be sited on BLM, State, and San Diego County lands in the McCain Valley (valley), while the other half of the proposed turbines would be sited on tribal, BLM, and California State Land Commission (CSLC) lands on the ridgeline adjacent to the valley (ridgeline). Under Tule Wind project Alternatives 1 through 4 of the EIR/EIS, approximately 65 wind turbines were proposed for the entire ridgeline area. The project proponent has since proposed a reduced intensity project on the ridgeline – on both tribal and CSLC lands. As part of this reduced-intensity project, up to 20 turbines are proposed on ridgeline lands within the Ewiiapaayp Indian Reservation. While the Final EIR/EIS (FEIR/EIS) identified only 18 turbines as being located on the trust land, the FEIR/EIS analyzed the impact of siting 2 additional turbines in areas straddling BLM and trust lands, and therefore, this ROD anticipates that the final placement of those two turbines, which the EIS/EIR depicted as being located on BLM land directly adjacent to the trust land, may actually be on trust land within the area analyzed in the EIR/EIS after final engineering of the project is completed. Therefore, this ROD approves up to 20 wind turbines which may be sited on trust land, and which would be consistent with the environmental evaluation completed as part of the NEPA process for the Project.

The lease of tribal lands to site up to 20 turbines and the subsequent implementation of a portion of this reduced intensity project on tribal trust land are collectively referred to as the “Proposed Action” in this ROD. To fully implement the Proposed Action, BLM and CSLC will have to adopt Right of Way (ROW) agreements with the developer for all proposed access roads and power line connections as identified in the Final EIR/EIS (FEIR/EIS). The final approval of those routes rests with BLM and CSLC and will require separate actions by those agencies.

The primary route analyzed under the FEIR/EIS is a new road from the valley to the ridgeline that would augment fire and emergency services to the reservation, as well as allow construction equipment; this route requires ROW grant from the BLM and approval by the CSLC for the

sections of the road and utility connection corridors in their respective jurisdictions. The secondary route analyzed is the existing BIA Road 12 (Old Mine Road) through three separate tribal jurisdictions, as well as BLM and CSLC land. The use of either route would require improvements and/or construction of the road to bring it up to fire safety standards; in addition, it would require separate agreements with the appropriate land ownership entities that have jurisdiction over portions of the road. Please see **Section 2.2.2** for further discussion of these access roads.

The BIA is the decision-maker for approving the lease under the Proposed Action which will allow for the construction, maintenance, operation, and decommissioning of turbines and related infrastructure on the lands held in Federal trust for the Tribe. The decisions in this ROD are consistent with Federal policy and tribal policy and ordinances related to the development of wind energy. Project Site (Figure 1) and Vicinity (Figure 2), and Project Components (Figure 3) maps are provided as **Attachment A** to this ROD. A table of Adopted Mitigation Measures for the Proposed Action is provided as **Attachment B**. The Ewiiapaayp Tribal Resolution is provided as **Attachment C**. The Project-Specific Avian and Bat Protection Plan for the Tule Reduced Ridgeline Wind Project (PSABPP) that was made available for public comments and as amended based on those comments is provided as **Attachment D**. The Biological Opinion (BO) issued by FWS for the entire Tule Wild Project, which covers the Proposed Action, is provided as **Attachment E**. The Memorandum of Agreement (MOA) addressing cultural issues is provided as **Attachment F**. The Wind Lease Agreement (and amendment) between the Ewiiapaayp Band of Kumeyaay Indians and Tule Wind, LLC, which was reviewed and analyzed per the lease regulations in 25 C.F.R. Part 162, is provided as **Attachment G**. The Construction Fire Prevention/Protection Plan (Fire Plan) is provided as **Attachment H**. The Fire Protection Agreement between the San Diego Rural Fire Protection District and Tule Wind, LLC is provided as **Attachment I**. The PSABPP and the Fire Plan were submitted for a public comment period, and **Attachment J** is a compilation of the public comments on both of these documents. The Response to these Comments is provided as **Attachment K**.

1.2 BACKGROUND

In December of 2010, the BLM published a Notice of Intent (NOI) in the Federal Register describing a proposed action for the entire Tule Wind Energy Project and announcing BLM's intent to prepare an EIR/EIS. Included in this NOI was a discussion of future construction activities, including on tribal trust lands. Regulations for implementing NEPA, promulgated by the Council on Environmental Quality (CEQ), also required a "scoping session" which took place on January 27 and 28, 2010, in the project area. Also in December of 2010, a draft of the Tule Wind Energy Project EIR/EIS was issued for a 70-day public review and comment period ending March 4, 2011. Upon the close of the comment period and following consideration and incorporation of the comments received on the Draft EIR/EIS, the BLM issued the FEIR/EIS on October 14, 2011. The Draft EIR/EIS and the FEIR/EIS considered a reasonable range of alternatives and analyzed the potential effects of those alternatives, as well as feasible mitigation measures. Under project Alternatives 1 through 4 of the FEIR/EIS, approximately 65 wind turbines were proposed for the entire ridgeline area. Further clarification from the FEIR/EIS indicates that the final placement of those turbines will be made at the time of installation within areas previously identified and analyzed. Four of the five alternatives analyzed in the FEIR/EIS included the siting of up to 18 turbines on the ridgeline within the Ewiiapaayp Indian

Reservation, which is defined as the Proposed Action and is the subject of this ROD. As explained above, this ROD anticipates that the final placement of two of the turbines directly adjacent to the trust land may actually be sited on the trust land; therefore, this ROD approves up to 20 wind turbines which may be sited on trust land. The BIA and the Tribe acted as cooperating agencies during the development of the FEIR/EIS for the overall Tule Wind Energy Project. The FEIR/EIS specifies in *Section ES.2.3 Responsible/Cooperating Agencies* that the BIA will utilize the EIR/EIS to determine its final decision relative to the proposed lease for the land held in trust for the Tribe by the federal government (Dudek, 2011).

The overall Tule Wind Energy Project FEIR/EIS addressed 5 alternatives. Alternatives 1 through 4 consisted of the development of the entire Tule Wind Energy Project, which includes both the valley and ridgeline portions of the Tule Wind Energy Project sites. Alternative 5 only included the valley portion of the Tule Wind Energy Project. Approximately 65 wind turbines were proposed for the entire ridgeline site and analyzed under the Tule Wind Energy Project FEIR/EIS.

The Tule Wind Energy Project divides the ridgeline site according to land jurisdiction, with the majority of the proposed ridgeline turbines located in the central portion of the ridgeline, on BLM lands. The most southerly portion of the ridgeline, where approximately seven wind turbines are proposed, is under the jurisdiction of CSLC. Agreements from BLM and CSLC are needed to access the northern portion of the ridgeline, where two rows (or strings) of up to 20 wind turbines were proposed and evaluated, and would be located immediately on or adjacent to the Ewiiapaayp Indian Reservation. The exact final location of each wind turbine on the Ewiiapaayp Indian Reservation will be determined during the final design process consistent with the FEIR/EIS evaluation, but that document estimates that the Proposed Action will temporarily or permanently impact 75 acres of Reservation lands (Iberdrola Renewables, 2011d). The lease anticipates that approximately 62 acres of the 75 acres analyzed in the FEIR/EIS will actually be impacted on the trust land.

When taking actions on a lease agreement, the BIA must comply with NEPA but can adopt another agency's environmental review to meet those requirements if it has addressed all the environmental issues associated with the trust land action. The BLM's FEIR/EIS fully addressed all of the environmental issues for the Proposed Action. The FEIR/EIS states that it may be used by other state, local and Federal agencies for those that have portions of the project proposed on lands under their jurisdiction. The BIA relies on the FEIR/EIS for the entire project in making the decisions in this ROD and adopts the FEIR/EIS and incorporates by reference necessary related documents to address the NEPA requirements for this Proposed Action.

1.2.1 BLM Record of Decision

The BLM has already approved via a separate ROD, dated December 19, 2011, 62 wind turbine configuration for the valley floor turbines that were analyzed as part of Alternative 5 of the Tule Wind Energy Project EIR/EIS. The BLM ROD was amended by a separate decision on March 7, 2013. For purposes of this ROD the references to the BLM ROD below refer to 2011 ROD as amended. As part of that decision, the BLM adopted an Avian and Bat Protection Plan (ABPP) governing the operation of the valley turbines. The Project-Specific ABPP (PSABPP)

was developed for the Proposed Action for those ridgeline turbines sited on the Ewiiapaayp Indian Reservation, as discussed further below.

1.2.2 Project-Specific Avian and Bat Protection Plan (PSABPP)

A Final PSABPP for the Proposed Action was prepared to provide information on some of the issues related to the ridgeline turbines that were not specifically addressed in the overall ABPP for the Tule Wind Energy Project prepared in 2011. This PSABPP, included as **Attachment D** to this ROD, is based on the overall project ABPP adopted by BLM for purposes of the turbines approved for the valley portion of the Project. The 2011 ABPP predicted that the project would kill 0.15 eagles per year during its 20 year operating life, or 3.0 eagles total, and that construction and/or operation could result in the loss of an eagle nest territory.

The PSABPP prepared for the Proposed Action, like the ABPP, used the 2011 draft Eagle Conservation Plan Guidance. Based on the PSABPP, additional mitigation measures to further reduce impacts to biological resources beyond those identified in the FEIS/EIR are identified in **Section 7.2** of this ROD. The PSABPP requires, among other things, biological monitoring during construction activities, worker environmental awareness training, restoration of temporarily impacted areas, compensation for permanently impacted habitat at a minimum 1:1 ratio, minimization of impact areas, and control of fugitive dust as well as golden eagle-specific preconstruction nest surveys and no-activity buffers of 0.25 mile around any active nests with a direct line of sight to the work area and 660 feet (or otherwise set in consultation with CDFW and/or FWS) if the work area is not within direct view of the nest (FEIS, p. 4.21-9). It also requires the seasonal curtailment of turbines H1 and H2 (identified as J1 and J2 in the FEIR/EIS) during daylight hours between the months of February to April if the closest Cane Brake nest is occupied. Even with the implementation of these measures, the FEIS/EIR anticipated that construction and operation of the proposed project could kill golden eagles and adversely affect their foraging habitat, and therefore FWS has recommended that the Applicant obtain take authorization under BGEPA. The Tribe has agreed to direct the Applicant to apply for an eagle take permit using the Service's 2013 Eagle Conservation Plan Guidance. Based on consultation with the FWS and BIA, the Applicant will apply for an eagle take permit, including the risk assessment model contained in the 2013 guidelines, prior to initiating operation of the project.

This ROD contains BIA's approval of a lease between the Ewiiapaayp Indian Reservation and Tule Wind Energy Project, LLC for construction and operation of the ridgeline portion of the Tule Wind Energy Project. As noted above, the lease allows the construction and operation of the Proposed Action to proceed before an eagle take permit is issued, subject to the applicable requirements. However, the Applicant remains responsible for complying with all applicable federal laws, including the BGEPA. Any take of eagles caused by the Project, prior to the issuance of an eagle take permit, constitutes a violation of BGEPA that the FWS may refer to the Department of Justice for enforcement. (16 USC 668a, 668b). Any unauthorized take of eagles is a violation of BGEPA.

1.2.3 Biological Opinion

Although there is no habitat for the endangered Quino Checkerspot butterfly on the ridgeline site, the Biological Opinion (BO) issued by FWS for the entire Tule Wind Energy Project addresses the area covered by this ROD for the Proposed Action. The BO is provided as **Attachment E** to this ROD.

1.2.4 Right-of-Way

To fully implement the development and operation of the wind energy project, BLM and CSLC will need to approve the necessary ROW for necessary project components that cross lands under their jurisdiction, including access roads, transmission lines, and other ancillary facilities analyzed in the FEIR/EIS. This ROD approving the lease of tribal lands assumes that the preferred alignment of the access road(s) and the transmission lines will be in the approximate location that was identified and fully evaluated in the FEIR/EIS.

1.2.5 Clean Air Act, as Amended in 1990

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

1.3 BIA DETERMINATION

The ridgeline portion of the overall Tule Wind Energy Project is analyzed in the FEIR/EIS, which noted in *Section B Project Description* that each jurisdictional agency will need to make findings for the properties under its authority. This BIA ROD applies only to the Ewiiapaayp Indian Reservation. In issuing this ROD, the BIA adopts the relevant mitigation measures taken from the FEIR/EIS as identified in **Attachment B**. This ROD also contains additional mitigation measures (**Section 7.2**) which are designed specifically to reduce the risk of fire (**Attachments H and I**) and ensure the minimization of impacts to golden eagles and other species covered in the revised PSABPP (**Attachment D**) as modified in response to public comments for the Tule Wind Reduced Ridgeline Project. Based on the analysis in the FEIR/EIS and based on the entirety of the administrative record, the BIA has determined that the Proposed Action meets those tribal needs as identified in *Section A.3.2 Ewiiapaayp Band of Kumeyaay Indians Project Purpose* of the FEIR/EIS by promoting the long-term economic self-sufficiency, self-determination and self-governance of the Tribe and provides compliance with overall Federal policy regarding renewable energy and the mission of the BIA to support Tribal self-determination on land held in trust for the Tribe.

In issuing this ROD, the BIA adopts the relevant mitigation measures from the FEIR/EIS as identified in **Attachment B** which provide avoidance, minimization, and or the mitigation of impacts of the Proposed Action to the fullest extent feasible. This ROD also contains additional

mitigation measures (**Section 7.2**) which are based on and designed specifically to address the unique conditions of the ridgeline site; the Fire Plan and PSABPP are herein adopted and made part of the administrative record by this ROD. Based on the analysis in the FEIR/EIS and based on the entirety of the administrative record, the BIA has determined that the approval of a lease within the 720-acre area on the Ewiiapaayp Indian Reservation and the subsequent construction, maintenance, operation, and decommissioning of up to 20 turbines and related facilities such as roads, transmission lines, and other facilities will best meet the overall purpose and need of the Tribe for the Proposed Action (see **Section 2** below).

This Proposed Action, as analyzed in the FEIR/EIS, meets those tribal needs as identified in *Section A.3.2 Ewiiapaayp Band of Kumeyaay Indians Project Purpose* of the FEIR/EIS by promoting the long-term economic self-sufficiency, self-determination, and self-governance of the Tribe and is consistent with overall Federal policy regarding renewable energy, including the President's Climate Action Plan released by the Executive Office of the President in June 2013, and the mission of the BIA to support tribal self-determination on land held in trust for the Tribe.

Implementing this action will provide the Tribe with opportunity for attracting and maintaining a significant, stable, long-term source of tribal governmental revenue, and accordingly, prospects for maintaining and expanding tribal governmental programs which will provide a wide range of health, education, housing, social, cultural, environmental, and other programs, as well as employment and career development opportunities for its members. The approval of the lease of trust land will further meet the overall Federal and state policies to increase the share of energy derived from renewable sources, decrease greenhouse gases (GHGs), and increase overall energy independence. The BIA has considered potential effects to the environment, including potential impacts to local governments and other tribes, has adopted all practicable means to avoid or minimize environmental harm while ensuring the overall purpose and need of the Tribe is met, and has determined that any potentially significant effects will be adequately addressed by these mitigation measures, as contained in this ROD, and therefore approves the subject lease.

The BIA's decision to approve the lease of trust lands is based on the following:

- execution of the lease is in the best interest of the Tribe;
- thorough review and consideration of the Tribe's lease application and materials submitted therewith;
- the applicable statutory and regulatory authorities governing non-agricultural land uses on trust land, including compliance with 25 U.S.C. 415, and a determination that the lease documents comply with these authorities;
- the capacity of this site to produce wind energy;
- the Draft EIR/EIS and FEIR/EIS (Dudek, 2011);
- the Cultural Resources Memorandum of Agreement (MOA) signed by the BLM, BIA, and the Tribe (**Attachment F**);
- the total administrative record, including supplemental documents such as the Fire Plan (**Attachment H**), the revised PSABPP (**Attachment D**), and related responses to public comments (**Attachment K**) attached to this ROD;
- the comments received from the public, federal, state, local governmental agencies as well as other potentially affected Indian tribes (**Attachment J**);

- consultation with other nearby tribes; and
- the BIA's mission to foster economic development for tribes.

2.0 TRIBAL PURPOSE AND NEED

2.1 PURPOSE AND NEED FOR THE PROPOSED ACTION

The economic benefits of the Proposed Action for the Tribe are in conformance with the mission of the BIA. The mission of the BIA and the basis for the acceptance of this ROD is to facilitate the economic well-being of the Ewiiapaayp Tribe while fostering tribal self-sufficiency.

The Proposed Action is needed to provide the Tribe with significant and dependable annual revenues to supplement tribal governmental services and priorities. Project revenues would be used to fund essential tribal governmental programs and supplement Federal program funding that has historically been insufficient for tribal needs, has required matching funds by the Tribe of between 20 to 50 percent. Revenues from the Proposed Action would also enable the Tribe to replace its failing office building, replace its residential diesel generators with solar panels and small wind turbines, replace its failed septic tanks, add water filters to its water wells, improve its failed roads, obtain legal access over a shorter proposed access road, hire additional staff, and expand its environmental, health and safety programs.

The Proposed Action would also provide employment opportunities for Tribal members and many local non-tribal residents. Operation of the project would require the purchase of goods and services, increasing opportunity for local businesses, and would increase taxes and revenues that would stimulate the local economy.

The economic need for the Proposed Action is evident when comparing the Tribe's socioeconomic conditions with those of the surrounding tribal and non-tribal communities. The Tribe's economy and Tribal member socioeconomic status lags behind the economy of the local community. The Ewiiapaayp Band is one of the poorest of the 29 Southern California American Indian tribes, and has one of the highest unemployment rates and the highest incidence of poverty among this group of tribes. The development of the turbines on the Ewiiapaayp Indian Reservation will improve the tribal economy by providing a sustained and viable economic base. The Proposed Action is consistent with *Section A.3.2 Ewiiapaayp Band of Kumeyaay Indians Project Purpose* stated in the FEIR/EIS (Dudek, 2011). The Tribe's need for the development of this project is based on:

- Promoting a sustained revenue stream for the Tribe;
- Promoting employment opportunities for tribal members;
- Promoting economic development opportunities for tribal members;
- Improving socioeconomic conditions of the Tribe and its members;
- The inherent right of the Tribe's government as the sovereign authority with governmental jurisdiction over its tribal lands to determine the use of its lands; and
- Promoting funding of tribal programs.

Approval of the Proposed Action on the Ewiiapaayp Indian Reservation would allow the Tribe to make use of a significant resource available to the Tribe on their existing Reservation—wind. Approval of the Proposed Action would also provide the tribal government with the following beneficial impacts in meeting the following project objectives:

- Construction and operation of the turbines will provide a substantial revenue stream to the Tribe.
- The increased revenue stream will enable the tribal government to fund a variety of social, governmental, administrative, educational, and health and welfare services to improve the quality of life for tribal members. The economic opportunities made possible by the wind turbines may also provide a basis for previously disenfranchised tribal members to return to the Tribe. Additionally, the revenue will help to improve conditions on the Ewiiapaayp Indian Reservation and help to ensure permanent access.
- The improved development opportunities resulting from the wind turbines will assist in improving the socioeconomic status of the tribal government and its tribal citizens. The Tribe plans to use Tule Wind Energy Project revenues to develop and invest in long-term projects that will provide the Tribe with alternative sources of sustained revenues for up to 30 years. This economic development by the Tribe will provide its first commercial revenues that are direly needed given the certainty of dramatic decreases in federal government program revenues.
- The Tribe will also use its revenues to provide programs to assist its tribal citizens in developing viable business ventures. There exists no significant infrastructure for the Tribe's reservation due in part to its remote location and inadequate access roads that prevent or limit the transport of materials to the Ewiiapaayp Indian Reservation. As stated in its Tribal Constitution, the overriding goal of the Tribe is to improve and develop the Ewiiapaayp Indian Reservation for the benefit of its people such that it might become a self-sufficient Indian community. The long-term goals of the Tribe, after accomplishing the development goals and objectives provided by the Tule Wind Energy Project, are to pursue community and economic development necessary to provide for a self-sufficient and sustainable tribal community. The Tribe has adopted ordinances and land use plans which are consistent with this lease and the development of up to 20 wind turbines on land held in trust for them by the Federal Government.

The long-term goals of the Tribe are to increase tribal economic self-sufficiency by (1) creating an increase in tribal income from market-based economic enterprises, and (2) providing jobs for tribal citizens and others throughout the region. The focus of the Tribe's economic development effort is on enterprises that: (a) earn revenue for the Tribe from its targeted enterprises of (i) healthcare, (ii) renewable energy, and (iii) entertainment; (b) create and sustain jobs and economic activity for the Tribe, its neighbor and sister Kumeyaay tribes and the region; and (c) improve healthcare for the Tribe, its neighbor and sister Kumeyaay tribes, and the region. These goals are reflected in the Tribe's Comprehensive Economic Development Strategy (CEDS).

2.2 PURPOSE OF THE LEASE UNDER THE PROPOSED ACTION

The purpose of the proposed lease is solely and exclusively for "Wind Energy and Transmission Purposes," and throughout the term, Tule Wind, LLC shall have the sole and exclusive rights to use the leased premises (up to the designated 720-acre portion of the Ewiiapaayp Indian

Reservation or generally, hereafter trust land) for wind energy and transmission purposes, whether as the developer/owner and/or whether wind energy and transmission purposes are developed/owned/operated by or managed by third parties, as well as to convert wind resources on the trust land. A copy of the lease reviewed by the Pacific Regional Office of the BIA for consistency with 25 C.F.R. Part 162 is provided as **Attachment G** to this ROD. Wind Energy and Transmission Purposes is defined in the lease to include: wind resource evaluation; wind energy development; converting wind energy into electrical energy; collecting and transmitting the electrical energy converted from wind energy on trust land by Tule Wind, LLC on BLM and private land adjacent to the trust land (including installation of all necessary substations, switch yards off take equipment and the like for delivering the electrical energy to third party utilities and/or consumers); use of the trust land ancillary to Tule Wind, LLC's wind energy conversion activities on BLM and private land; and any and all other activities related to the foregoing. Other uses of the land by the Tribe to the degree that it does not interfere with these approved uses will be allowed during the term of the lease.

Permitted uses of trust lands by Tule Wind, LLC during the lease are solely for purposes of the development, construction, ownership, operation, maintenance, repair and removal of the Tule Wind Energy Project on trust land. In general, these permitted uses include the following:

- 1) Extract soil samples, perform geotechnical tests, and conduct such other tests, studies, inspections, and analysis as necessary, useful or appropriate.
- 2) Construct, erect, use, operate, maintain, repair, install, reinstall, replace, relocate, and remove from time to time, meteorological and wind measuring equipment, including but not limited to, anemometer towers and all necessary and proper appliances and fixtures for use in connection with said towers, to determine the feasibility of wind energy conversion on the trust lands.
- 3) The right of ingress to and egress from the Windpower and Transmission Facilities located on the trust land and BLM and private land and by use of project roads at all times and by use of non-project roads or paths during regular business hours of 8:00 a.m. to 6:00 p.m with prior notice to the Tribe, provided Tule Wind, LLC shall have access to non-project roads at any time in the event of emergencies.
- 4) Install or utilize any other improvements, including roads, facilities, machinery, and equipment, on the trust lands that are necessary, useful or appropriate to accomplish any of the foregoing.
- 5) Remove, disturb, and use caliche, gravel, soil, earth, in place or other material on or in the trust land for the purposes of the aforementioned activities.

The lease will also allow for Tule Wind, LLC to construct, erect, use, operate, maintain, repair, install, reinstall, replace, relocate, and remove from time to time, the following "Wind power and Transmission Facilities" on the trust lands:

- (A) Meteorological and wind measuring equipment, including but not limited to anemometer towers and all necessary and proper appliances and fixtures for use in connection with said towers, to determine the feasibility of wind energy conversion on the trust land, and on adjacent property or elsewhere;

- (B) Wind turbines, steel towers, foundations and concrete pads, support structure, footings, anchors, fences and other fixtures and facilities, maintenance, security, office and/or guest facilities, staging areas for the assembly of equipment, power generation facilities to be operated in conjunction with large wind turbine installations, control buildings, laydown areas, crane pads, and related facilities and equipment;
- (C) Electrical wires and cables required for the gathering and transmission of electrical energy and/or for communication purposes, which may be placed overhead on appurtenant support structures or underground and one or more substations or interconnection or switching facilities from which Tule Wind, LLC may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy, together with the appropriate rights of way on, along, in and under the trust lands.
- (D) Other improvements, including roads, utilities, facilities, buildings, machinery, and equipment, maintenance, repair, and storage facilities that Tule Wind LLC reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing.
- (E) Remove, disturb, and use caliche, gravel, soil, earth in place or other material on or in the Premises and to install and operate a well and withdraw groundwater at a rate not to exceed fifty (50) gallons per minute for the purposes of operation.

3.0 DESCRIPTION OF THE PROPOSED ACTION

3.1 TULE WIND, LLC LEASE AND THE PROPOSED ACTION

The Proposed Action includes the approval of a lease agreement between the Tribe and Tule Wind, LLC by BIA to develop, construct, operate, and decommission up to 20 turbines on a portion of the ridgeline located on the Ewiiapaayp Indian Reservation. The Tule Wind Energy Project proposed in the FEIR/EIS would produce up to 201 megawatts (MW) of wind energy (Dudek, 2011), thus reducing the reliance on other non-renewable forms of energy and reducing GHG emissions overall. Generally speaking, the turbines sited on the Ewiiapaayp Indian Reservation would be the most productive power-producing turbines among those of the Tule Wind Energy Project due to their location on the ridgeline. Approval of the lease would facilitate the following primary development components:

- Development of up to 20 wind turbines on the Ewiiapaayp Indian Reservation (**Figure 3; Attachment A**);
- Access roads between turbines, including improvements to existing roadways and new roadways to meet fire safety standards;
- A 34.5 kilovolt (kV) overhead and underground collector cable system linking the wind turbines to the off-reservation collector substation;
- Four 2-acre temporary laydown areas; and
- One permanent meteorological (MET) tower.

3.2 WIND TURBINE DEVELOPMENT

As explained above, the Tule Wind Energy Project FEIR/EIS identified 18 wind turbines in 2 rows to be located on the Ewiiapaayp Indian Reservation within the northernmost portion of the

ridgeline site, pending final siting. The final placement of those turbines will be made at the time of installation within areas previously identified and analyzed, and up to 20 turbines may be sited on tribal land. Access to this site would require BLM and CSLC ROWs to grant road access and transmission corridors to connect the Ridgeline project to the previously approved valley floor turbines. Approvals of ROWs from both Agencies is also necessary for the collector cable system and transmission lines, and to access the project site. The FEIR/EIS describes a minimum safety zone around each turbine. Neither this ROD nor the associated lease authorize any disturbance whatsoever on lands outside the Ewiiapaayp Indian Reservation boundary. As a result, for turbines located near the boundary of the trust land, any construction, maintenance, or decommissioning activity, including any necessary buffers either have to be entirely on trust lands or a separate authorization may be required from the BLM ROW for BLM lands. For turbines located on those trust lands that border the BLM-managed Sawtooth Mountain Wilderness Area, the offset and safety buffers from the boundary must be sufficient to avoid any and all incursions into the Wilderness Area. Such activities cannot be authorized by the BLM.

Depending on site topography, an approximately 200-foot-radius area around each turbine would be cleared (approximately 2.88-acre total area) (Dudek, 2011). The cleared area would be re-vegetated with fire-safe vegetation consistent with fire agency standard practices. These areas are assumed to be permanently impacted. On the Ewiiapaayp Indian Reservation within the 720-acre lease area under the Proposed Action, approximately 62 acres are anticipated to be permanently impacted, which generally includes but is not limited to the following components of each facility: the foundation, pad-mounted transformer, and a gravel driveway from the turbine string access road to the individual turbine (Iberdrola Renewables, 2011d). For the construction pad sites for the wind turbines, any gravel driveways and slope areas would require grading of rock and dirt. The slopes would be constructed in accordance with the latest International Building Codes and be treated with specific landscaping and erosion controls.

3.2.1 Description of Wind Turbines

Wind turbines would consist of three main parts: the turbine tower, turbine rotor, and the nacelle. Measured from the ground to the turbine blade tip, the typical turbine would be a maximum of 492 feet tall and would be mounted on a concrete pad and pedestal, supported by a permanent concrete foundation, which would be located below the ground surface (Dudek, 2011). The turbine tower typically consists of three tubular steel pole sections. A turbine rotor and the nacelle (which includes the electrical generator) would be mounted on top of each turbine tower, for a rotor hub height of up to 328 feet (Dudek, 2011). Computer systems installed in each turbine would routinely perform self-diagnostic tests and would allow a remote operator to set new operating parameters, perform system checks, and ensure turbines are operating at peak performance. As a standard safety precaution, turbines would automatically shut down if sustained winds or gusts exceed predetermined set points established by the turbine manufacturer to prevent equipment failure. Each turbine would also be equipped with a transformer that would step-up the electricity received from the generator at 600 to 690 volts to 34.5 kV. Depending on the turbine type selected, the transformer would either be located on a pad at the base of each turbine or within the wind turbine itself (Iberdrola Renewables, 2011a).

Turbines in the same geographical location would be grouped in rows (or strings) and connected by an underground and/or overhead collector cable system. Those turbines on the trust land would be primarily connected with an underground collector system.

In compliance with Federal Aviation Administration rules (Advisory Circular (AC) 70/7460-1K), all turbine components including towers, nacelles, and rotors, would be painted or finished using low-reflectivity, neutral white colors. The small cabinets containing the pad-mounted equipment at the base of each turbine tower would be painted with earth tone finishes, helping cabinets blend in with the surrounding ground. To minimize the potential for bird perching, external ladders and platforms would not be placed on tubular towers and guy wires would not be used on turbine towers.

Exterior lighting installed on turbines would be restricted and would only include FAA aviation warning lights. The minimum required number of lights would be installed and the minimum intensity of light would be used to meet FAA standards (Dudek, 2011).

Overhead and Underground 34.5 kV Collector Cable System

Transformers within the wind turbine or at the base of the proposed turbines would be connected to an underground or overhead electrical system. The overhead collector cable system would be supported by wood or steel poles. Poles would be between 60 and 80 feet in height and would be approximately 2 feet in diameter. The underground collector cable system construction footprint would include a 24-foot-wide temporary disturbance area and would not result in permanent land disturbances.

Description of Collector Cable System

The underground/overhead collector cable system would connect turbines located in the same strings and transmit electricity generated by the turbines to a centrally located overhead collector cable system. The overhead system would then transmit the generated electricity to the collector substation. The collector substation for the area covered under the Proposed Action would be located on private land adjacent to the proposed Tule Wind Operations and Maintenance (O&M) facility (for the overall Tule Wind Energy Project). Portions of the collector cable system may require additional authorization by BLM and CSLC. This substation has been approved in an agreement with San Diego County.

The underground collector cable system would be placed within a cable trench generally located along the length of the proposed turbine access roads. The underground collection system would consist of a network of 34.5 kV circuits that would collect and deliver electricity from the wind turbine generators to the off-reservation collector substation. Although the size of the cable would vary depending on the designed electrical load, each circuit would consist of three 35 kV cables and all cables would have stranded aluminum conductors, cross-linked polyethylene insulation, and a copper concentric shield neutral/ground wire in a black polyethylene jacket. The circuits would also feature a bare copper or copper-clad trench neutral/ground wire and a fiber-optic cable for turbine generator management and control. Cables comprising each circuit would be placed in the cable trench in a tight trefoil configuration and backfilled with select soil free of rocks and debris previously set aside during trench excavation. With the exception of riser poles and wind turbines, no conduits would be used for power cables (Dudek, 2011).

Concrete or fiberglass vaults and splice boxes would be placed along the underground cable system where necessary. Vaults would be approximately 5 feet wide by 5 feet tall by 5 feet long and spaced approximately 2,500 feet apart. Boxes would have locked lids to control access.

The aboveground collector system would utilize wood or steel poles approximately 60 to 80 feet in height, with single and double circuit collectors. Taller poles may be required at wash or drainage crossings (Dudek, 2011).

3.2.2 Access Roads

To connect the Ridgeline Component to the previously approved project, access roads would be constructed and improved primarily on BLM administered land adjacent to the proposed turbine strings on trust land. A small portion of the roads falls under the jurisdiction of the CSLC, and therefore, approval from both the BLM and the CSLC would be required for the contemplated access roads to be constructed. As stated in **Section 1.2**, the December 2011 ROD approved by BLM for a portion of the Tule Wind Energy Project at the valley site specifically noted that separate approval regarding access roads may be required if BIA and/or CSLC subsequently approves the placement of turbines on the portions of the ridgeline under their respective jurisdictions.

The location of the proposed access road from the McCain Valley to the turbines on the ridgeline would also cross and provide access to CSLC managed state lands on the south end of the ridgeline (**Attachment A**). This route was evaluated in the FEIR/EIS and is considered the most feasible to construct in terms of maintenance of existing topography; furthermore, it will provide beneficial fire and emergency response access to the isolated ridgeline reservation. This ROD anticipates that this alignment will be built, which will support Proposed Action.

Some existing roads were also analyzed in the FEIR/EIS as being possible points of access to the turbines on the ridgeline. Tule Wind, LLC may be able to negotiate with the Manzanita and Campo Indian tribes for the portions of BIA Road 12 (Old Mine Road) that would be improved to fire safety standards within tribal lands. To date, this agreement has not been reached. If access through the Manzanita Reservation cannot be obtained, then additional back-up access through the Ewiiapaayp Reservation (via Thing Valley Road off La Posta Truck Trail) may be required. In the event these existing roads are used as alternative or secondary access routes to the project site as identified in the FEIR/EIS, they would need to be improved to current fire safety standards before construction of the turbines. These roadway improvements are addressed in Mitigation Measure FF-1 in **Section 7.2** of this ROD. Such improvement is consistent with the existing fire agreements between Iberdrola and the County and Rural Fire Departments, which were submitted for public review by the BIA in advance of the adoption of this ROD.

The construction of spur roads on the Ewiiapaayp Indian Reservation from the BLM designated ROW to the actual turbine locations would be in conformance with State Responsibility Areas (SRA) Fire Safe Regulations and the Tribe's planning standards. The existing agreement between BIA and CAL FIRE will remain in place relative to wild lands fire suppression.

3.3 TULE WIND ENERGY PROJECT CONSTRUCTION

3.3.1 Construction Schedule

Construction of the Tule Wind Energy Project is anticipated to require up to two years for completion. The schedule would be modified to begin after BLM, BIA, County of San Diego, and CSLC approvals are complete. It is estimated that portions of the overall Tule Wind Energy Project could be operational approximately one month following the completion of construction (Iberdrola Renewables, 2011a). Tule Wind, LLC anticipates that construction activities would occur between 7 a.m. and 7 p.m., Monday through Saturday, but may involve extended hours as needed to complete certain construction activities (Dudek, 2011). Construction of the Tule Wind Energy Project will be phased, and construction on the Ewiiapaayp Indian Reservation will likely not occur until after the valley portion of the project is completed or once the BIA and required approvals to ensure access are in place.

3.3.2 Construction Personnel and Equipment

Construction of the Tule Wind Energy Project would employ up to 325 workers per day during the peak construction period. Depending on the specific state of construction, an average daily workforce of 125 workers would be present at the construction site and up to 200 delivery trucks are anticipated daily. During the peak of construction, a typical day would include the transportation of turbines, movement of heavy equipment, and transportation of materials and concrete. Construction activities may be supplied power by generators provided by the construction contractor. Heavy equipment used for construction would generally include bulldozers, graders, water trucks, compactors, excavators, heavy duty rock trenchers, and cranes.

3.3.3 Water Usage

Construction of the entire Tule Wind Energy Project is estimated to require approximately 5.2 million gallons of water to support the water needs of the project for dust suppression and concrete mixing. Project water needs are currently expected to be supplied by a combination of on-site wells, and if necessary would be augmented with water from nearby water districts. Wells located on Rough Acres Ranch and in the Thing Valley on the Ewiiapaayp Indian Reservation, when combined, can produce approximately 130 gallons per minute (gpm). This is sufficient to supply water for construction of the overall Tule Wind Energy Project (Geo-Logic Associates, 2010). The overall Tule Wind Energy Project has received written confirmation from the Jacumba Community Service District (Lindenmeyer, 2010) and Live Oak Spring Water Company (Najor, 2010) of water supplies available to provide construction water to the project. In addition, the property owners of the well sites on Rough Acres Ranch and the Ewiiapaayp Indian Reservation provided letters confirming use of the wells by Tule Wind, LLC during construction of the overall Tule Wind Energy Project (Iberdrola Renewables, 2011b, 2011c).

3.3.4 Maintenance

Each turbine is scheduled to be serviced approximately twice per year, or more as needed. Typical service activities include (but are not limited to) temporarily deploying a crane within the construction easement of each turbine, removing the turbine rotor, replacing generators, bearings, and deploying personnel to climb the towers to service parts within the turbine. In

addition, computer systems inside each turbine would routinely perform self-diagnostic tests. The installed computer systems would allow a remote operator to set new operating parameters, perform system checks, and ensure turbines are operating at peak performance.

As a safety precaution, turbines would automatically shut down if sustained winds or gusts exceed predetermined set points established by the turbine manufacturer to prevent equipment failure. Inoperative turbines would be repaired, replaced, or removed in a timely manner.

The overhead and underground 34.5 kV collector cable system, off-reservation collector substation, and other transmission components of the project facilities would be regularly inspected, maintained, and repaired following construction. Overhead components would be inspected, at a minimum, for corrosion, equipment misalignment, loose fittings, and other mechanical problems. The underground portion of the cable system would be inspected as required. Tule Wind, LLC would maintain a working space around all overhead structures, which would be cleared of shrubs and other obstructions for inspection, fire, and maintenance purposes.

3.3.5 Decommissioning of the Wind Turbines on Trust Land

Prior to the termination of the lease agreement with Tule Wind, LLC, a final decommissioning plan would be developed in compliance with the standards and requirements for closing a site and would be circulated for approval to regulatory entities. The project could potentially be extended by Tule Wind, LLC through agreement of a new lease with the Tribe. The BIA would then review the new lease and make a decision based on the applicable Federal laws and regulations in place at that time.

A site reclamation plan and monitoring program would be included as components of the decommissioning plan. Requirements in effect at the time of decommission are anticipated to require that all turbines and ancillary structures be removed from the site. The final decommissioning plan would, however, be developed in compliance with the standards and requirements for closing a site at the time decommissioning occurs.

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

4.0 THE FEDERAL GOVERNMENT'S TRUST RESPONSIBILITY TO INDIAN TRIBES

The BIA's mission is to:

...enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes, and Alaska Natives.

The BIA's mission is consistent with the stated policies of other Federal agencies involved elsewhere in the development of the Tule Wind Energy Project, including BLM Manual Rel. 8-58 1/26/90 TC-1 8160, which states the objectives of:

...ensuring that Native American issues and concerns are given equitable and legally adequate consideration during decision making. (8160.01A), and

Recognize the Bureau's ongoing fiduciary responsibility toward Native American resource development and protection programs on Indian lands. (8160.01E)

The BLM under the Federal Land Policy and Management Act of 1976 (FLPMA; P.L. 94-579; 90 Stat. 2743; 43 U.S.C. 1701) requires coordination with Indian tribes, as well as with other Federal agencies and state and local governments, in the preparation and maintenance of an inventory of the public lands and their various resource and other values; in the development and maintenance of long range plans providing for the use of the public lands; and in the management of the public lands. A MOU between the BLM and the BIA and the Ewiiapaayp Tribe, which applies to this ROD, for example was in accordance with this policy direction of government to government relations between the Federal Government and the Tribe.

The BIA lease approval and the needed future BLM and CSLC actions relative to the approval of the ROWs in support of the Ewiiapaayp Tribe's participation in the Tule Wind Energy Project would also be consistent with the following laws and directives pertaining to renewable energy resources:

- President's Climate Action Plan, released by the Executive Office of the President in June 2013. This plan calls for the expansion of America's renewable energy sources, including a Presidential Memorandum that directs Federal agencies to streamline the siting, permitting, and review process for transmission projects across Federal, state, and tribal governments.
- Section 211 of the Energy Policy Act of 2005, enacted in August 2005, mandated up to 10,000 MW of non-hydropower, renewable-energy projects on public lands by 2015.
- Section 142 of the Energy Independence and Security Act, enacted in December 2007, requires Federal agencies to achieve a 10 percent increase in annual alternative fuel consumption by 2015 from a 2005 baseline.
- Executive Order 13423: Strengthening Federal Environmental, Energy, and Transportation Management, signed by President George W. Bush on January 24, 2007. This order requires the Federal Government to improve energy efficiency, reduce greenhouse gas emissions, ensure that at least half of the required renewable energy from the Energy Policy Act of 2005 comes from new renewable sources, and implement new renewable energy projects on agency property.
- Instruction Memorandum 2009-043, dated December 19, 2008, Wind Energy Development Policy, establishes BLM policy to ensure the timely and efficient processing of energy ROWs for wind power on public lands.
- Secretarial Order 3283 Enhancing Renewable Energy Development on public lands, signed January 16, 2009. This order facilitates the Department of the Interior's efforts to achieve the goals established in Section 211 of the Energy Policy Act of 2005.

- Secretarial Order 3285 Renewable Energy Development by the Department of the Interior, signed March 11, 2009. The order establishes the development of renewable energy as a priority for the Department of the Interior and establishes a Departmental Task Force on Energy and Climate Change.
- Secretarial Order 3206: This order, which was signed by the Secretaries of the Interior and Commerce on June 5, 1997, clarifies the responsibilities of the departments when actions taken under the authority of the Endangered Species Act (ESA) may affect Indian lands, resources, or rights.
- Executive Order 13514: Federal Leadership in Environmental, Energy and Economic Performance Executive Order 13514 was issued by President Obama on October 5, 2009, establishing requirements for sustainability in Federal Government and directing agencies to make greenhouse gas emission reductions a priority. This order establishes requirements for the management of Federal facilities and vehicles, strategic planning, implementing renewable energy generation projects on agency property, and integration of sustainability goals in agency missions.
- Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, signed November 6, 2000. This order establishes regular consultation and collaboration with tribal officials in the development of Federal policies, strengthens government-to-government relationships between the Federal Government and tribes, and reduces the imposition of unfunded mandates upon Indian tribes.
- The Clinton Memorandum Government-to-Government Relations with Native American Tribal Governments, signed April 19, 1994. This memorandum clarified the responsibility of the Federal Government to ensure that it operates within a government-to-government relationship with Federally-recognized Native American Tribes.

Of particular importance is Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act." Section 4 states:

Indian lands are not federal public lands or part of the public domain, and are not subject to federal public land laws. ... These lands are managed by Indian tribes in accordance with tribal goals and objectives, within the framework of applicable laws. ... Principle 2. The Departments recognize that Indian tribes ... are not subject to the controls or restrictions set forth in federal public land laws. Indian lands are not federal public lands or part of the public domain ... Accordingly, Indian tribes manage Indian lands in accordance with tribal goals and objectives, within the framework of applicable laws. ... (B) The Departments acknowledge that Indian tribes value, and exercise responsibilities for management of Indian lands and tribal trust resources. In keeping with the federal policy of promoting tribal self-government, the Departments shall respect the exercise of tribal sovereignty over the management of Indian lands, and tribal trust resources. Accordingly, the Departments shall give deference to tribal conservation and management plans for tribal trust resources that: (a) govern activities on Indian lands, ... and (b) address the conservation needs of listed species. ... Appendix (D) (1) Facilitate the Service's use of the best available scientific and commercial data by soliciting information, traditional knowledge, and comments from, and utilizing the expertise of, affected tribal governments in habitat conservation planning that may affect tribal trust resources or the exercise of tribal rights.

The BIA recognizes that the golden eagle possesses cultural as well as biological significance to the Tribe and other Kumeyaay Bands in the area and that potential impacts to the golden eagle may occur as a result of the Proposed Action. The mitigation measures adopted herein (**Attachment B**), the additional mitigation relative to the PSABPP developed for the Proposed Action also adopted herein (**Section 7.2**), and the Tribe's requirement that the applicant seek an eagle take permit, would all significantly reduce potential impacts to golden eagles.

As stated above, the Proposed Action is consistent with the BIA's mission, as well as the policies underlying the Federal statutory authorities in the Indian Reorganization Act, 25 U.S.C. § 461 *et seq.*) and BIA's implementing regulations at 25 C.F.R. Part 162, of promoting meaningful opportunities for economic development and self-sufficiency of tribes and their members, and furthering tribal self-governance and self-determination.

The approval of the lease when considered together with all other identified and reasonably mitigated impacts of the Proposed Action provides the best available opportunity to meet the Purpose and Needs of the Tribe, the mission of the BIA, and the stated objectives of both the state and Federal Governments in the arenas of renewable energy without creating significant or unreasonable harm to the environment.

4.1 AUTHORITIES

The Indian Long-term Leasing Act (25 U.S.C. § 415) provides the Secretary of the Interior with general authority to approve leases of trust lands for Indian tribes in furtherance of the statute's broad goals of promoting Indian self-governance and economic self-sufficiency. If a tribe is seeking to lease land in trust, it must apply to the BIA and comply with the implementing regulations in 25 C.F.R. Part 162. This ROD records the decision by the BIA to approve the Proposed Action to lease trust lands of up to 720 acres of the Ewiiapaayp Indian Reservation in San Diego County, California, to Tule Wind, LLC for development and operation of up to twenty turbines.

4.2 PROCEDURAL BACKGROUND

The regulations in 25 C.F.R. Part 162 require compliance with NEPA. When taking actions on a lease agreement, the BIA must comply with NEPA but can use another agency's environmental document to meet those requirements if it has addressed all the environmental issues associated with the trust land action. Accordingly, BLM published a Notice of Intent ("NOI") in the Federal Register in December 2010, describing the Proposed Action for the entire Tule Wind Energy Project and announcing BLM's intent to prepare an EIR/EIS. This NOI and later FEIR/FEIS also addressed the future actions of construction of wind turbines on trust lands. Council on Environmental Quality (CEQ) Regulations for implementing NEPA also required a "scoping session" which took place on January 27 and 28, 2010, in the project area. As stated in **Section 1.2**, the Draft EIR/EIS for the entire Tule Wind Energy Project was distributed to Federal, tribal, state, and local agencies and other interested parties for a 70 day review and comment period from December 2010 to March 2011. The FEIR/EIS was published on October 14, 2011. The BLM issued a ROD on December 19, 2011, for the overall Tule Wind Energy Project.

The FEIR/EIS fully addresses all of the environmental issues for the Tule Reduced Ridgeline Project which is in fact a subset of the overall Tule Wind Project analyzed in the FEIR/EIS. The FEIR/EIS states that it may be used by other State, local and Federal agencies for those that have portions of the project proposed on lands under their jurisdiction, which is the case of the BIA as described earlier for this ROD. The BIA relies on the FEIR/FEIS for the entire project in making the decisions in this ROD and incorporates by reference the FEIR/FEIS and necessary related documents to address the NEPA requirements for this ROD.

5.0 ANALYSIS OF ALTERNATIVES

5.1 BACKGROUND ON THE ALTERNATIVES ANALYSIS

This BIA ROD relates only to the lands held in trust for the Ewiiapaayp Tribe and administered relative to the lease being considered by the BIA (Proposed Action). Thus, the only alternatives from the FEIR/EIS for the entire Tule Wind Energy Project discussed in this ROD are those that directly relate to the development and operation of the turbines and related infrastructure on the Ewiiapaayp Indian Reservation, which includes Alternatives 1 through 4, as well as the No Action Alternative

The BIA recognizes that an additional ROW will need to be granted by BLM and CSLC to support the Proposed Action. For purposes of this ROD, the BIA assumes that the future BLM decision on ROWs will be made for a route similar to the routes already analyzed in the FEIR/EIS for Alternatives 1 through 4 for development of turbines on the ridgeline. In general, the main access route of the ROW runs from the McCain Valley to the south end of the ridgeline, connecting through State-owned land, then through BLM land located along the ridgeline and then onto the Ewiiapaayp Indian Reservation.

As stated in **Section 1.2**, the FEIR/EIS for the Tule Wind Energy Project addresses five alternatives. Alternatives 1 through 4 consist of the development of the entire Tule Wind Energy Project, which includes both the valley and ridgeline sites. Under those alternatives, approximately 65 wind turbines were proposed for the entire ridgeline area under the overall Tule Wind Energy Project. The northern portion of the ridgeline, where approximately 2 rows of up to 20 wind turbines are proposed to be sited, is located immediately on and adjacent to the existing Ewiiapaayp Indian Reservation. The development of these turbines on the northern end of the ridgeline is the subject of the lease under the Proposed Action.

The NEPA requires an evaluation of the No Project/No Action Alternative so that decision makers can compare the impacts of approving a project with the impacts of not approving a project. The No Action Alternative, in which the BIA does not approve a lease of tribal lands for up to 20 turbines, will not meet the Purpose and Needs of the Tribe for the Proposed Action and is therefore not considered viable by the BIA. This is discussed further in this ROD in **Sections 10.1 and 10.2**.

5.2 DESCRIPTION OF ALTERNATIVES 1 THROUGH 4 TO THE TULE WIND ENERGY PROJECT

The following descriptions of Alternatives 1 through 4 are taken from the Tule Wind Energy Project FEIR/EIS, which includes the development of 128 wind turbines in both the valley and ridgeline sites. As stated above, each of these alternatives includes the development of up to 18 turbines on the northernmost portion of the ridgeline on trust land (Proposed Action).

5.2.1 Tule Wind Alternative 1, Gen-Tie Route 2 with Collector Substation/O&M Facility on Rough Acres Ranch

Under this alternative, the proposed Tule Wind Energy Project would consist of 128 turbines (including up to 20 sited on or immediately adjacent to the Ewiiapaayp Indian Reservation), and the proposed O&M and collector substation facilities would be co-located on Rough Acres Ranch (Township (T) 17 South (S), Range (R) 7 East, Section 9), approximately five miles south of the originally proposed site. In addition, under this alternative, the temporary five acre concrete batch plant would be moved from its proposed location on BLM jurisdictional lands to Rough Acres Ranch. The proposed overhead collector line located west of Lost Valley Rock would be relocated to east of Lost Valley Rock and constructed within the proposed Tule Wind Project 138 kV alignment that would be vacated as a result of the O&M facility and collector substation location shift. Moving the O&M and collector substation facilities to Rough Acres Ranch would result in an increase in the length of the 34.5 kV overhead collector lines and the number of collector line poles to connect the wind turbines to the substation. The overhead collector line system would increase by 7.7 miles, from 9.3 miles (proposed) to 17 miles and would increase the amount of collector line poles by 202, from 250 to 452 poles. However, the underground collector lines would decrease in distance by approximately 6.2 miles, from 35.1 miles (proposed) to 28.9 miles, and the 138 kV transmission line would decrease in distance as a result of this alternative by approximately 5.4 miles, from 9.2 miles (proposed) to 3.8 miles and would decrease the amount of transmission line poles from 80 poles (proposed) to 44 poles.

Under this alternative, the 138 kV transmission line would run from the alternate collector substation approximately one mile east, south along McCain Valley Road, and then west along Old Highway 80 until connecting to the proposed Boulevard Substation Rebuild component of the ECO Substation Project. This alternative would increase the total land disturbance by 9.3 acres, from 725.3 acres (proposed) to 774.6 acres (Iberdrola Renewables, 2011e).

5.2.2 Tule Wind Alternative 2, Gen-Tie Route 2 Underground with Collector Substation/O&M Facility on Rough Acres Ranch

This alternative would consist of 128 turbines (including up to 20 sited on or immediately adjacent to the Ewiiapaayp Indian Reservation), and would essentially be the same as that described in for the Tule Wind Alternative 1, with the exception that the proposed 138 kV transmission line would run underground from the alternate collector substation approximately one mile east, then south underground along McCain Valley Road, and then west underground along Old Highway 80 until reaching the Boulevard Substation Rebuild component of the ECO Substation Project.

Based on existing topography and a preliminary slope analysis of the route, this alternative contains grades that exceed the maximum allowable slope (12 percent) for undergrounding transmission lines. At these locations (two short segments of the alignment), additional ROW, horizontal directional drilling, and other construction considerations could be implemented to avoid slope issues.

5.2.3 Tule Wind Alternative 3, Gen-Tie Route 3 with Collector Substation/O&M Facility on Rough Acres Ranch

This alternative would consist of 128 turbines (including up to 20 sited on or immediately adjacent to the Ewiiapaayp Indian Reservation), and would essentially be the same as that described for Tule Wind Alternative 2, with the exception that the proposed 138 kV transmission line would run from the alternate collector substation approximately three miles west to Ribbonwood Road, continue south along Ribbonwood Road, and then east along Old Highway 80 until connecting to the proposed Boulevard Substation.

As a result of this alternative, the 138 kV transmission line would decrease in distance by 3.8 miles, from 9.2 miles (proposed) to 5.4 miles. The length of the overhead collector line system would increase in distance by 7.7 miles from 9.3 miles (proposed) to 17 miles. Additionally, under this alternative, transmission line poles would decrease by 20 poles, from 80 poles (proposed) to 60 poles, and the collector line poles would increase by 202 poles, from 250 to 452 poles.

This alternative would increase the total land disturbance by 54.7 acres, from 725.3 acres (proposed) to 780.0 acres (Iberdrola Renewables 2011e).

5.2.4 Tule Wind Alternative 4, Gen-Tie Route 3 Underground with Collector Substation/O&M Facility on Rough Acres Ranch

This alternative would consist of 128 turbines, (including up to 20 sited on or immediately adjacent to the Ewiiapaayp Indian Reservation), and would essentially be the same as that described for the Tule Wind Alternative 3, with the exception that the proposed 138 kV transmission line would run underground from the alternate collector substation approximately three miles west to Ribbonwood Road, continue south underground along Ribbonwood Road, and then east underground along Old Highway 80 until reaching the Boulevard Substation. Based on existing topography and a preliminary slope analysis of the route, the Tule Wind Alternative 4 contains grades that exceed the maximum allowable slope (12 percent) for underground transmission lines. At these locations (three short segments of the alignment), additional ROW, horizontal directional drilling, and other construction considerations could be implemented to avoid slope issues.

5.3 PREFERRED ALTERNATIVE IN THIS ROD

Because the Proposed Action, the approval of the lease and implementation of up to twenty turbines on tribal lands, was analyzed as part of Alternatives 1 through 4 of the Tule Wind Energy Project FEIR/EIS, the Preferred Alternative is a reduced version of Alternatives 1 through 4 where turbine development is confined to tribal lands. Because Alternatives 1 through

4 are internally consistent relative to the placement of turbines on the trust land, those alternatives include the information used to analyze the potential impacts from approval of the lease under the Proposed Action.

6.0 ENVIRONMENTAL IMPACTS

6.1 ENVIRONMENTAL IMPACTS IDENTIFIED IN THE FEIR/EIS

Implementation of the Proposed Action could result in direct, indirect, and cumulative impacts to the environment. Cumulative impacts would occur as a result of the construction and operation of the Proposed Action, especially when taken into consideration together with the ROD already approved by the BLM relative to the land under its jurisdiction for the development of wind turbines in the valley site as part of the overall Tule Wind Energy Project.

Each of the alternatives, including those that dealt with the placement of wind turbines on trust land, was evaluated for the potential to impact environmental resource areas as required under NEPA. Additionally, each of the alternatives was analyzed in terms of the environmental concerns raised in comment letters during the EIR/EIS process from other tribes, agencies, and the public (see **Section 9.0**). The BIA evaluation of these project-related potential impacts included consultations with entities that have jurisdiction or special expertise to ensure that the impact assessments in the FEIR/EIS were conducted using accepted industry standards and the most currently available data.

The PSABPP for the ridgeline component of the Tule Wind Energy Project used a 2011 USFWS fatality risk model that the Service revised in 2013 to estimate potential golden eagle fatalities and habitat loss as a result of the project. The PSABPP includes data gathered in 2011 and 2012 that is specific to the ridgeline site. The Tribe has agreed to direct the Applicant to apply for an eagle take permit using the Service's 2013 Eagle Conservation Plan Guidance including the risk assessment model contained in the 2013 guidelines, prior to initiating operation of the project. Submitting a take permit application to the USFWS will satisfy this requirement and enable the applicant to move forward with construction and operation of the project; any delays due to the processing of the application will not affect this requirement.

7.0 SUMMARY OF MITIGATION MEASURES

This Proposed Action includes project-specific required mitigation measures, which provides the most benefits and avoids the greatest potential impacts on biological and cultural resources. Where applicable, mitigation measures will be monitored and enforced pursuant to federal law, tribal ordinances, agreements between the Tribe and appropriate governmental authorities, and the lease.

7.1 REQUIRED MITIGATION MEASURES

The Proposed Action adopts the following measures, terms, and conditions:

- Terms and Conditions in the USFWS BO for the overall Tule Wind Energy Project, for which the Proposed Action was analyzed as a part, provided in **Attachment E** to this ROD, even though the likelihood of the host species being present on the Reservation area is unlikely.
- Terms and Conditions in the MOA between the BIA, BLM, and the Tribe which addresses cultural issues, provided in **Attachment F** to this ROD, as may be amended;
- Adopted Avoidance, Minimization, and Mitigation Measures provided in the FEIR/EIS, as amended by this ROD (provided in **Attachment B** to this ROD);
- The Environmental and Construction Compliance Monitoring Plan (ECCMP) provided as **Attachment B** to the FEIR/EIS shall be implemented consistent with Tribal jurisdiction on trust land. The ECCMP includes verifying implementation and compliance with project mitigation measures, including preparation and implementation of plans, including the PSABPP and the Fire Plan; and
- Additional mitigation measures identified below are specific to the Proposed Action.

7.2 ADDITIONAL MITIGATION MEASURES PROVIDED IN THIS ROD

A number of specific environmental issues were raised during the EIR/EIS process relative to the use of the ridgeline, which includes the location of the turbines on the Ewiiapaayp Indian Reservation. The information from the FEIR/EIS evaluates two strings of up to 20 turbines on or directly adjacent to the Ewiiapaayp Indian Reservation. While sections of the FEIR/EIS identified only 18 turbines as being on the trust land, further clarification from that document indicates that the final placement of those turbines will be made at the time of installation within areas previously identified and analyzed. This ROD anticipates that the final placement of the turbines directly adjacent to the trust land may actually be sited on the trust land; therefore, this ROD approves up to 20 wind turbines which may be sited on trust land, and which are consistent with the environmental evaluation completed as part of the NEPA process.

The BIA examined the entire administrative record in issuing this ROD. That record includes supplemental information which addresses information not fully available to the Public as part of the FEIR/EIS process in three specific areas: Biological Resources (PSABPP), Cultural Resources, and Fire Prevention (Publically circulated documents). The documents, the Public comments on these documents, and the Response to comments included in this ROD were factors in the additional mitigation for these areas as summarized below.

7.2.1 Biological Resources

Migratory birds are protected under the terms of the Migratory Bird Treaty Act (MBTA), 16 U.S.C. § 703 *et seq.* Golden eagles, which are known to occur within the area of the Proposed Action, are also protected under the Bald and Golden Eagle Protection Act (BGEPA), 16 U.S.C. §§ 668-668d. The Bald and Golden Eagle Protection Act of 1940 (16 USC 668) (BGEPA) protects bald and golden eagles and their nests by prohibiting the take, possession, and commerce of such birds without a permit; it also establishes criminal and civil penalties for violations. In this context, “take” includes “disturb,” which means “to agitate or bother a bald or a golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal

breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior” (50 CFR 22.3). The FWS may authorize the take of eagles for activities that are otherwise lawful, but that result in disturbance or mortality where such take is unavoidable even though advanced conservation practices are being implemented (50 CFR 22.26).

Impact assessments to golden eagles were included in the ABPP for the overall Tule Wind Project. At the request of BIA and FWS, and consistent with the intent of the ABPP for the overall project, a supplemental project specific plan (the PSABPP) was completed to address this issue on the reduced ridgeline portion of the Tule Wind Project. The PSABPP for the ridgeline analyzes potential impacts to avian and bat species from the Proposed Action. Included within the PSABPP is a modified version of the adaptive management approach detailed in the ABPP. This revised PSABPP, which reflects the public comments, is adopted by this ROD as part of the administrative record and is included as **Attachment D**.

Additional Golden Eagle Mitigation – Operation of the Project

To characterize the risk associated with alternative operational strategies under the Proposed Action, several scenarios were developed and analyzed in the PSABPP. Through this ROD, the BIA has adopted *Scenario # 4 – Ewiiapaayp Tribal lands, only, with two northernmost turbines (H1, H2) curtailed during daylight from February 1 – April 30 during a year when the Cane Brake territory is occupied and either of the two nearest Cane Brake nests to the Project is active*. This scenario significantly reduces potential “take” of golden eagles during operation for the life of the Proposed Action. The approach in *Scenario #4* was selected based on the proximity of a golden eagle nest in the Cane Brake territory, directly north of the Proposed Action area. By curtailing the operation of the two northernmost turbines during this timeframe for years in which this nest is actively used by golden eagles, the likelihood of “take” is significantly reduced over the 20-year life of the project. As stated elsewhere in this ROD, the Project Proponent/Applicant must comply with all applicable Federal laws, including any requirements for an eagle take permit under the BGEPA. The Applicant understands that any construction or operation undertaken without all applicable Federal permits and approvals is done so at the Applicant’s own risk. A brief summary of *Scenario #4*, as taken from the PSABPP, is provided below and is herein adopted as additional mitigation in this ROD.

Some of the other analyzed scenarios showed virtually the same results, including those that would curtail the four northern turbines for the same time period or longer periods. However, based on the estimated core home range and activity pattern observed, curtailing turbines during the period of highest activity (February-April) resulted in a nearly consistent reduction in the number of predicted fatalities, when compared with other seasonal curtailment options. Curtailing turbines H3 and H4 (the next two in line) in addition to H1 and H2 results in a negligible reduction in fatalities and could be deemed to be virtually within the factor of rounding. Thus, the most effective curtailment, which meets the project purpose and need, is *Scenario #4*, which requires curtailing the operation of the two northernmost turbines between February 1 and April 30 for years in which this nest is actively used by golden eagles. Actual usage of the areas was largely taken from the telemetry data for the 2011 and 2012 seasons and the tagging of the fledging from the closest Cane Brake Nest that was occupied during the 2011

season, and which was a key factor in shaping the mitigation measure. The following language, taken from the PSABPP, supports the use of *Scenario #4* as the preferred operating scenario:

Applying the FWS model published in the draft ECP Guidance (FWS, 2011) to average point count data collected at points within the Ewiiapaayp Tribal lands from 2006-2012, the data input, “t”, for the Project equaled 22.0 minutes. To estimate the effects of curtailing the two northernmost turbines, these two turbines were removed from the model as well as all mapped flights occurring within 100 m of those turbines from February – April, resulting in a data input (t) of 17.2 minutes (see Table 2-8 for details of the 2011 surveys; **Attachment D**). This produced an average annual exposure time estimate of 159.1 minutes. The proportion of the project within 100 m of an active turbine during curtailment resulting from this change was 0.093, and the resulting estimated potential eagle fatalities were therefore calculated to be 0.15 per year, or 3.0 golden eagles over 20 years. This was functionally similar to the other curtailment measures evaluated and still meets the propose and need of the Tribe for this project while reducing modeled impacts to eagles during periods of closest eagle nesting and use.

Assuming the pattern of space use documented in 2011-2012 is typical, daytime curtailment of turbines H1 and H2 from February to April will reduce the projected golden eagle “take” by 0.6 eagles over the 20-year operational life of the Proposed Action.

Additional Golden Eagle Mitigation – Construction of the Project

During construction of the Proposed Action, the avoidance and mitigation measures in the PSABPP will be herein adopted as additional mitigation for the project. These measures reflect the mitigation provided in the FEIR/EIS, and are briefly summarized below.

Road construction, placement of turbine foundations, and all clearing of vegetation will occur during daylight hours. The main access road will be improved by grading and graveling. Access roads and turbine locations within the main body of the wind project area will be cleared, and construction trailers will be placed on-site. During the construction period, heavy trucks, light trucks, and other construction equipment will regularly travel the main access road, with dispersed travel on interior access roads. Construction vehicle trips will be reduced by requiring all craft workers to park their personal vehicles at a central location in the project area. During the operational phase of the project, traffic volume will be minimal, consisting only of the routine trips by technicians to check and maintain equipment.

Summary of Findings in the PSABPP

The following list provides a summary of the findings found in the PSABPP based on the 2011 Eagle Conservation Plan guidance for the geographic area covering the Proposed Action:

- The PSABPP for the ridgeline covers all of the relevant migratory bird, eagle, and bat species known to occur in the area of the proposed project (Tables 2-1, 2-2, and 2-7; **Attachment D**).

- The information analyzed in the PSABPP is from multiple field studies, in particular, those from 2010, 2011, and 2012. The bat and avian field studies for the PSABPP correspond to the studies previously conducted in the ABPP for the overall Tule Wind Energy Project.
- The BIA recognizes that the golden eagle has cultural significance as well as biological significance to the Kumeyaay people including the Ewiiapaayp Tribe. Therefore, the minimization of impacts is important both from a cultural and biological standpoint.
- The field work on the golden eagles included new information from the 2011-2012 season for the nesting surveys in 2011 and 2012, and included a telemetry study of fledglings from 2011 including those from the nest closest to the site of the Proposed Action.
- Golden eagles create and use different nests during different years within their overall nesting range. The golden eagle pair in the Cane Brake territory do not currently use the nest closest to the wind turbines in the Cane Brake Territory, which was analyzed as active during the 2011 field studies. The FWS does not consider a nest to be abandoned until eagles haven't used the nest for eight years in a row. The use of the field data from 2011 in the PSABPP may be more conservative, as it is based on the use of that nest and corresponding data as projected out over the life of the project. If more distant nests are used in other years by the breeding pair of golden eagles, there may be a lower level of exposure and frequency than that shown in the model as 'possible impacts'.
- Although the FWS has not recommended a generalized raptor fatality model, the avoidance, minimization, and mitigation measures that will be employed for golden eagles through the PSABPP will benefit all raptor species, as they behave similarly.
- The Tribe and the BIA, in accordance with the PSABPP, require the lease applicant and project operator (Tule Wind, LLC) to comply with all applicable Federal laws, including any requirements for a USFWS programmatic eagle take permit under the BGEPA.
- As is the case with the ABPP for the overall Tule Wind Project, the PSABPP for the Proposed Action provides an adaptive management program which is designed to continually gather information over the life of the project. All such information gathered will be presented to the FWS Technical Advisory Committee (TAC) established for this project or another appropriate advisory group as specified in the eagle take permit that the Applicant will apply for. The TAC provides recommendations (FWS 2010b) for reporting bird and bat fatalities and this committee will make continuing recommendations to ensure that all data is appropriately reviewed, interpreted, and used in the formation of future adaptive management recommendations including those identified in the PSABPP (**Attachment D**).

The PSABPP outlines ongoing monitoring and reporting requirements for any observed impacts to birds and bats that may occur from the operation of the Proposed Action. This additional mitigation through the Tribal adoption of the terms of the PSABPP will make this a tribal Natural Resource Management Plan which will ensure that potential impacts of the Proposed Action on golden eagles, raptors, other avian migratory species, and bats is reduced to less than significant.

The FWS does not have a similar take permit process under the Migratory Bird Treaty Act and the BIA assumes that the normal FWS procedures will apply. The PSABPP, like the FEIR/FEIS,

identifies the impacts to both other migratory birds and bats. The BIA understands that the mitigation and protection measures applied to eagles will also benefit other avian species; most specifically other raptors as well.

The adopted mitigation measures integrated in this ROD (**Attachment B**), combined with the mitigation measures based on the PSABPP and adopted by the BIA in this ROD (discussed above), including the Tribe's agreement to direct the applicant to apply for a permit, reduce the impacts to migratory birds, golden eagles, raptors, and bats to an acceptable level while meeting the purpose and need for this project.

The Project Will Result in Limited Habitat Impacts:

Similar to other changes in land use, this project will result in some changes in habitat. The decommissioning plans which are part of the project description and a requirement of this ROD will address the long term restoration of habitat once the life of the lease and any extensions which BIA may subsequently grant at the request of the Tribe. There will be some interim loss of habitat during the life of the project. The FEIR/EIS addressed this issue consistent with the requirements of NEPA.

To the degree clearing of land occurs whether the impacts are due to fire safety reasons or construction and operation activities on trust property, the applicant should consider applying – to the degree feasible – habitat mitigation measures consistent with the measures adopted by the BLM under the FEIR/EIS for such impacts on non-trust lands. These offsite habitat mitigation measures will be deemed to address interim use losses resulting from the Proposed Project. The actual impacts to habitat shall be mitigated at the conclusion of the lease through appropriate habitat restoration measures which are a required part of the decommissioning plans required by this ROD to be filed and implemented by the applicant. When providing interim offsite habitat mitigation, the applicant may use lands adjacent to other lands preserved as mitigation for the project as a whole, even if the habitat preserved is not in kind habitat. The restoration requirement of the decommissioning plan, especially when combined with any interim offsite habitat mitigation, will reduce the loss of habitat consistent with the NEPA requirements of the FEIR/EIS while still meeting the tribal purpose and need for this project and helping to address the alternative energy goals of both the State and Federal Governments.

7.2.2 Cultural Resources

The BIA and the Tribe, as one of twelve Kumeyaay Bands in San Diego County, recognize the spiritual significance of the golden eagle to Kumeyaay culture. Potential impacts of the Proposed Action to golden eagles are addressed in this ROD in terms of both biological and cultural significance. The adopted biological mitigation measures outlined in this ROD will minimize possible impacts to golden eagles. In Kumeyaay culture, issues related to cultural practices and natural resources are one and the same, and it is impossible to address either issue without also denying the spiritual connection central to Kumeyaay identity (Connolly, 2012). Therefore, the Kumeyaay believe that preservation of cultural resources must accompany biological preservation (Connolly, 2012). In the Kumeyaay worldview, natural resources (flora and fauna) as well as archaeological sites, cultural areas, and landscapes are interrelated and

indivisible (Connolly, 2012). The BIA and the Tribe recognize the spiritual significance of the eagle to Kumeyaay culture.

Consistent with 16 U.S.C. § 668a, the Secretary of the Interior authorizes the possession of eagles for tribal religious purposes if the Secretary determines that it is compatible with the preservation of the golden eagle. In the event a golden eagle is inadvertently taken by the implementation of the Proposed Action, the Tribe agrees to work with the FWS to ensure that it handles such eagles consistent with the applicable legal requirements at 16 USC § 668a and its implementing regulations.

All biological and cultural mitigation measures regarding the protection of golden eagles (both in **Attachment B** and described in the Biological section of this ROD) as herein adopted are intended to reduce impacts and therefore are consistent with the cultural significance of the eagle.

In addition to the terms of the signed MOA between the BIA, BLM, and the Ewiiapaayp Tribe (**Attachment F**), which are herein adopted by this ROD, the Tribe and BIA shall be immediately notified of any inadvertent discovery of human remains. The Tribe and BIA may choose to work with the Kumeyaay Cultural Repatriation Committee to appropriately address such discoveries.

7.2.3 Fire and Fuels Management

The Proposed Action contemplates the development of up to 20 wind turbines on the ridgeline. These turbines would occur in steeper terrain and within a variety of potentially flammable vegetation types, including chaparral, scrub, and grassland. Given the steep terrain and fuel bed throughout the project site combined with the potential ignition sources associated with wind turbines, the potential for wildfire ignition and spread is high. Due to the historical occurrence of wildfire events in the area, specifically those triggered in the past by electrical transmission lines or facilities, the Tribe and the applicant have developed a Multi-Agency Construction Fire Prevention/Protection Plan (Fire Plan) specific to trust lands, which was adopted February 21, 2012 (**Attachment H**). The Fire Plan was developed in consultation with, and to the satisfaction of, CAL FIRE, San Diego Rural Fire Protection District, BLM fire, and San Diego County Fire Authority. This plan includes mitigation and best management practices to reduce the likelihood of wildfire events and covers the entirety of the project site on trust land as well as the ROW corridors along roads servicing the proposed turbines. This additional mitigation measure is over and above what was reflected in the FEIR/EIS and will further reduce the potential impacts of wildfire. The requirements of the Fire Plan are herein adopted by this ROD.

In accordance with the Fire Plan and the FEIR/EIS, all existing roads that may be used to access the ridgeline site will be upgraded to meet or exceed current fire safety standards. This ROD proposes to widen all existing roads that are used to a minimum of 28 feet wide to meet and exceed both the County of San Diego and the CAL FIRE safety standards. The existing roads pass through multiple tribal, local, State, and Federal jurisdictions, and the applicant must obtain consent or written agreements with the appropriate landowners prior to using any existing roadway for access to the project site. If the new road identified in the FEIR/EIS from the valley portion of the overall Tule Wind project is approved through the subsequent BLM ROW process

and CSLC approval, it shall have no less a fire protection standard than those for upgrading existing roads. The BIA has an existing statewide agreement with Cal Fire, which applies to existing trust lands and this agreement is recognized in this ROD as helping to contribute to the overall fire protection and response capability for the reservation including the land under lease for this project.

The Service Area of the Campo Tribal Fire Department includes the Campo, Manzanita, La Posta, and Ewiiapaayp Reservations. In addition, Tule Wind, LLC has an agreement with the San Diego Rural Fire Protection District for the provision of fire and emergency protection services (**Attachment I**). Both this agreement and the Fire Plan were made available for public comment between September 19, 2012 and October 19, 2012. The response to comments is provided in **Attachment K**.

7.3 STATEMENT OF ALL PRACTICABLE MITIGATION ADOPTED

As required in the *BIA NEPA Guidebook* and 40 C.F.R. § 1505.2(c), all practicable means to avoid or minimize the environmental harm from the alternative selected have been adopted by this ROD. The FEIR/EIS identifies some mitigation measures that BIA is modifying, clarifying, or not adopting. (See **Attachment B** to this ROD for modified mitigation measures and the reason for modification, and **Sections 7.4** and **7.5** for measures not adopted and the rationale for not adopting these measures). This ROD also adopts additional mitigation measures as identified to further ensure minimization, avoidance, or mitigation of impacts consistent with the purpose of the proposed project. In addition to the above mitigation, an Eagle Take Permit issued by the US Fish and Wildlife Service would further minimize any environmental harm because the Service may require additional mitigation measures to avoid and minimize take of eagles as a condition of a permit.

7.4 MITIGATION MEASURES NOT ADOPTED

Pursuant to 40 C.F.R. § 1505.2(c), this ROD must state whether all practicable means to avoid or minimize environmental harm from the Tule Wind Project have been adopted, and if not, why not. Because some of the proposed mitigation measures identified in the FEIR/EIS for the overall Tule Wind Energy Project are not applicable to the Proposed Action for project activities on trust land, the BIA has deemed that additional mitigation as not required. The rationale for why these measures are not being adopted (either in part or in full) is provided following each measure.

BIO-7g. Conduct protocol surveys for Quino Checkerspot butterfly within 1 year prior to project construction activities in occupied habitat.

Tule Wind, LLC shall conduct pre-construction protocol surveys for Quino Checkerspot butterfly within 1 year prior to construction activities, or as required by FWS, in any area known to support the species. Surveys shall be conducted by a qualified, permitted biologist in accordance with the most currently accepted protocol survey method. Results shall be reported to FWS within 45 days of the completion of the survey.

Rationale: Conservation Measure #5 of the approved BO for the overall Tule Wind Energy Project requires that if construction within occupied Quino habitat has not started by May 2012,

additional FWS-protocol Quino Checkerspot butterfly (QCB) surveys will be conducted in the flight season prior to construction. The approved BO assumes that these Conservation Measures will be implemented by the project applicant (see BO p.16). Neither the Eastern San Diego County (ESDC) RMP or the approved BO require protocol surveys be conducted for the QCB within one year prior to project construction. The FWS has determined in its BO that protocol surveys will occur during the flight season prior to construction as opposed to “within 1 year prior to construction” per the MM BIO-7g. The project applicant is required to comply with the BO’s reasonable and prudent measures (RPM), terms and conditions, and the Conservation Measures of the BO, which have superseded to a certain extent the requirements of MM BIO-7g. The BIA does not believe it is practicable for the project applicant to conduct protocol surveys for QCB one year prior to construction. This would be above and beyond those required by the USFWS in its BO. Completing surveys as outlined in the BO will determine whether QCB are present prior to construction activities. The intent of both the BO and MM BIO-7g is to determine whether QCB are present prior to construction and by completing protocol QCB surveys in the flight season prior to construction will ensure the intent of MM BIO-7g is met as identified in the FEIR/EIS. Furthermore, the ridgeline site subject to BIA consideration in this ROD is not habitat for the QCB, although consultation did cover the entire project area including the ridgeline site.

VIS-1a. Reduce impacts at scenic highway and trail crossings. At highway and trail crossings, structures shall be placed at the maximum feasible distance from the crossing to reduce visual impacts as long as other significant resources are not negatively affected.

Rationale: This FEIR/EIS mitigation measure applies to where the gen-tie line would cross I-8 or parallel Old Highway 80. These areas are located off trust land significantly to the south of the Proposed Action and therefore would not apply directly to the project. Thus, this measure is not adopted in this ROD.

VIS-3g. Reduce visual contrast associated with substation and ancillary facilities. Tule Wind, LLC shall submit to the BLM a Surface Treatment Plan describing the application of colors and textures to all new facility structure buildings, walls, fences, and components comprising all ancillary facilities including substations. The Surface Treatment Plan must reduce glare and minimize visual intrusion and contrast by blending the facilities with the landscape. The Surface Treatment Plan shall be submitted to the BLM for approval at least 90 days before (a) ordering the first structures that are to be color treated during manufacture or (b) construction of any of the ancillary facility components, whichever comes first. If the BLM notifies Tule Wind, LLC that revisions to the Plan are needed before the Plan can be approved, within 30 days of receiving that notification, Tule Wind, LLC shall prepare and submit for review and approval a revised Plan. The Surface Treatment Plan shall include:

- Specification and 11” × 17” color simulations at life-size scale of the treatment proposed for use on project structures. including structures treated during manufacture;

- A list of each major project structure, building, tower and/or pole, and fencing specifying the color(s) and finish proposed for each (colors must be identified by name and by vendor brand or a universal designation);
- Two sets of brochures and/or color chips for each proposed color;
- A detailed schedule for completion of the treatment; and
- Procedures to ensure proper treatment maintenance for the life of the project.

Tule Wind, LLC shall not specify to vendors the treatment of any buildings or structures treated during manufacture or perform the final treatment on any buildings or structures treated onsite, until Tule Wind, LLC receives notification of approval of the Surface Treatment Plan by the BLM. Within 30 days following the start of commercial operation, Tule Wind, LLC shall notify the BLM that all buildings and structures are ready for inspection.

Rationale: This measure applies to ancillary facilities and substations. Under the Proposed Action, only one meteorological tower is to be placed on trust land. The collector substation and other relevant facilities to support the turbines on trust land will be placed on adjacent BLM land (**Section 2.1**) and no such structures will be placed on trust land.

WR-1. Provide notice for access restrictions or anticipated closures to wilderness and recreation areas. Tule Wind, LLC shall coordinate with the BLM to ensure that proper signage is posted in advance for any access restriction and/or anticipated closures of wilderness and recreation areas so that recreational users may plan accordingly. Signage shall be posted 30 days prior to construction at public venues such as rest stops, resource management offices, and along access routes to known recreational destinations that would be restricted, blocked, or detoured. Notices shall provide information on alternative recreation areas that may be used during the closure of these facilities.

Rationale: This measure from the FEIR/EIS refers specifically to construction activity associated with all Tule Wind Project components located within the McCain Valley. Since the Proposed Action covered under this BIA ROD will occur only on the ridgeline that is not a recreation area, this measure does not apply.

WR-2. Maintain access along McCain Valley Road. Tule Wind, LLC shall coordinate with the BLM to ensure that access is maintained to wilderness and recreation areas within the McCain Valley National Cooperative Land and Wildlife Management Area during construction. Tule Wind, LLC shall provide adequate turnouts along McCain Valley Road such that visitors to the area may utilize the roadway to access recreational areas. In addition, the project applicant shall ensure that construction vehicles and equipment are not left in McCain Valley Road so as to obstruct the movement of non-construction vehicles in the area.

Rationale: This measure from the FEIR/EIS refers specifically to construction activity associated with all Tule Wind Project components located within the McCain Valley. Since the Proposed Action will occur only on the ridgeline, this measure does not apply.

7.5 MITIGATION MEASURES IDENTIFIED IN THE FEIR/EIS NOT APPLICABLE TO THE BIA

The FEIR/EIS identified mitigation measures for effects on non-trust lands. The BIA will not adopt the following mitigation measures from the FEIR/EIS because they are not applicable to the effects of the BIA's Proposed Action in this ROD:

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

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

Rationale: Under the Proposed Action, the off-reservation collector substation and O&M facility will be located adjacent to trust land on BLM-land and any mitigation will therefore be required by the BLM.

MM VIS-1. Reduce potential view blockage and visual contrasts of structures. Transmission line structures will not be installed directly in front of residences or in direct line of sight from a residence, where feasible. Tule Wind, LLC will consult with affected property owners on structure siting to reduce land use and visual impacts.

Rationale: There are no residences located on the subject trust lands.

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

evidence of the notice to landowners and copies of any responses to the notice within 30 days of the notice closing date for responses. In addition, granted easements for the 138 kV transmission line must be formally recorded by the County of San Diego prior to MUP approval.

Rationale: It is anticipated that BLM will issue a ROW grant to Tule Wind, LLC (consistent with the route alignment analyzed in the FEIR/EIS), which would allow the construction of ROW under the Proposed Action on BLM-lands. Therefore, this measure does not apply as it is strictly a County mitigation measure.

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

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

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

Rationale: This mitigation measure is not applicable to trust land.

MM HYD-6. Horizontal Directional Drill Contingency Plan. If horizontal directional drilling is to be used during construction Tule Wind, LLC shall prepare a Horizontal Directional Drill Contingency Plan to address procedures for containing an inadvertent release of drilling fluid (frac-out). The plan shall contain specific measures for monitoring frac-outs, for containing drilling mud, and for notifying agency personnel. The plan shall also discuss spoil stockpile management, hazardous materials storage and spill clean-up, site-specific erosion and sediment control, and housekeeping procedures,

as described in the SWPPP. The plan shall be submitted to BLM, San Diego County, CSLC, BIA, and/or the Ewiiapaayp Band of Kumeyaay Indians depending on the jurisdiction where the construction activities are being completed 60 days prior to construction.

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

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

8.0 POTENTIAL UNAVOIDABLE ADVERSE EFFECTS

Potential unavoidable environmental impacts resulting from the lease of 720 acres that will be reduced to approximately 62 acres of permanent and temporary impacts upon final siting of the wind turbine array, and the construction and operation of up to 20 wind turbines on trust lands include a change in visual character due to the construction and operation of the wind turbines, potential impacts to public safety due to high fire fuels in the area, and impacts to culturally significant resources (i.e. eagles). For all of these potential unavoidable adverse effects, the FEIR/EIS and this ROD have identified corresponding mitigation measures, provided in **Section 7.2** and in **Attachment B**, which reduce any such potential impacts to less than significant consistent with applicable Federal law and permits.

9.0 SUMMARY OF COMMENTS ON THE FEIR/EIS AND RESPONSES

During the public review period for the EIR/EIS, more than 200 comment letters were received. These comment letters and their corresponding responses were presented chronologically and organized in the following categories in the FEIR/EIS:

- a. Federal agencies and officials
- b. State and local agencies and officials
- c. Native American tribes
- d. Community groups, non-profit organizations, and private organizations
- e. The applicants
- f. Individuals
- g. Form letters
- h. Late letters (accepted after the close of public review).

Each comment letter was assigned a unique letter-number designation based on category and chronology. Individual comments within each letter are bracketed and subsequently numbered

in the right-hand margin and correspond with the responses of the same letter-number designation in the FEIR/EIS.

Six letters were received from Native American governments and organizations, including letters from the Ewiiapaayp Band of Kumeyaay Indians, the Viejas Tribal Government, Manzanita Band of Kumeyaay Nation, Campo Band of Mission Indians, and the Kumeyaay Cultural Repatriation Committee.

The Ewiiapaayp letters focused on the need to have an alternative approved that would meet the Purpose and Needs of the Tribe. The Viejas Tribal Government letters focused on the need to combine the cultural resources and biological resources mitigation in a comprehensive coordinated program, provide Native American monitors, and support the Manzanita Band's concern to not endanger the golden eagle. The Manzanita Band of Kumeyaay Nation did not want any project to be approved that would endanger golden eagles. The Kumeyaay Cultural Repatriation Committee requests notification of any burial issues.

The BIA further extended the public comment period on the following documents: nine comment letters were reviewed (see treatment above) and these letters along with the response to comments and the revised SABPP pursuant to those comments are included in **Attachments J** and **K** to this ROD.

The lease agreement has additional mitigation measures to minimize impacts to golden eagles from construction and operation of up to 20 turbines on trust land. Also, the BIA will incorporate all mitigation measures from the FEIR/EIS for cultural resources. Based on the existing cultural resource studies, it is also important to note that no National Register of Historic Places sites are located on trust lands. The BIA has further adopted additional mitigation measures consistent with the adopted fire plans and agreements which were reviewed by the Public.

10.0 DECISION TO IMPLEMENT THE PROPOSED ACTION

The BIA has determined that it will implement the lease agreement between the Ewiiapaayp Band of Kumeyaay Indians and Tule Wind, LLC on 720 acres of trust land to facilitate the installation of up to 20 turbines on the trust land. This decision has been made based on:

- Analysis of the environmental impacts identified in the FEIR/EIS and corresponding mitigation;
- Consideration of economic and technical factors, updated information and action plans such as the PSABPP and the publically reviewed fire-related documents and the responses to those documents, which are part of the administrative record;
- The mission of the BIA and its policy goals and objectives;
- Federal renewable energy policy;
- State renewable energy goals; and
- The identified purpose and need of the Ewiiapaayp Tribe outlined in the FEIR/EIS and in ordinances adopted by the Tribe for the Governance of their trust land.

The action is also consistent with BIA's statutory mission and responsibilities, which are to promote the long-term economic vitality and self-sufficiency, self-determination, and self-governance of the Tribe. As discussed above, the lease agreement provides the Tribe with an opportunity for securing a viable means of attracting and maintaining a long-term, sustainable revenue stream for its Tribal Government and to fund necessary development of economic ventures. Implementation of the Proposed Action would enable the Tribal Government to establish, fund, and maintain governmental programs that offer a wide range of health, education, and welfare services to tribal members, as well as provide the Tribe, its members, and local communities with greater opportunities for employment and economic growth. Accordingly, the BIA herein approves the Proposed Action, which includes the lease agreement that allows for the construction of up to 20 wind turbines and associated infrastructure on 720 acres of trust land of the Ewiiapaayp Indian Reservation.

10.1 ANALYSIS OF REQUIRED FACTORS

The BIA has chosen to implement the selected preferred alternative (Proposed Action). The preferred alternative is a reduced intensity ridgeline project. Alternatives to the Proposed Action included Alternatives 1-4 and the No Action Alternative analyzed in the FEIR/FEIS for the entire Tule Wind Energy Project. Because the Proposed Action, the approval of the lease and implementation of up to twenty turbines on tribal lands, was analyzed as part of Alternatives 1 through 4 of the Tule Wind Energy Project FEIR/EIS, the Preferred Alternative is a reduced version of Alternatives 1 through 4 where turbine development is confined to tribal lands. Adequate consideration has been given to the five approval criteria under 25 U.S.C. §415(a) as follows:

1. The relationship between the use of the leased premises and the use of the neighboring lands.

The BIA and the Tribe chose the selected alternative (Proposed Action) after examining alternative sites 1 through 4, and technologies. Alternative sites and technologies were eliminated from further consideration based on natural resources factors as discussed in Section 5.0 of this ROD and the FEIR/EIS.

2. The height, quality, and safety of any structures or other facilities.

The chosen technology, the remoteness of the operation is conducive to the protection of the trust land and neighboring lands. A 200 foot radius will be cleared around each turbine. The cleared areas will be re-vegetated with fire safe vegetation consistent with fire agency standard practice. All structures will adhere to Federal and tribal law as evidenced in Exhibit G of the lease. Tribal standards will be adhered to and sub-contractors health and safety plans will be required.

3. The availability of police and fire protection, utilities, and other essential community services.

The FEIR/EIS shows that there will be no significant impact on utilities and other community services. In addition to the onsite mitigation measures, the Tribe and the applicant have developed a Multi-Agency Construction Fire/Prevention Plan developed in conjunction with, and to the satisfaction of CAL FIRE, San Diego Rural Fire Protection District, BLM Fire, and San Diego County Fire Authority as evidenced in attachment H of this ROD. Law enforcement will be managed by the San Diego County Sheriff's Department.

4. The availability of judicial forums for all criminal and civil matters arising on the leased premises.

Section 20 of the Lease establishes a process by which disagreements or disputes arising between the lessor and lessee as to the interpretation of any substantial rights or obligations arising under the lease may be resolved. Claims and actions arising on the leased premises, but not under the lease, will be adjudicated in the appropriate tribal, Federal, or state court.

5. The effect on the environment of the proposed land use.

All relevant environmental impacts have been fully addressed in the FEIS/EIS.

10.2 NO ACTION ALTERNATIVE RESTRICTS BENEFICIAL EFFECTS

The exclusionary impacts of the No Action Alternative to the Tribe would be significant. Of the Tribe's Ewiiapaayp Indian Reservation lands, its East Ewiiapaayp Reservation is extremely rugged and isolated land in eastern San Diego County, between 4,800 feet and 6,200 feet in elevation and bordered on three sides with steep ridges. The Tribe's West Ewiiapaayp Reservation added an additional 8.6 acres in 1986 and 1.42 acres in 1997 to the Ewiiapaayp Indian Reservation in the community of Alpine. The Tribe leased its West Ewiiapaayp Reservation in its entirety to the Southern Indian Health Council for \$1 rent for 25 years for the purpose of founding and operating an Indian Health Care clinic through a consortium of seven sister and neighbor Kumeyaay tribes. The East Ewiiapaayp Reservation offers approximately 100 acres of arable land that is used for tribal housing. The Ewiiapaayp Indian Reservation is unsuited for any forms of economic development due to a lack of infrastructure, including failing and eroded dirt roads, poor soils, and severe climate. There is a lack of utilities, with no telephone, wireless cellular or radio communications, no water treatment system, and failing septic systems. The Ewiiapaayp Indian Reservation is land-locked and has no legal access; it is located at the end of a single twelve mile, winding dirt access road that rises over 1,200 feet through other private lands. The sole significant asset possessed by the Tribe is its wind resource which is of such quality as to be ideal for wind energy development due to the strong winds, remote location, and minimal environmental impact.

10.3 NO ACTION ALTERNATIVE FAILS TO MEET PURPOSE AND NEED OF PROJECT

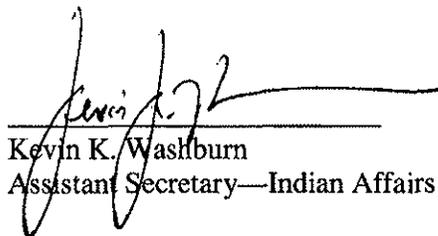
The No Action Alternative fails to meet the Purpose and Need of the Tribe as identified in the FEIR/EIS.

11.0 SIGNATURE

By my signature, I indicate my decision to approve a wind energy lease to Tule Wind, LLC within the Ewiiapaayp Indian Reservation.

Approved by:

Date: **DEC 16 2013**



Kevin K. Washburn
Assistant Secretary—Indian Affairs

12.0 REFERENCES

Connolly, Michael. 2012. Kumeyaay Culture and Environment. Revised Draft. January 16, 2012.

Dudek, 2011. Final Environmental Impact Report/Environmental Impact Statement for East County Substation, Tule Wind, and Energia Sierra Juarez Gen-Tie Projects. Lead Agencies: California Public Utilities Commission and the U.S. Bureau of Land Management. October 2011.

Iberdrola Renewables, 2011a. "Comments of Iberdrola Renewables, Inc. regarding the Tule Wind Project Draft DEIR/DEIS--Modified Project Layout" and "Comments of Iberdrola Renewables, Inc. on the Joint Draft Environmental Impact Report – Draft Environmental Impact Statement (DEIR/DEIS) for the East County Substation/Tule Wind/Energia Sierra Juarez Gen-Tie Projects." Comment letters and EIR/EIS revisions package from J. Durocher (Iberdrola Renewables) to I. Fisher (California Public Utilities Commission) and G. Thomsen (Bureau of Land Management). March 4, 2011.

Iberdrola Renewables, Inc. 2011b. "Re: Tule Wind Project – Groundwater Availability Confirmation Request." Letter from H. McDonald (Iberdrola Renewables) to J. Gibson (Hamann Companies). April 6, 2011.

Iberdrola Renewables, Inc. 2011c. "Re: Tule Wind Project – Groundwater Availability Confirmation Request." Letter from H. McDonald (Iberdrola Renewables) to W. Micklin (Ewiiapaayp Band of Kumeyaay Indians). April 8, 2011.

Iberdrola Renewables, 2011d. Correspondence via email with Gwen Wolph. Subject: "RE: Tribal Disturbance acreage." December 30, 2011.

Iberdrola Renewables, Inc. 2011e. "Comments of Iberdrola Renewables, Inc. regarding the Tule Wind Project Draft DEIR/DEIS--Modified Project Layout" and "Comments of Iberdrola Renewables, Inc. on the Joint Draft Environmental Impact Report – Draft Environmental Impact Statement (DEIR/DEIS) for the East County Substation/Tule Wind/Energia Sierra Juarez Gen-Tie Projects." Comment letters and EIR/EIS revisions package from J. Durocher (Iberdrola Renewables Inc.) to I. Fisher (California Public Utilities Commission) and G. Thomsen (Bureau of Land Management). March 4, 2011.

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