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Sent: Friday, March 04, 2011 4:55 PM
To: ECOSUB; catulewind@blm.gov
Cc: Jennifer DeLeon
Subject: Comment Letter SCH # 2009121079 EC Substation & Tule Wind DEIR
Attachments: 2009121079 CPUC Tule Wind DEIR (2011-03-04).pdf

All,

Please see the attached comment letter for [SCH # 2009121079 EC Substation & Tule Wind DEIR](#).

Thank you,

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March 4, 2011

File Ref: SCH 2009121079

California Public Utilities Commission  
Iain Fisher, Project Manager  
505 Van Ness Avenue  
San Francisco, CA 94102

**Subject: Draft Environmental Impact Report/Environmental Impact Statement for the East County Substation, Tule Wind, and Energia Sierra Juarez Gen-Tie Projects**

Dear Mr. Fisher:

Staff of the California State Lands Commission (CSLC) has reviewed the subject Draft Environmental Impact Report/Environmental Impact Statement (DEIR/DEIS) for the East County Substation, Tule Wind, and Energia Sierra Juarez Gen-Tie Projects (Project) prepared by the California Public Utilities Commission (CPUC) and the Bureau of Land Management (BLM) as joint lead agencies representing state and federal jurisdictions. The CPUC is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code § 21000 et seq.) with respect to the Project and the BLM is the lead agency under the National Environmental Policy Act (NEPA).

The CSLC has prepared these comments as a responsible and trustee agency because of its leasing jurisdiction over portions of the Project located on state school lands as well as its trust responsibility for any and all projects that could directly or indirectly affect state owned "sovereign" land and/or school lands, and their resources or uses (pursuant to CEQA Guidelines<sup>1</sup> §§ 15381, 15386, subd. (b)). The CSLC also supports environmentally responsible use of school lands for renewable energy projects (see the *Resolution By The California State Lands Commission Supporting The Environmentally Responsible Development Of School Lands Under The Commission's Jurisdiction For Renewable Energy Related Projects* [Resolution] adopted by the CSLC on October 16, 2008, at [http://www.slc.ca.gov/Renewable\\_Energy/Documents/Resolution.pdf](http://www.slc.ca.gov/Renewable_Energy/Documents/Resolution.pdf)).

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<sup>1</sup> The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with Section 15000.

## CSLC Jurisdiction

In 1853, the United States Congress granted to California hundreds of thousands of acres of land for the specific purpose of supporting public schools. In 1984, the State Legislature passed the School Land Bank Act (Act), which established the School Land Bank Fund (SLBF) and appointed the CSLC as its trustee (Pub. Resources Code § 8700 et seq.). The Act directed the CSLC to develop school lands into a permanent and productive resource base for revenue generating purposes. The CSLC manages approximately 469,000 acres of school lands held in fee ownership by the State and the reserved mineral interests on an additional 790,000± acres where the surface estates have been sold. Revenue from school lands is deposited in the State Treasury for the benefit of the Teachers' Retirement Fund (Pub. Resources Code § 6217.5).

As proposed, the Project includes seven wind turbines located on a State school land parcel acquired from the federal government in 1880 and described as Section 16, T16S, R6E, SBBM, San Diego County. Project proponents would be required to obtain a lease for all or a portion of the section in order to construct and operate those turbines or locate any other project-related facilities on the section.

## Proposed Project

As proposed, the Project includes construction and operation of the East County Substation, the Tule Wind facility, and the Energia Sierra Juarez Gen-Tie. The DEIR/DEIS also includes brief overviews of three potential future wind energy projects referred to as the Campo, Manzanita, and Jordan Wind projects. Because the DEIR/DEIS provides no specific information about the latter three projects or their potential environmental effects, the CSLC cannot provide comments at this time beyond those that might be relevant to the cumulative impacts section.

While the CPUC, as lead agency, has determined that the Project components are sufficiently connected to be considered the "whole of the action" under CEQA, the CSLC staff has focused its comments on the DEIR/DEIS on the Tule Wind component of the Project (hereinafter referred to as the "Tule Wind Project") for the following reasons:

- As a responsible agency, the CSLC is limited to considering only the effects of those activities involved in the Project which it may carry out or approve.
- As a trustee agency, the CSLC is also responsible for considering the effects of those activities involved in the Project which may impact trust resources on State-owned sovereign lands.

In this case, only the Tule Wind Project involves activities that implicate the CSLC's leasing jurisdiction and trust responsibilities and therefore the comments that follow are presented in the context of the adequacy of the disclosure and analysis of potential effects caused by that component; however, to some extent, certain discussions and mitigation measures in the document about which the CSLC is commenting apply to the East County Substation and Energia Sierra Juarez Gen-Tie components as well.

The Tule Wind Project would be primarily located in the In-Ko-Pah Mountains near the McCain Valley in southeastern San Diego County. It includes construction and operation of up to 134 wind turbines (up to 492' in height in the 1.5 megawatt (MW) to 3.0 MW range) and associated electrical systems to generate 200 MW of electricity. In addition to wind turbines and associated generator stepup transformers, the Tule Wind Project would include the following components:

- A 5-acre collector substation site and a 5-acre operations and maintenance (O&M) building site;
- A 34.5 kilovolt (kV) overhead and underground collector cable system linking the wind turbines to the collector substation (this portion would require approximately 232 poles and an unknown amount of trenching to install underground portions);
- Two permanent meteorological (MET) towers and one sonic detecting and ranging (SODAR) unit;
- A 9.7-mile-long 138 kV overhead transmission line supported by 108 steel galvanized or weather steel finished tangent poles running south from the collector substation to be interconnected with the rebuilt San Diego Gas & Electric (SDG&E) Boulevard Substation (associated with the East County Substation component of the Project);
- 36.38 miles of newly constructed access roads (166.1 acres) and 27.62 miles of temporarily widened and improved existing access roads (84.2 acres);
- Development and use of a temporary on-site concrete batch plant;
- Up to three temporary use water wells for construction on private land; and
- One permanent water well for the O&M building

Construction of the Tule Wind Project would require approximately 17.5 million gallons of water and approximately 3.55 million cubic yards (CY) of earthwork (3.55 million CY includes 1.0 million CY attributed to rock excavation). Construction and operation would result in the temporary loss of approximately 215 acres and the permanent loss of approximately 492 acres of native vegetation communities, including 5 sensitive natural communities. The Tule Wind Project is also expected to impact wildlife resources including mammals, birds, and insects, through habitat loss, movement restriction, and collision potential.

### **General Comments**

Given the CSLC's support for environmentally responsible development of renewable energy related projects on CSLC school lands, the CSLC staff is concerned that the DEIR/EIS does not provide sufficient information to: (1) facilitate meaningful review of the Tule Wind Project's environmental impacts; (2) enable staff to independently conclude that the identified impacts are lessened or avoided to the extent feasible; or (3) determine that the proposed Tule Wind Project would be developed with assurances that the State's unique and sensitive environment will be protected, per the Resolution. Specifically, the DEIR/DEIS as currently written:

- relies heavily on general characterizations of the Tule Wind Project components and impacts rather than specific data;
- does not provide project-/site-specific, readily measureable or quantifiable significance criteria to enable staff to evaluate and conclude whether or not there is substantial evidence as to why or how identified mitigation measures will avoid or reduce project-related significant impacts to a less than significant level;
- does not contain several critical plans and protocols, even in draft form, for public review and analysis, instead relying on the future development of plans, protocols, and performance/effectiveness criteria for a number of proposed mitigation measures;
- provides no explanation as to why it is infeasible at this juncture to conduct needed surveys and include survey results, identify the location or abundance of specific sensitive species, or prepare and include for public review certain plans and protocols that are the basis for the document's ultimate significance conclusions; and
- may need to be recirculated (as provided in Pub. Resources Code § 21092.1, CEQA Guidelines § 15088) to address these apparent deficiencies.

Overall, our concerns relate to the project description, information on environmental setting, the incremental change to the baseline caused by the Tule Wind Project, and whether the impacts resulting from that change are significant either with or without mitigation. As a result, the comments that follow are intended to highlight major issues and provide recommendations for improving the DEIR/DEIS throughout by discussing several specific examples rather than by providing an exhaustive page by page list; the CSLC staff intends these comments and suggestions to be a platform from which the CPUC and BLM can systematically revise the DEIR/DEIS across all appropriate discussions and resource areas.

### Project Description and Environmental Setting

With respect to the Tule Wind Project description and environmental setting, the DEIR/DEIS in several instances neglects to provide specific information on activities that may affect the environment or on the status of local sensitive resources that may be affected by those activities. Without a complete and accurate project description and environmental setting, the DEIR/DEIS likely provides an incomplete picture of project-related environmental impacts.

For example, the DEIR/DEIS indicates in Section B, Project Description, that blasting may be necessary, but does not indicate, or provide a preliminary estimate, where, when, or how much blasting may occur. As a result, the CSLC staff is unable to evaluate to what extent blasting may cause a significant effect on the public (e.g., recreation, safety) or biological resources (e.g., nesting birds, lambing Peninsular bighorn sheep). Furthermore, Section B describes the location and general nature of the turbines and transmission lines, but does not provide adequate detail regarding the methods that will be used to install those components. For instance, the use of

helicopters is described as part of the 138 kV transmission line install and stringing for the East County Substation component of the Project, but potential use of helicopters is not mentioned in the discussion of the 138 kV transmission line associated with the Tule Wind Project. If helicopters in fact will be used, the omission of this detail in the DEIR/DEIS precludes an evaluation of potential impacts associated with helicopters.

Furthermore, in Section D.2, Biological Resources, the DEIR/DEIS fails to characterize baseline abundance estimates for several species due to lack of investigation or incomplete surveys, instead simply assuming presence and categorizing the impact as "adverse." For example, the document indicates plant surveys and bat investigations were incomplete at the time of releasing the DEIR/DEIS, and therefore, quantified estimates of population abundance or specific species information are not disclosed or evaluated in the context of the scope and magnitude of potential impacts. Absent the inclusion in the document of even preliminary figures that capture a baseline or starting point from which to measure the Tule Wind Project's expected incremental effect to these resources, the CSLC staff is unable to determine whether those effects are significant and whether the proposed mitigation is effective in lessening the significant effects. Several other examples and recommendations are provided below in the "Specific Comments" section of this letter.

#### Significance Criteria

While CEQA provides lead agencies broad discretion to define significance thresholds, because CEQA's "substantive mandate" applies to significant project-related impacts, a clearly defined project-specific threshold against which the impacts are gauged is necessary. The CSLC staff is concerned that the DEIR/DEIS as currently written does not satisfy this mandate for the following reasons.

- The DEIR/DEIS does not identify a meaningful threshold by which the significance of project-related impacts is gauged.
- As a consequence, the DEIR/DEIS does not identify all significant environmental impacts.
- The ultimate significance conclusions for many affected resources lack reasoned explanations of how that conclusion is a logical outcome of factual analysis, instead relying almost entirely on unsupported "conclusory" statements

As the significance thresholds for the Tule Wind Project are identified only as the generic thresholds contained in Appendix G of the CEQA Guidelines, rather than as project-/site-specific, readily measureable or quantifiable thresholds tied to the local environmental conditions on which the Tule Wind Project will operate, the CSLC staff is generally unable to evaluate and reach its own conclusions regarding whether or not there is substantial evidence as to why or how the identified mitigation measures will avoid or reduce project-related significant impacts to a less than significant level. (Said another way, because the meaning of "adverse" is unclear in the context of site-specific factors, it is difficult to determine what type or amount of mitigation would render the impact "not adverse.") To make the Appendix G thresholds meaningful in the present document, the CSLC staff recommends identifying, for each affected resource, a value

or site-specific definition of "substantial adverse" effect (e.g., loss of over "X" percent of habitat or direct mortality or abandonment of the area of "Y" percentage of the estimated local population, etc.).

### Mitigation

With respect to the mitigation measures identified in the DEIR/DEIS, the CSLC believes many constitute an impermissible deferral or are otherwise unenforceable due to a lack of specific standards or a commitment to achieve or maintain those standards. Although for CEQA purposes the mitigation measures identified in an EIR need not include all specific details when such specificity is "truly infeasible or impractical" at the time of preparation, which the DEIR/DEIS does not explain is true in the present case, the EIR does need to at least:

- (i) specify performance standards which would ensure the mitigation of the significant effect, and
- (ii) disallow the occurrence of physical changes to the environment unless the performance standard is or will be satisfied. (See CEQA Guidelines §15126.4.)

In the DEIR/DEIS as currently drafted, the mitigation measures related to development and implementation of plans and measures that may be devised in the future do neither of the above. As a consequence, the DEIR/DEIS denies responsible agencies and the interested public the chance to comment on the adequacy of the proposed mitigation for avoiding or minimizing a project's impacts. Specific examples and recommendations are provided below in the "Specific Comments" section of this letter, but in general, the CSLC staff recommends the DEIR/DEIS either provide the required plans in a recirculated document for public review and comment or replace unenforceable statements like "criteria will be developed," "appropriate," "may include," "to be developed," and "acceptable risk" with more meaningful, measureable, and achievable performance standards.

Similarly, a lead agency may not defer the formulation of a mitigation measure to other agencies; lead agencies must do all that is feasible on their part to address significant impacts even where a subsequent permit from another agency is necessary. Examples of improper deferral in the DEIR/DEIS of this nature are particularly evident in Section D.2, Biological Resources, related to habitat restoration (BIO-1d), jurisdictional features (BIO-2a), federal or state listed species (BIO-7f), nesting birds (BIO-7j), and Avian Protection Plan (BIO-10b). While the requirements contained in permits issued by the various regulatory agencies mentioned may ultimately provide a basis to conclude that the particular agency's permitting requirements were met, such a conclusion is not, as a matter of law, a basis to conclude that all project-related impacts on those resources are mitigated to below a level of significance under CEQA. Rather, the CPUC has the responsibility to comply with CEQA's substantive mandate to mitigate all project-related impacts to the extent feasible, not simply pass the responsibility to a responsible agency with more limited regulatory and statutory requirements.

The CSLC staff recognizes that a lead agency's obligation to disclose all that it reasonably can is tempered by feasibility and the scope and magnitude of the project. Even so, for the reasons identified above and described in more detail below, CSLC staff is concerned the apparent lack of factually based analysis in the DEIR/DEIS, including the lack of related discussion and substantive support for ultimate conclusions in the document, preclude meaningful public review of the environmental effects that may actually be caused by the Tule Wind Project.

### **Specific Comments**

#### **Section ES and Section A – Executive Summary and Introduction:**

1. The first paragraph of ES.5.2.2 (Tule Wind Project Alternatives) on Page ES-15 states that the CSLC, among other agencies, would be responsible for "making a decision...including which, if any, of the five alternatives or variations and/or combinations of those alternatives evaluated in this EIR/EIS should be adopted." This statement places the responsibility for determining Project alternatives on responsible agencies rather than the lead agency. The CPUC, as the CEQA lead agency for the Project, which includes the Tule Wind Project, is responsible for certification of the EIR/EIS, including selecting an alternative or combination of alternatives and incorporating appropriate mitigation measures for use as the final "Project" on which the CSLC and other responsible agencies would rely for their subsequent discretionary actions. If the CSLC determined that additional measures were necessary, those would be included in the lease as lease conditions or use restrictions on the school lands parcel; however, CSLC staff does not agree that each of the identified land owners would approve a different version of the "Project." This paragraph should be rewritten to clarify that the CPUC is the CEQA lead agency and will make a decision on which, if any, of the alternatives to incorporate into the final document it may ultimately certify.
2. Section A.5.1 (CPUC) on Page A-13 includes the statement: "The CPUC is the lead state agency for CEQA compliance in evaluation of SDG&E's proposed ECO Substation Project..." In fact, because the CPUC determined that the three components (ECO, Tule, and ESJ) were part of the "whole of the action" subject to the CPUC's lead agency action, this sentence should be rewritten to clarify that the "CPUC is the lead state agency for CEQA compliance in evaluation of the Proposed PROJECT..." The CSLC staff further suggests this paragraph be expanded to clarify that while the CPUC has the independent statutory authority to condition its approval only on the East County Substation component of the Project by requiring project changes or mitigation measures be incorporated into the final document, the CPUC is nonetheless responsible for (i) disclosing and evaluating all that it reasonably can for the entire proposed Project, (ii) identifying feasible mitigation measures, and if necessary, (iii) finding that those measures, if they are within the responsibility and jurisdiction of another agency, can and should be adopted by that agency (Pub. Resources Code § 21081, CEQA Guidelines § 15091).



Section B - Project Description:

3. As stated above in General Comments, the Project Description should be revised to include additional detail regarding the potential use of blasting (p. B-128) and helicopters (P. B-131). For instance, it would be helpful to include estimates based on preliminary site investigations regarding the expected locations and extent of blasting that could occur. This information is relevant because the location, timing, and extent of these activities could affect whether or not significant impacts result. Page B-130 makes passing reference to limiting the timing and location of blasting "in the proximity of sensitive habitat," but the discussion of potential impacts and commensurate mitigation measures, whether near sensitive habitat or sensitive species is absent from Section D.2 Biological Resources.

Section D.2 – Biological Resources:

4. Section D.2.1 Environmental Setting/Affected Environment: Pages D.2-3 – D.2-4 describe the methodology for characterizing the biological resource setting, identifying several surveys and studies relevant to the Tule Wind Project setting. However, surveys for rare plants and bat monitoring investigations are described as "ongoing" and thus, the environmental setting for these resources cannot be considered complete. As explained above in the General Comments section, the CSLC staff is concerned that because the DEIR/DEIS does not provide a complete picture of the environmental setting and the potential resources that could be found in or using the area, a number of potentially significant impacts may have been overlooked. Additionally, reports from the completed surveys and investigations are not included with the document (e.g., the final bat monitoring report). The CSLC staff recommends that any technical biological information and data reports relevant to characterizing the environmental baseline be included in appendices.
5. Section D.2.1.1 Regional Overview: The last sentence on page D.2-46 under the Golden Eagle heading states "Suitable nesting habitat (i.e., cliffs) is not known within the Proposed PROJECT area..." However, on page D.2-89 under the Golden Eagle heading in the Tule Wind Project section (D.2.1.3) the DEIR/DEIS indicates there were several active nest sites recorded in the 2010 surveys. Please correct the statement on suitable golden eagle nesting habitat to more accurately reflect the actual environmental setting.
6. Section D.2.1.1 Regional Overview: It is unclear why the pallid bat and the pocketed free-tailed bat, both low frequency echolocating bats, are the only bat species mentioned in this section (on pages D.2-53 and D.2-56, respectively), when according to the draft "Final Bat Acoustic Studies" Report (Report) prepared by WEST, Inc., the ranges of nearly two dozen bat species include the Tule Wind Project area. The CSLC staff is concerned that the DEIR/DEIS has excluded several other sensitive bat species from the analysis by improperly limiting the Existing Setting discussion in spite of direct acoustic monitoring evidence indicating use of the area by not insignificant numbers of other bats. In particular, the Report indicates that the monitoring stations recorded a high number of "bat passes" from high-frequency bats, "...suggesting that the species in the high frequency group are

generally more abundant throughout the [Tule Wind Project] area." Using these data, it is clear that the Tule Wind Project area is utilized by more species of bats than the DEIR/DEIS states, and as such, the analysis of potentially significant impacts to bat resources is deficient. The DEIR/DEIS could be improved by including more species information, obtained through direct visual or night-goggle surveys. If such surveys are infeasible, the DEIR/DEIS should at a minimum be revised to indicate that based on the acoustic monitoring, other bat species of concern occur and are likely to be impacted by construction and operation of the Tule Wind Project.

7. Section D.2.1.1 Regional Overview: Under the Mountain Lion heading on page D.2-54, the first sentence regarding legal status should be revised to indicate that the mountain lion is designated a "Specially Protected Mammal" pursuant to Fish and Game Code section 4800 and is subject to the protections specified therein.
8. Section D.2.1.1 Regional Overview: The discussion on page D.2-60 regarding the potential for the Project area to serve as a flight corridor is only briefly and generically described in this section, and the subsequent Tule Wind Project Section (D.2.1.3) fails to discuss in any more detail the potential for operation of the turbines to affect migratory bird species (in particular nocturnal migrating songbirds and raptors, including the state-listed Swainson's hawk). As such, the document fails to disclose and evaluate the potential direct and indirect effects on these resources resulting from project operation or whether those impacts are potentially significant. The CSLC staff recommends the appropriate sections be revised to include information on whether and to what extent the Tule Wind Project, *specifically*, could result in impacts to migrating bird species and provide measures to avoid or lessen that impact should it be found significant.
9. Section D.2.1.3 Tule Wind Project Setting: On pages D.2-92 and D.2-93 the DEIR/DEIS indicates there is "moderate" potential for the pallid bat and pocketed free-tailed bat to "forage over the site" but that roosting potential, based on limited investigation of abandoned mines in the vicinity, was limited. The CSLC staff recommends this section (and Appendix 1) be updated to include other sensitive bat species, for the reasons stated in Comment 6 above. In addition, this section limits roosting potential to mines; it should also include a discussion of the presence and extent of large boulder-like rock formations scattered throughout the McCain Valley, and their potential to be used by crevice-dwelling bats. Without this information, the DEIR/DEIS likely understates both the type and extent of impacts on bats.
10. Section D.2.2 Applicable Regulations, Plans, and Standards: There are several errors and outdated references to relevant laws and regulations that should be corrected in consultation with the relevant agencies. For example, the description of the federal Endangered Species Act Section 7 consultation process and issuance standard on page D.2-16 should be revised in coordination with the U.S. Fish and Wildlife Service (Service) to state that "no jeopardy" biological opinions contain both Reasonable and Prudent Measures and Terms and Conditions to implement those measures, while a jeopardy biological opinion contains a Reasonable and Prudent Alternative to the proposed project that if implemented would avoid jeopardy. Also,

the State Laws section should be revised for more clear organization of the relevant sections of the Fish and Game Code in consultation with the Department of Fish and Game (CDFG), and to correct erroneous references to statute (e.g., reference to section 2091 should be eliminated as it has sunsetted).

### Section D.2.3 – Biological Resources Environmental Effects and Mitigation Measures:

As stated above in the General Comments of this letter, CSLC staff believes that in order for the EIR/EIS to meet CEQA's substantive mandate to mitigate or avoid significant effects to the extent feasible, substantial revision of the document is necessary. CSLC staff recommends additional consultation and coordination between the lead agencies, applicant, and the relevant wildlife agencies be initiated to develop a more meaningful, specific, and fully enforceable set of feasible mitigation measures, including more specific performance criteria, that will minimize impacts to sensitive species, avoid "take" of fully protected species, and provide compensation for impacts to affected biological resources. Specific comments and suggestions are as follows:

11. Peninsular bighorn sheep: Page D.2-160 states that because "preferred" habitat is not found in the Project area, impacts would be less than significant. However, this conclusion is unsupported by substantial evidence. While the Tule Wind Project may not result in "direct" loss of habitat, CEQA requires analysis of reasonably foreseeable indirect impacts as well. The discussion of Peninsular bighorn sheep should fully explore the potential for blasting and helicopter activities to impact sheep, especially lambing ewes, and the potential for the new project-related water sources to draw sheep into the area. If appropriate, mitigation measures should be identified, such as limiting those activities to outside lambing season and ensuring potential water sources are not accessible to sheep.
12. Special Status Bats: Page D.2-152 states that implementation of several mitigation measures will render impacts to bats less than significant. However, upon examination of the identified mitigation measures, CSLC staff does not agree that there is substantial evidence presented to support this conclusion. The measures are non-specific and are limited in large part to unidentified future plans and surveys that do not actually result in any actual reduction of the impact or compensation to offset an impact. For example, it is unclear how measures associated with habitat restoration and invasive species control lessen impacts to bats, particularly as it relates to insect production and collision potential or impacts to potential roosting crevices that may be lost during blasting activities. In regard to collision fatalities, CSLC staff believes the conclusion that impacts related to operation of the turbines will be less than significant with the proposed mitigation is deficient, because the identified measures suffer from improper deferral of specific, enforceable standards or courses of action, and because several measures cited as reducing impacts to bats appear to be related only to avian collision reduction.
13. Golden Eagle: Page D.2-157 indicates at least two nests are located in close proximity to planned turbines and suggests a number of the DEIR/DEIS mitigation measures would help reduce this impact. However, CSLC staff does not agree that

the measures are specific or enforceable enough to support the assertion that impacts to all but the closest nests would be less than significant. The section should clearly state buffer distances and seasonal restrictions rather than using unenforceable "suggestions" like "may be required." In regard to loss of nests and collision mortality, the Tule Wind Project was identified in the BLM's August 26, 2010 Eagle Act Consultation Memo to the Service as one of four proposed projects it believes "would result in take and where an [Avian Protection Plan] is unlikely to mitigate to the no net loss standard." While the DEIR/DEIS acknowledges the impacts to golden eagles from operation of the Tule Wind Project are significant and unavoidable, it does not provide information related to whether or how it could be carried out in compliance with the Service's Final Rule on Eagle Act Take Permits (74 FR 46835, September 2009). Finally, CSLC staff recommends that as part of the effort to revise and update the DEIR/DEIS to address the deficiencies described herein, that the CPUC and BLM incorporate relevant information or revise the document as necessary to reflect the monitoring and mitigation recommendations contained in the Service's 2011 draft Land-Based Wind Energy Guidelines ([http://www.fws.gov/windenergy/docs/Final\\_Wind\\_Energy\\_Guidelines\\_2\\_8\\_11\\_CLEAN.pdf](http://www.fws.gov/windenergy/docs/Final_Wind_Energy_Guidelines_2_8_11_CLEAN.pdf)).

14. Burrowing Owl: Page D.2-158 states that burrowing owl could occur on the site but that the mitigation measures in the DEIR/DEIS mitigate the potential impact to less than significant. However, because burrowing owls nest underground, and therefore could be subject to project-related impacts differently compared to the other raptors, the CSLC staff recommends further consultation and coordination with CDFG to identify and incorporate mitigation measures specific to burrowing owls, including flagging and avoidance of nest burrows, buffers, and compensatory mitigation if burrows are lost as a result of the Project.
15. Mitigation Measures MM BIO-1d, X, X, are all examples of measures that improperly defer the formulation of specific performance standards in favor of subjective and unenforceable "judgment calls" to be made at an undetermined point in the future.
  - a. MM BIO-1d, Habitat Restoration Plan, simply sets forth a requirement that a plan be developed that "include[s] success criteria" that are "sufficient" to restore temporarily impacted areas "to the satisfaction of the permitting agencies." The measure should be revised in consultation with the relevant resource agencies to include specific criteria related to timing (how long until success must be achieved), the definition of success (percent vegetative cover), and monitoring methods.
  - b. MM BIO-3a, Invasive Species Control Plan, should include a performance standard or otherwise define the meaning of "control" as used in the measure, such that if invasive species are found to exceed that threshold, additional control efforts would be conducted.
  - c. MM BIO-5b, Special-status Plant Species Compensation, defers the formulation of the mitigation and as such, precludes evaluation of whether impacts to special-status plants would indeed be rendered less than significant after mitigation. Appropriate agencies (CDFG, Service) should be

consulted and a revised MM that includes specific compensation requirements should be included. Additionally, salvage and relocation should be considered a minimization measure only, not actual mitigation.

- d. MM BIO-7f, Listed Species, appears to equate compliance with a Service or CDFG take permit with CEQA compliance, when in fact, measures should be included in the DEIR/DEIS independent of agency permitting requirements, as explained above in General Comments. If a listed species were adversely impacted by the Project but actual "take" as defined by the CDFG and the Service did not occur, the permitting requirement would not be triggered, and therefore, absent stand-alone measures, up to and including compensatory mitigation, as appropriate, the DEIR/DEIS likely cannot support a conclusion of less than significant.
- e. MM BIO-7j, Pre-construction Surveys, should include specific and enforceable avoidance measures that specifically demonstrate how avoidance would be achieved, rather than deferring the formulation of those measures. For example, the measure could specify specific buffer distances and prohibit the use of helicopters and blasting if active nests are identified. Without these specifics, CSLC staff is unable to concur that significant impacts to nesting birds would be made less than significant through this measure.
- f. MM BIO-10b through MM Bio-10h, measures to avoid or lessen collision-related impacts: The CSLC staff believes that these measures as written constitute improper deferral of mitigation because the plans and their associated performance criteria are deferred until after completion of the CEQA process. Identification and formulation of mitigation outside the CEQA process precludes meaningful public review and input, and provides no basis on which the lead agency can conclude impacts are sufficiently mitigated. Additionally, the measures are solely related to monitoring and surveys, with only passing reference to adaptive management. There exists extensive scientific literature and guidance from experts containing reasonable, enforceable, and measureable actions that can be taken to reduce bird and bat collision fatalities, including off-site habitat improvements and protocols for fatality monitoring and adaptive management. The CSLC staff recommends revising this entire section based on additional coordination and input from the CDFG, the Service, and relevant experts to include more specific measures that can actually demonstrate that they lessen fatality effects or contribute to the body of knowledge in this area. Lastly, this section should incorporate compensatory mitigation for birds and bats. Measures could include off-site habitat protection and management, enhancement of bat roost sites, and the like.

#### Section D.7 – Cultural and Paleontological Resources:

16. Section D.7.2.2 State Laws and Regulations – California Environmental Quality Act, p. D.7-44, par. 1: This section should be revised to describe all the historical resources that must be considered under CEQA. Pursuant to both Public Resources Code section 21084.1 Historical Resources and CEQA Guidelines

section 15064.5 subsection (a)(1-4), consideration must be given to resources that are 1) listed in, or determined to be eligible for listing in the California Register of Historical Resources, 2) included in a local register of historical resources or identified as significant in a historical resource survey, and 3) other resources that the lead agency may determine are historical resources. For CEQA purposes, the citation to California Public Resources Code section 5020.1(j) incorrectly limits the resources that must be considered.

17. Section D.7.2.2 State Laws and Regulations – California Environmental Quality Act, p. D.7-44, par. 2-4: The significance of an archaeological site is not determined in the first instance by whether it qualifies as a “unique archaeological resource.” First, an archaeological site must be evaluated to determine if it is an “historical resource.” According to the CEQA Guidelines, the following process must be followed in sequence:

(c) CEQA applies to effects on archaeological sites.

(1) When a project will impact an archaeological site, a lead agency shall **first** determine whether the site is an historical resource, as defined in subdivision (a) [see comment above for the list of resources that must be considered for CEQA purposes].

(2) **If a lead agency determines that the archaeological site is an historical resource**, it shall refer to the provisions of Section 21084.1 of the Public Resources Code, and this section, Section 15126.4 of the Guidelines, and the limits contained in Section 21083.2 of the Public Resources Code do not apply.

(3) **If an archaeological site does not meet the criteria defined in subdivision (a), but does meet the definition of a unique archaeological resource** in Section 21083.2 of the Public Resources Code, the site shall be treated in accordance with provisions of section 21083.2....(CEQA Guidelines section 15064.5(c)(1-4), emphasis added.)

Thus, an evaluation of a resource to determine if it is a unique archaeological resource does not occur unless it has already been determined NOT to be an historical resource. If an archaeological resource has been determined to be an historical resource, the provisions concerning unique archaeological resources *do not apply*. The DEIR/DEIS should revise the analysis based on the CEQA Guideline quoted above. In numerous places, sites that are described as eligible to the NRHR (and thus the CRHR) are then erroneously further evaluated to determine if they qualify as unique archaeological resources (see pp. D.7-13, 14, 18, etc.) It is important to distinguish between these two categories of resources since the mitigation requirements are different.

This section of the DEIR/DEIS on State Laws and Regulations should also include a summary of the provisions concerning Mitigation Measures Related to Impacts on Historical Resources contained in CEQA Guideline section 15126.4(b)(1-3). This section specifies the appropriate type of mitigation for archaeological sites that are determined to be historical resources.

For additional information on the provisions in CEQA and the CEQA Guidelines concerning historical resources, archaeological resources, and unique archaeological resources please refer to the *Guide to CEQA*, by Remy, Thomas, Moose, and Manley, 11<sup>th</sup> ed., pp. 223-236.

18. Table D.7-5, Previously Recorded Sites within the Proposed Tule Wind Project APE and ROW, and Table D.7-6, New Archaeological Sites Recorded During the Tule Wind Intensive Survey, should provide information on the potential eligibility to the California Register of Historical Resources (CRHR) of those sites that are considered ineligible to the NRHP (sites eligible to the NRHP are automatically considered eligible to the CRHR). In some cases, sites that are ineligible to the NRHP may be eligible to the CRHR since the integrity requirement may be more lenient. Additionally, all resources that are ineligible to the CRHR should be evaluated to determine if they qualify as a unique archaeological resource under Public Resources Code section 21083.2(g).
19. If any historical resources on State lands under the jurisdiction of the State Lands Commission will be affected by the proposed project, the CPUC, as the state lead agency, must consult with the State Historic Preservation Officer as described in CEQA Guidelines section 15064.5(b)(5). Please provide evidence of this consultation if appropriate. Generally, the state lead agency should request this consultation concurrently with the Section 106 review required of federal agencies under the National Historic Preservation Act to avoid duplication of effort.
20. California Public Resources Code, p. D.7-48, the first full paragraph referring to section 30244 should be deleted. Although CEQA requires mitigation measures for significant impacts to archaeological resources as described in earlier comments, this specific provision is part of the Coastal Act and does not apply to this project.
21. Table D.7-9, Cultural and Paleontological Resource Impacts, and Table D.7-11, Tule wind Project Alternatives, should be clarified to show the impact classification before and after mitigation is applied. The stated classification appears to be after mitigation is applied. Some of the Descriptions should also be clarified to indicate whether the impacts are certain to occur ("would cause and adverse change") or are potential impacts. For potential impacts, the word "could" should be substituted for "would." For example, the description for TULE-PALEO-1 states that "Construction of the project would destroy or disturb significant paleontological resources," yet no paleontological resources were identified that would be affected.
22. Tule Wind Project, Mitigation Measure CUL-1A, p. D.7-104:
  - (a) The CSLC is not a party to the MOA/PA; however, CSLC staff request a copy of the Historic Properties—Cultural Resources Treatment Plan for review and comment.
  - (b) Should data recovery be required on State land under the jurisdiction of the CSLC, the CSLC staff requests that copies of research designs and reports be provided to the CSLC for review and comment.

- (c) The disposition or curation of any artifacts collected on State-owned land must be approved in advance in writing by the CSLC. Artifacts collected from sites that are not considered eligible to the NRHP or CRHR and are not unique archaeological resources shall be transferred to the CSLC on request at a mutually agreeable location.
23. Under Mitigation Measure CUL-2, Human Remains, the section on the Tule Wind Project states that "two sites have the potential to contain human remains" (page D.7-63). However, in the section under Proposed Project, which includes the Tule Wind Project, it states "one site has the potential to contain human remains in the Tule Wind Project" (page D.7-64). Please clarify the number of sites that have the potential to contain human remains in the Tule Wind Project.
24. Also under Mitigation Measure CUL-2, Human Remains, the section under Proposed Project states that "the potential exists for human remains to be found during survey of the unsurveyed portion of the Proposed Project" (paragraph 1) and that "most of the unsurveyed land lies within the Campo and Manzanita reservations, with a portion in the CSLC jurisdiction. Please clarify when the survey of the unsurveyed portion of the Proposed Project will be completed and how the CSLC will be notified of the survey results/potential for human remains on lands under CSLC jurisdiction.
25. Mitigation Measure CUL-2, Human Remains, p. D.7-105: Please clarify that NAGPRA does not apply on State-owned lands. If human remains are discovered on State-owned lands, then the proper procedure is to follow the steps in the CEQA Guidelines 15064.5(e). Please clarify that the county coroner must notify the Native American Heritage Commission within 24 hours if the coroner determines that the remains are Native American, not "within a reasonable time frame" as stated in the mitigation measure. Please also add a requirement that CSLC staff shall be notified within 24 hours of the discovery of Native American human remains on State-owned lands under its jurisdiction.
26. Mitigation Measure PALEO-1A, 1B, p. D.7-106, 107: Upon completion of the paleontological resources inventory for the Tule Wind Project area, if paleontological resources are identified on lands under the jurisdiction of the CSLC, please provide a copy of the report to CSLC staff, and a copy of the Paleontological Monitoring and Treatment Plan to CSLC staff for review and comment.
27. Mitigation Measure PALEO-1D, p. D.7-107: The disposition or curation of any paleontological resources collected on State-owned land under the jurisdiction of the CSLC must be approved in advance in writing by the CSLC.
28. Please correct numerous typographical errors located throughout the chapter for terms in quotation marks with a dashed line instead of the first set of quotation marks (e.g., -built" in second paragraph of D.7.1).
29. Many acronyms are used throughout the chapter and in Table D.7-13 that cannot be found in the acronym list in the table of contents. Please add to the Acronyms and Abbreviations list all acronyms used in the chapter and in Table D.7-13 including:



- 1) AAA–American Antiquities Act
- 2) AHPA–Archaeological and Historic Preservation Act
- 3) APE–Area of Potential Affect
- 4) ARPA–Archaeological Resources Protection Act
- 5) BMS–bedrock milling station
- 6) CRHR–California Register of Historic Resources
- 7) ESAs– Environmentally Sensitive Areas
- 8) HPRD–?
- 9) HPTP-CRTP–Historic Properties-Cultural Resources Treatment Program
- 10) MOA/PA–Memorandum of Agreement/Programmatic Agreement
- 11) NADB–National Archaeological Database
- 12) NAGPRA–Native American Graves Protection and Repatriation Act
- 13) NAHC–Native American Heritage Commission
- 14) NRHP–National Register of Historic Places
- 15) OPLA-PRP–Omnibus Public Lands Act- Paleontological Resources Preservation
- 16) PFYC–Potential Fossil Yield Classification
- 17) PMTP–Paleontological Monitoring and Treatment Plan
- 18) PRPA–Paleontological Resources Preservation Act
- 19) SCIC–South Coastal Information Center
- 20) SDSU–San Diego State University
- 21) SEIC–Southeast Information Center
- 22) SVP–Society of Vertebrate Paleontology
- 23) TCP–traditional cultural properties

Section D.10 – Public Health and Safety:

30. Section D.10.2.1, page D.10-13 Abandoned Mines: The CSLC staff is concerned that the Tule Wind Project will increase human activity not only with those workers involved in construction and operation but also an increased level of public visitation to view the wind turbines. The DEIR/DEIS states that “The Bureau of Land Management Eastern San Diego County Resource Management Plan and Record of Decision Public Health and Safety section identifies goals, objectives, and management actions associated with abandoned mines...” CSLC staff agrees that BLM’s incorporation of the goals, objectives and management actions associated with abandoned mines would reduce potential safety hazards to workers or the general public in the project vicinity to a less than significant level.
31. Since 2002, the CSLC has also managed an Abandoned Mine Program to identify and remediate abandoned mine features that may pose a hazard to the public or wildlife. In July of 2007, CSLC staff inspected the Metal Mountain and Buckthorn Mines and posted warning signs at many of the shafts and adits to help safeguard the public. The CSLC staff recognizes, however, that more permanent remediations such as fencing or bat compatible closures could help protect public safety and sensitive bat species. As stated above in the comments related to Section D.2, Biological Resources, the CSLC staff recommends abandoned mine closure as a potential measure that could reduce operational impacts related to turbine collisions. Implementation of some or all of these mine management activities could therefore be helpful in both increasing public safety on the site and minimizing effects to bat resources.

32. Applicant Proposed Measure Tule- PHS-2 states that a Health and Safety Program would be developed to protect both workers and the general public during construction, operation and decommissioning of the project to reduce impacts to public health/safety (Mitigation Measure HAZ-1b). We recommend that an element of this program be that all workers as well as the public avoid areas containing abandoned mines and that pamphlets with the "Stay Out-Stay Alive" information used by federal and state governments be distributed to inform people of the dangers these mines may pose.

Section D.18 – Climate Change:

33. CSLC staff is concerned that the DEIR/DEIS misclassifies the greenhouse gas (GHG) impacts, related to its threshold determination and improperly limiting the scope of the emissions considered. The document classifies all GHG impacts as Class III (less than significant) or Class IV (beneficial). The October 2008 California Air Resources Board (CARB) preliminary draft threshold is 7,000 Mtons/year. Given that the GHG emissions for construction are likely to exceed CARB's tentative operational threshold of 7,000 tons per year, they should be considered Class II (significant but can be mitigated to below significant). The DEIR/DEIS assumes the threshold to be 10,000 Mtons/year based on the December 2008 SCAQMD interim threshold. The draft EIR apparently used the higher threshold "because CARB has yet to adopt a threshold" (D.18-13), but the choice could be seen as motivated by the desire to change the impacts for turbine installation from Class II (significant before mitigation) to Class III (less than significant). As stated above in the General Comments section of this letter, while CEQA allows lead agencies latitude in setting significance thresholds, ultimately the conclusions reached about significance must be based on substantial evidence. To the extent CARB's lower threshold could raise questions about the conclusions in the present document, the decision to use the SCAQMD interim threshold instead should be more thoroughly discussed. Please confirm the CEQA significance threshold with CARB, verify whether CARB has finalized its significance threshold, and add discussion about whether wind energy might result in net reduction in GHGs (by offsetting fossil fuel energy generation).
34. The CSLC staff is also concerned that the analysis is conclusory because it (i) does not include a complete accounting of the emission sources, and (ii) does not illustrate how the GHG emissions totals were derived. Most importantly, the project calculations do not seem to consider the GHG emissions of manufacturing the turbines, pads, anchors, etc. including the effects of the cement mixing and use, or emissions related to the release of carbon through habitat conversion. As stated in the DEIR/DEIS: "GHG emissions were simulated for the construction phase of the Tule Wind Project. These GHG emissions will occur as a result of burning the fuel required to operate the on-site construction equipment and mobilize work crews to and from the Tule Wind Project site." (D.18-17). Although some effort is made in Appendix 8 to explain how the GHG totals were reached, there is no evidence that construction of the turbines (and associated energy consumption) was included in the calculations. The DEIR/DEIS should more clearly describe the GHG emissions from the production of 65,794 cubic yards (Appendix 8-4) of cement and factory


construction of 134 wind turbines. Additionally, the analysis neglects to account for the potential release of GHG or loss of sequestration capacity caused by the permanent loss of several hundred acres of desert habitat. This source of emissions should be included.

- 35 **Timing:** The GHG analysis should be updated to reflect the current project timeline. For example, it is currently 2011, yet some of the calculations show emissions beginning in 2010.
- 36 The DEIR/DEIS should specifically indicate which alternatives and project detail assumptions were used to calculate the GHG numbers, and perhaps offer several different sets of calculations for different alternatives/details. At the very least, the document should include a simple comparison chart of the GHG emissions per energy generation of the Tule Wind Project compared with other feasible/existing energy alternatives. The document should demonstrate a robust, serious effort to inform decision-makers and the public about the GHG impacts of this project versus what positive benefits may flow (in terms of offsetting emissions from fossil fuel or other energy sources).

Thank you for the opportunity to review and make comments on the DEIR/DEIS for the Project. As a Responsible and Trustee Agency, the CSLC will need to rely on the EIR for the issuance of a lease for any portion of the Project that occupies school lands. We request that you consider our comments and implement these recommendations prior to adoption of the Final EIR.

If you have any questions regarding sovereign lands subject to the CSLC's jurisdiction, please contact Jim Porter, School Lands Unit at (916) 574-1865 or by e-mail at [Jim.Porter@slc.ca.gov](mailto:Jim.Porter@slc.ca.gov). If you have any questions regarding the environmental review comments, please contact Jennifer Deleon at (916) 574-0748 or by e-mail at [Jennifer.Deleon@slc.ca.gov](mailto:Jennifer.Deleon@slc.ca.gov).

Sincerely,



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