



February 23, 2015

California Energy Commission
Attn: Scott Flint, DRECP Program Manager
Dockets Office, MS-4
Docket No. 09-RENEW EO-01
1516 Ninth Street
Sacramento, CA 95814-5512

California Energy Commission
DOCKETED
09-RENEW EO-1
TN 75188
FEB 23 2015

Re: AWEA Comments on Draft DRECP and EIR/EIS

Dear Mr. Flint:

The American Wind Energy Association¹ (“AWEA”) appreciates the opportunity to provide comments on the Draft Desert Renewable Energy Conservation Plan (“Draft DRECP” or the “Draft Plan”) and Environmental Impact Report/Environmental Impact Statement (“EIR/EIS”). AWEA has been actively involved in the DRECP process over the past several years, both through our affiliation and work with our regional partners, the California Wind Energy Association (“CalWEA”) and the Center for Energy Efficiency and Renewable Technologies (“CEERT”), the active involvement of many of our developer members and the direct participation of AWEA staff.

Executive Summary

AWEA and the wind industry in the United States have a strong record of lands and species conservation work. Collectively, the wind industry has invested between \$290 and \$300 million over the last ten years on wind-wildlife studies and further research, with investments increasing as companies work harder each year on data collection, research and developing new and advanced mitigation techniques. At the project level, the industry is engaged in pre-construction surveys and detailed, site-specific analyses to avoid, minimize and mitigate the impacts of our projects. Through the American Wind Wildlife Institute (“AWWI”) and many other efforts, we collaborate with environmental groups, regulators, and other stakeholders at the national, regional, and local level, all in an effort to make sure that full-lifecycle impacts of the wind industry – from project development all the way through to

¹ AWEA is the national trade association representing a broad range of entities with a common interest in encouraging the deployment and expansion of wind energy resources in the United States. AWEA’s members include wind turbine manufacturers, component suppliers, project developers, project owners and operators, financiers, researchers, renewable energy supporters, utilities, marketers, customers and their advocates.

decommission – have the lowest feasible impacts on wildlife and their habitats, natural resources, viewsheds, cultural resources, and other environmental concerns.

In this regard, AWEA was actively engaged in helping to develop and implement the land-based Wind Energy Guidelines (“WEGs”) promulgated by the U.S. Fish & Wildlife Service (“USFWS”) in 2012. Our members embraced this risk-based and tiered approach to wind project siting and permitting, as wind developers have found that this process best fits with the reality of how wind project sites are selected and ultimately developed. The WEGs work well to balance lands and species protection with a workable and repeatable siting process that ultimately provides the level of business certainty needed to finance and timely complete wind projects.

We appreciate the intent behind the landscape-level planning effort to comprehensively plan development activities and conservation efforts across large areas such as the 22.5 million acres within the DRECP boundaries. If done correctly, this approach could accommodate multiple proposed uses of public and private lands within a large area over a long planning horizon. Indeed, a landscape approach is more scientifically sound than smaller, piecemeal approaches to protect wildlife habitat and other natural resources given that the many political boundaries in play in the DRECP planning area are irrelevant to wildlife habitats and dispersal.

As discussed below, our major concern and overriding theme for our comments is that the DRECP plan in its current form proposes a landscape planning approach that is at its core too rigidly constructed, (i.e., the plan is based on existing knowledge without an ability to adjust development focus areas throughout the extensive plan period if new information, siting and operation techniques, technology innovations, etc. improve to allow for further development impact reduction). Accordingly, the fundamental approach of the DRECP is at odds with the concept of the WEGs and realities of how wind development occurs in tiered stages as more information and data are gathered and then determining if the project risk is acceptable to in order to move forward to construction. Indeed, by essentially determining with a broad brushstroke where wind development will occur and where it will not, the process in effect precludes wind development where it could be developed while conserving wildlife and their habitats. As a result, the DRECP draft plan unnecessarily precludes levels of wind energy development in California that are needed to meet state renewable energy and Greenhouse Gas (“GhG”) reduction goals.

On a broader level, AWEA also has serious concerns with the fundamental “zoning” or “go/no go zone” approach proposed in in the DRECP should it be replicated in other efforts throughout the country, such as is being proposed in BLM’s draft competitive leasing regulations that will impact renewable energy development on BLM-administered lands throughout the western United States. Indeed, for the reasons discussed herein, we think that the approach taken by the DRECP not only doesn’t work for wind energy development and wildlife protection in California, but also, should not serve as a model for similar efforts outside of California – as this type of approach serves to unduly hamper the development of wind energy without providing a corollary conservation benefit in many circumstances. That said, the wind industry restates our commitment to continue to work constructively with federal and state agencies and environmental groups to develop a planning, siting, and permitting system that works for the wind industry as well as ensuring the conservation of wildlife, related habitat, natural resources in general and other land uses.

I. The Environmental Benefits of Renewable Energy

Wind energy is one of the fastest growing electricity sources in the United States. Over the last five years, wind energy has accounted for 31 percent of all newly installed electric generating capacity, second only to natural gas.² There are now 65,897 megawatts (MW) of wind energy projects installed in 39 states and another 12,700 MW currently under construction.³ On an average annual basis, wind energy produces more than 25 percent of the electricity in two states, 12 percent or more in nine states, and 5 percent or more in 17 states.⁴ Furthermore, the wind industry in the U.S. supports more than 50,000 U.S. jobs and has more than 500 manufacturing facilities in 44 states supplying the industry.⁵

Renewable energy technologies provide numerous environmental benefits. For instance, generating electricity from renewable energy has been well documented to reduce carbon emissions. Wind energy alone reduced carbon emissions by 127 million tons per year nationally in 2013, or more than 5% of electric sector emissions, with 11 states achieving reductions of greater than 10% and three other states just under 10%. In addition to reducing carbon emissions, renewable energy reduces other harmful emissions such as NO_x and SO₂. There is also less pollution of soil and water resources as a result of the development and use of renewables.

As noted in the National Audubon Society's 2014 report,⁶ which examined the effects of climate change on birds, there is no greater threat to avian populations as a whole than climate change. Following a seven-year study into the effects of climate change on bird populations, the Chief Scientist of the National Audubon Society went so far as to declare that "the greatest threat our birds face today is global warming."⁷ Carbon-reducing wind energy is a vital component of clean air initiatives aiming to reverse the effect of climate change.⁸ As a result, wind energy provides a net positive effect on wildlife and their habitats—a claim that most other land uses cannot make.

If we are to realize these benefits and contribute to the realization of the Administration's goals of reducing carbon pollution, we must have reasonable and workable permitting regimes for both private and public lands. In this regard, the agencies in charge of developing and implementing the DRCEP should provide meaningful opportunities to site and operate wind energy facilities within high quality, economically viable wind resource areas and ensure that the final plan does not unduly dis-incentivize wind energy development on public and private lands. The final plan should allow the many environmental benefits wind energy development brings to be realized as long as conservation values can be assured. As suggested, we think a proposal that arbitrarily determines risk at a landscape level, without examining the real risks posed by a project, will inevitably preclude environmentally appropriate

² U.S. Wind Industry Annual Report 2013. Available at:

<http://www.awea.org/AnnualMarketReport.aspx?ItemNumber=6309&RDtoken=11102&userID=>

³ U.S. Wind Industry Fourth Quarter 2014 Market Report. Available at: <http://awea.files.cms-plus.com/4Q2014%20AWEA%20Market%20Report%20Public%20Version.pdf>

⁴ U.S. Wind Industry Annual Report 2013. Available at

<http://www.awea.org/AnnualMarketReport.aspx?ItemNumber=6308&RDtoken=61755&userID=>

⁵ U.S. Wind Industry Annual Report 2013. Available at:

<http://www.awea.org/AnnualMarketReport.aspx?ItemNumber=6315&RDtoken=55525&userID=>

⁶ *Audubon Bird's and Climate Change Report*, National Audubon Society (September, 2014).

⁷ Comments of Audubon Chief Scientist Greg Langham, Audubon Press Release (September 9th, 2014).

⁸ *Wind Power for a Cleaner America*, Environment America (November 28th, 2012) ("renewable energy is an important piece of any strategy to reduce global warming pollution").

wind development. Ironically, if wind energy development is unnecessarily hindered, the GhG-reducing benefits and, in turn, benefits to wildlife from mitigation of climate change will not be realized—potentially causing more harm to the species which the DRCEP seeks to protect.

II. The DRECP May Frustrate Public Land Renewable Energy Goals

While the DRECP planning area contains public and private lands, we are concerned, in particular, that the plan, in its current form, will discourage wind energy development on public lands. Those lands will increasingly be needed for responsible wind power development as the country moves from approximately 5% of electricity supplied by wind power in 2014, to the higher penetration levels needed to meet the many renewable energy and climate change mitigation policy goals in California, as well as across the U.S., while providing consumers a low cost energy resource.

There is a significant opportunity for wind energy development on public lands in the United States. Indeed, BLM has estimated that 20.6 million acres of public lands in 11 western states have wind energy potential.⁹ Not surprisingly, the federal government has sought to promote the development of wind energy on federal lands. For example, in the Energy Policy Act of 2005,¹⁰ Congress set a goal of approving at least 10,000 MW of renewable energy projects on public lands by 2015. Since then, BLM has approved 13,957 MW (8,786 MW of solar, 4,767 MW of wind, and 605 MW of geothermal).¹¹ We highlight the difference between “approved” projects and those that are actually built – most of these approved projects have not been constructed. While we acknowledge that multiple factors are involved affecting these outcomes (e.g., market forces, financing), one key factor is the complicated permitting process that follows project approval.

DOI and BLM have also taken a number of actions to expedite wind energy development on public lands. In June of 2005, BLM issued a Programmatic Environmental Impact Statement (EIS) for the development of wind energy on BLM-managed lands in the West.¹² Moreover, on March 11, 2009, DOI issued Secretarial Order 3285,¹³ which establishes the “development of renewable energy as a priority for the Department of Interior” and also states that “[e]ncouraging the production, development and delivery of renewable energy is one of the Department’s highest priorities.” In addition, in order to aid in achieving that goal, DOI established renewable energy coordination offices¹⁴ to “expedite the production of renewable energy on public lands while protecting land, water, and wildlife.”¹⁵

It is discouraging that despite all of these policies in place to promote the development of renewables on public lands, of the 20.6 million acres of public lands managed by BLM with wind potential, it has, to date, only authorized 39 wind energy development projects, with a total approved capacity of 5,557 MW.¹⁶ Furthermore, of the 4,740 MW of wind energy that BLM has authorized since 2009, less than

⁹ Available at http://www.blm.gov/wo/st/en/prog/energy/wind_energy.html.

¹⁰ Available at <http://doi.net/iepa/EnergyPolicyActof2005.pdf>.

¹¹ Available at

http://www.blm.gov/wo/st/en/prog/energy/renewable_energy/Renewable_Energy_Projects_Approved_to_Date.html.

¹² Available at <http://windeis.anl.gov/>.

¹³ Available at <http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&pageID=5759>.

¹⁴ Available at http://www.blm.gov/ca/st/en/info/newsroom/2009/may/DOI_Reweable_permitting_offices.html.

¹⁵ Id.

¹⁶ Available at http://www.blm.gov/wo/st/en/prog/energy/wind_energy.html.

470 MW¹⁷ has actually been built. Indeed, it is important to note that, at present, 98.6% of the currently installed U.S. wind energy capacity is on private lands, and only 1.4% is on public lands managed by BLM. The trends are unfortunately continuing in this direction: in 2014, BLM was currently only processing 13 renewable energy projects (11 solar and 2 wind), representing about 3,030 MW.¹⁸ Furthermore, while there are more than 12,700 MW of wind energy currently under construction in the U.S., less than 100 MW the wind under construction is on public lands.

The Draft DRCEP, if finalized without significant revisions, will only further discourage development of wind energy on the public lands encompassed in the plan and, in turn, add to the disconnect between the goals for renewable energy development on public lands and the 1.4% reality.

III. The DRECP Draft Plan May Frustrate State and Federal Renewable Energy Goals

The Draft Plan is premised on the need to significantly increase the use of renewable energy and reduce the burning of fossil fuels in order to achieve California’s long-range goal of reducing the 1990 level of GhG emissions by 80% by 2050.¹⁹ The Draft Plan aims to determine how much renewable energy might be needed to meet this goal and how much of this need might be met through development in the area encompassed by the plan.²⁰ The California Energy Commission (“CEC”) developed a “renewable energy acreage calculator” for this purpose and identified a need to plan for 20,000 MW of new renewable energy resources in the area subject to the plan by 2040. Each of the five Draft Plan alternatives include a different mix of solar, wind and geothermal generation capacity, which together comprise the planning figure, with the amount of wind energy ranging from a low of 398 MW under Alternative 1 to a high of 5,810 MW under Alternative 2.²¹

Both the overall planning target of 20,000 MW by 2040 and the wind-specific planning targets are clearly insufficient to support achievement of California’s long-range GhG-reduction goals by 2050, as reflected in Executive Order S-3-05 (“Executive Order”). The “acreage calculator” appropriately acknowledges that it is not a “crystal ball” that can predict the future, and that its aim is rather to “inform and prepare for a number of different futures that might be.”²² Yet, the calculator has produced figures that do not begin to achieve this objective. The 20,000 MW renewable energy planning target is based on an overall estimate of required electric-sector carbon reductions that studies accepted by the California Air Resources Board have shown to be too low. More specific assumptions further err in the direction of significantly underestimating the quantity of renewable energy that will be needed statewide, and in the desert. The low fraction of the 20,000 MW that is estimated to be met with wind energy, specifically, is arbitrary and does not reflect any economic or reliability analyses that are readily available and show a far greater need for wind energy. The Draft Plan will make it challenging to meet Governor Brown’s recently stated goal of moving California to 50% renewable

¹⁷ Available online at:

http://www.blm.gov/wo/st/en/prog/energy/renewable_energy/Renewable_Energy_Projects_Approved_to_Date.html

¹⁸ Available at http://www.blm.gov/wo/st/en/prog/energy/renewable_energy/2014-15_Renewable_Energy_Projects.html

¹⁹ Draft Plan at p. I.3-33 (citing California Executive Order S-3-05, which establishes a long-range goal of reducing 1990 levels of GHG emissions by 80% by 2050).

²⁰ Draft Plan Executive Summary at p. 16.

²¹ The “No Action” Alternative shows 5,442 MW of wind development occurring. (Appendix F2 at p.F2-4.) Though a slightly lower figure than Alternative 2 would purportedly enable, the No Action Alternative does not constrain wind energy development as would occur under Alternative 2; therefore, the No Action Alternative figure – or greater – is much more likely to be achieved.

²² DRECP Appendix F3 at pp. 1 and 3.

energy by 2030, and also fails to account for a *doubling* of renewable energy that the Draft Plan itself anticipates will be needed between 2040 and 2050.

When the Draft Plan was released in September 2014, the Department of Interior and BLM stated that the DRECP could serve as a “landscape-level blueprint for renewable energy and conservation” for other efforts outside of California. To the extent we view the DRECP in its present form as not achieving these twin goals in California, it may also frustrate federal renewable energy and climate goals if its core approach is repeated elsewhere. Those federal goals and initiatives include the EPA Clean Power Plan draft regulations pursuant to section 111(d) of the Clean Air Act seek to reduce electricity sector carbon emissions 30% below 2005 levels by 2030. As renewable energy can provide large emissions reductions in a cost-effective manner when part of a balanced energy portfolio, and provide significant positive economic returns to a state, it is widely recognized that renewable energy policies and programs will be key compliance tool for states to meet their emission targets under this landmark policy, where the U.S. is demonstrating international leadership to address and reduce the impacts of climate change. This leadership continued recently when the U.S. and China jointly announced new clean energy and climate change goals. In the announcement, President Obama set a new target to cut net greenhouse gas emissions 26-28 percent below 2005 levels by 2025, with China setting targets for emissions to peak by 2030, with the intention to peak early, and to increase the non-fossil fuel share of all energy to around 20 percent by 2030.

The wind projects that will help meet these ambitious goals will need to an appropriate amount of land for development. In 2008, the Bush Administration completed the Department of Energy’s 20% Wind by 2030 report, which is being updated in the soon-to-be released DOE Wind Vision. Although it is important to note that the DOE Wind Vision is not yet final, a draft summary states that we’ll need approximately 200,000 MW of installed land-based wind to reach 20% wind by 2030 – that number climbs to 320,000 MW to reach 35% wind by 2030.²³ From today’s baseline of 66,000 MW of existing wind, this means that we’ll need approximately 134,000 MW of new wind development (depending on technology and capacity factor improvements) to realize all of the benefits from 20% wind power by 2030. It will take both private and public lands site these additional MWs of wind projects that will play a pivotal role in moving the U.S. forward to reach these state and federal goals. Unfortunately, in its present form, the DRECP plan stands in the way of California meeting its renewable energy and GhG reduction goals and would certainly hinder much broader goals in the U.S. if the fundamental approach of the DRECP is replicated in other parts of the country.

IV. The DRECP Draft Plan is Inconsistent with What Works: The 2012 USFWS Voluntary Wind Energy Guidelines

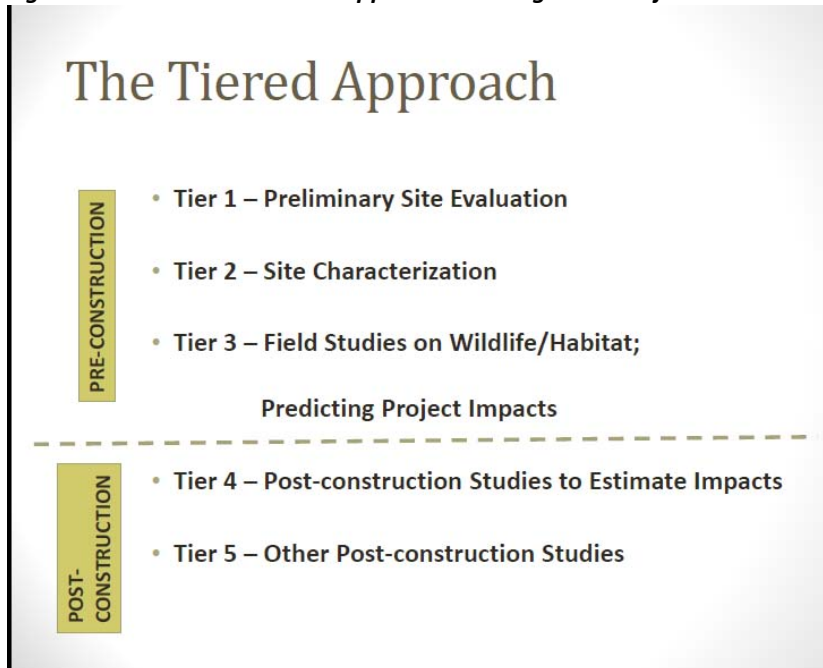
Wind is unlike other forms of energy development, or land use, where one particular location is generally like the next and merely shifting locations based on location within a landscape is more readily accomplished. This is not necessarily the case with wind energy development as economic wind resources are not universal across the landscape. Due to the variability of wind speeds from location to location (even a few hundred feet can make the difference in the ability to capture an economically viable wind class), it is not easy to create rigid development focus areas by relying solely on wind

²³ U.S. Dept. of Energy. *Wind Vision: A New Era for Wind Development in the U.S.* (Nov. 2014). Available at: <http://energy.gov/sites/prod/files/2015/01/f19/AWEA-2014-Fall-Symposium-Presentation-by-Jose-Zayas.pdf>

resource maps, particularly without conducting on-site measurements and collecting data for at least a year.

As a result, rather than create no-development zones, or highly restricted areas, AWEA recommends that development be allowed to proceed through the use of the risk-based and site-specific approaches, as specified in the FWS’s Land-Based Wind Energy Guidelines (WEGs) that were finalized in 2012. See Figure 1.

Figure 1. US FWS WEG Tiered Approach to Siting Wind Projects



In tier 1 of the WEGs, wind developers utilize informational maps – including wildlife overlays such as the AWWI’s Landscape Assessment Tool (“LAT”) – when prospecting for sites. If that tier of analysis shows promise, developers then proceed to tiers 2 and 3 where they conduct extensive general and species-specific bird and bat studies for at least a year, often longer, prior to construction. In tier 2 and all subsequent tiers, wind developers regularly communicate with state and federal wildlife officials and other stakeholders and often make changes to plans to reduce potential impacts. After years of site-specific surveys and consultation, developers then proceed to state and federal permitting and additional months/years of environmental review prior to construction, which includes extensive stakeholder participation. After permits are obtained and wind projects are constructed, developers engage in tier 4 post-construction monitoring in order to determine whether tier 3 estimates were accurate. This phase includes working with permitting agencies to address unexpected issues. Finally, tier 5 involves the evaluation of new technologies to avoid and minimize wildlife impacts (e.g., acoustic bat deterrents, raptor detection systems, etc.), as the wind industry – working with NREL and other research entities – constantly updates and applies the best science in siting and wind project operations.

The wind industry prefers the WEG risk-based, tiered approach because it fits how wind developers prospect for and eventually construct wind projects, better protects natural resources by ensuring real risks are avoided and minimized and maintains flexibility to allow development to occur when information and data gaps are closed and mitigation technologies are improved. This flexibility,

adaptability and new information obtained, work in combination to allow for wind projects to be developed in an area that today may appear to present challenges related to wildlife risks. In contrast, the Draft DRECP's approach has very limited flexibility and too often, when faced with little data on a specific area or actual impacts to species, the de facto result is to place an "X" (i.e., no development zone) over the area for the life of the plan. In contrast, the WEGs allow for new science, improved data collection and improved mitigation strategies to demonstrate that development can occur in a given area with minimal impacts. Put simply, the rigid approach of the Draft DRECP over-inclusively places acres off limits to potential wind development, even if the particular area might not pose a risk after a site-specific evaluation. At the very least, in order to avoid being inconsistent with the WEG approach favored by the USFWS (one of the lead agencies in charge of the DRECP), the DRECP's final plan should adopt a site-specific, risk-based approach with respect to wind energy – an approach that reflects how wind projects are successfully developed and that works well to protect wildlife.

V. The DRECP's Development Focus Areas (DFAs) Do Not Provide for Sufficient Wind Development²⁴

The Draft Plan's Preferred Alternative allows for just 3,070 MW of wind energy in the DRECP area and 5,810 MW under Alternative 2 (the highest MW total for wind); neither amount would be sufficient to meet state and federal renewable energy and GhG reduction goals listed above in sections II and III. The DRECP planning agencies should not over rely upon areas outside the DRECP playing a major role in wind development, given that the state's highest-quality wind resources are concentrated in the DRECP region and that 75% of development activity has been occurring inside the DRECP area. Further, the major wind resource areas in California – in Solano County, the San Geronio Pass, the Altamont Pass, and the private-land areas of the Tehachapi Pass – are now largely developed and only so much can be achieved through the efficiencies associated with repowering these older wind farms with larger modern turbines. Further, over 95% of California's nearly 6,000 MW of operating wind facilities have been built on private lands; the strong wind resources on California's federally owned lands remain largely untapped.

Moreover, the proposed DFAs themselves provide insufficient acreage to achieve the identified 3,070 MW of wind (Preferred Alternative) or 5,810 MW wind planning goal (Alternative 2). The DFAs in the Preferred Alternative capture just 11% of the DRECP area's best available wind resources, and only 12% of the wind resource areas of sufficient quality to be are commercially feasible today. Under Alternative 2, the figures are 19% and 18%, respectively.

Based upon actual wind developer past performance in CA, approximately 63 acres/MW will be needed to respond to conflicts within a site that ultimately occupies 40 acres/MW; and for every project that is actually developed, five are abandoned (reflecting a 6 to 1 ratio). Accordingly, approximately 378 acres/MW (6 X 63) are needed to allow room to prospect for and find the best sites – "best" meaning the best wind resource combined with development locations that have the least lands/wildlife/military and other conflicts. Respectively, this means that the Preferred Alternative and Alternative 2 would need over 1.1 million acres and 2.2 million acres to achieve the wind planning goals. However, when analyzed against the best wind resources in the DFAs, there are just 500,000 and 300,000 acres for wind in the DFAs for these alternatives, respectively, which means that less than 50% of the wind MW goal in

²⁴ AWEA incorporates herein by reference section 2 of our regional partner CalWEA's comments on the DRECP draft plan for a more thorough discussion of these points.

the Preferred Alternative and about 15% of the wind MW goal in Alternative 2 can be realistically reached.

The final DRECP plan needs to better explain its methodology for arriving at acres available for wind development in the DFAs, and also significantly expand the DFA acreage to include the best wind resources. This expanded acreage needed is not to be conflated with additional resource impacts; rather, the 378 acres/MW is consistent with how wind site selection and eventual development works. The larger acreage number is needed for prospecting and finding the best sites – much less acreage will actually be affected by the resulting projects. Indeed, this is the exactly how the risk-based, tiered approach in the WEGs is intended to work.

VI. Areas Outside the DFAs and Potential Wind Development²⁵

The DFAs do not contain enough high-quality wind resource areas to meet state and federal RE/GhG reduction goals, or even the wind MW goals of the DRECP alternatives. It is therefore troubling that under the Preferred Alternative of the Draft Plan, there would be nearly 3 million fewer acres available for development than are available today on BLM-managed lands. In fact, the Draft Plan would likely prohibit all renewable energy development within the BLM's Land Use Plan Amendment (LUPA) conservation designations (ACECs, Wildlife Allocation areas, and newly designated National Conservation Lands). For areas outside of DFAs, remaining public lands open to development are largely located on the poorest wind resource areas; and as discussed below, eagle take permits will be focused in DFAs.

All of these factors add up to areas outside of DFAs not helping the Draft Plan meet the stated renewable energy or GhG goals through 2040. This is yet another example of the Draft Plan's inflexibility and illustrates how the risk-based, tiered approach of the Wind Energy Guidelines is much better suited for this type of planning and siting exercise for wind energy – it is impossible to have a lot of site-specific information for the 22.5 million-acre planning area and to know how things will change over 25 years. In short, acting without this type of data and then permanently placing areas off-limits to development in areas of scientific uncertainty is the fundamental design flaw in the DRECP approach. AWEA recommends that a better approach would be to allow more acreage in the development or study areas such that future knowledge and/or improved mitigation technologies and techniques (both which could combine to significantly avoid and/or minimize impacts compared to our present understanding) could ultimately render these areas acceptable for development rather than permanently off limits.

VII. Eagle Annual Take Cap and Permitting²⁶

As provided in Appendix H of the Draft Plan, the potential available eagle take for projects covered by the DRECP was calculated by determining the golden eagle population within the local area population (DRECP plus 140-mile buffer zone) and the annual ongoing golden eagle mortality from all sources in the local area, to arrive at an allowable golden eagle take of 15 eagles across the entire DRECP area.

²⁵ AWEA incorporates herein by reference sections 2.d and 3.c.ii of our regional partner CalWEA's comments on the DRECP draft plan for a more thorough discussion of these points.

²⁶ AWEA incorporates herein by reference sections 5.a of our regional partner CalWEA's comments on the DRECP draft plan for a more thorough discussion of these points.

AWEA has many concerns with the proposed eagle take cap and permitting process that need to be addressed in the final plan. First, the take cap is based upon an assumption that eagle density is distributed uniformly across the DRECP local area, when the USFWS Eagle Conservation Plan guidance manual states that this assumption will over-protect eagles in high density areas and under-protect them in low density areas. More reliable modeling should be used where available in order to reach take caps that better correlate to species populations, breeding populations and overall species protection. Further, an overly conservative take estimation model has the confounding effect of reaching take limits quicker than will actually occur and making it extremely challenging for Service staff to authorize take.

Second, the annual take cap of 15 eagles is to be adjusted annually and can include: take from all new projects within the DRECP area but which are not necessarily covered by the DRECP; existing projects within a DFA; and also projects not within the DRECP at all, but within the local area. What little available remaining take would be distributed to new projects within DFAs seeking take coverage under the DRECP. Therefore, participants in the DRECP can be affected by developers and projects not participating in, and not located within the DRECP. The Draft Plan does not specify the exact impact this will have on how take under the DRECP will be affected and the amount of permits that can be expected to be issued. Also included in the existing and available take calculations is take from unpermitted projects or other unauthorized sources of take. Take from these sources would be subtracted from the available take, with the result that preference is given to unauthorized take, and those seeking permitted take under the DRECP would be left with whatever remains. Without some additional clarification, or other means of addressing this issue, the incentive for wind energy projects to proceed under the DRECP seems negligible.

Third, the proposed eagle permitting scheme under the plan is inconsistent with the 2009 Eagle Permitting Rule and related USFWS Eagle Conservation Plan Guidance. Importantly, the 2009 Eagle Rule provides that “projects seeking programmatic permits would need to minimize their own take of golden eagles to the point that it is unavoidable and also reduce take from another source to completely offset any new take from the new activity.” Likewise, the ECP Guidance states that “[n]o-net-loss means that unavoidable mortality caused by the permitted activities is offset by compensatory mitigation that reduces another, ongoing form of mortality by an equal or greater amount.” The Draft Plan misapplies these mitigation requirements because it requires all take to be counted against the annual 15 cap, whether offset by mitigation or not.

Fourth, golden eagle take authorization under the DRECP is limited to projects located within a DFA.²⁷ This is problematic as DFAs are not reasonably related to the potential eagle impacts of wind energy development. Instead, the eagle-related constraints on DFA location are based on limited data. In the absence of better data, avoidance of avian high-risk areas is best achieved through detailed, site-specific studies, as has been outlined in the tiered structure of the USFWS WEGs and the 2012 Eagle Conservation Plan Technical Appendices rather than through a rigid go/no-go planning exercise that will limit development within these areas for decades to come. In addition, in order to be able to execute buffers and other avoidance and minimization techniques, projects need flexibility with respect to siting turbines and other project facilities, a flexibility which is not available under the current DFA structure. To that end, excluding future wind energy development for the life of the plan based on

²⁷ Appendix H, at p. H-43.

limited/incomplete data does little to ensure eagle impacts will be minimized. Instead, take authorization under the DRECP, and any resulting compensatory mitigation and implementation of Advanced Conservation Practices will be unnecessarily constrained.

VIII. The Proposed General Conservation Plan and Permitting Uncertainties²⁸

USFWS has prepared a proposed General Conservation Plan (GCP) to be used as the permitting process to authorize incidental take resulting from covered activities on non-federal lands under the DRECP. The GCP is intended to be a programmatic process for “streamlining issuance of ESA section 10(a)(1)(B) permits for impacts to Covered Species” resulting from renewable energy development within certain portions of the Plan area.

Our primary concern is that we do not believe that the USFWS has the legal authority under the ESA to use the GCP – as proposed in the DRECP – for large regional areas to regulate an industry. Therefore, there appears to be few permitting efficiencies: although the DRECP states that an applicant may refer to the appropriate GCP sections of the DRECP and the EIR/EIS for the HCP and NEPA requirements, the applicant nonetheless is still required to prepare a separate, stand-alone HCP and ensure that there is sufficient NEPA clearance for its project, in addition to providing the other materials specified in the GCP.

Additional permitting efficiency benefits remain unclear in the Draft Plan. For example, pursuant to the GCP permit applicants must submit a “complete application package” to the USFWS. That package must include: (1) Federal Fish and Wildlife Permit Application Form 3-200-56; (2) \$100 application fee; (3) proposed Habitat Conservation Plan; (4) an analysis of the effects to Covered Species of the requested take authorization; and (5) an analysis of the proposed permit issuance under NEPA. In addition to all of this material, the applicant must submit additional information to demonstrate compliance with the terms and conditions of the GCP.

IX. Proposed Mitigation Plan and Funding Uncertainties²⁹

Pursuant to both federal and state law, the Draft Plan must detail the funding that will be made available to implement the wide variety of mitigation programs proposed for the DRECP. The Draft Plan estimates total mitigation costs for the Preferred Alternative to be approximately \$1.67 billion. However, there is a lack of specific information with respect to how such funding actually will be obtained and no analysis on impacts to mitigation and conservation goals should funding shortfalls occur.

The mitigation programs contemplated in the Draft Plan contain a broad list of activities to be funded, including: (1) land acquisition; (2) endowment for long-term land management and maintenance; (3) habitat restoration and enhancement; (4) monitoring and adaptive management costs; and (5) administrative costs. These activities would be carried out by a wide variety of entities over a lengthy time period. In order to implement such diverse mitigation, the Draft Plan states that the GCP will be

²⁸ AWEA incorporates herein by reference sections 5.b of our regional partner CalWEA’s comments on the DRECP draft plan for a more thorough discussion of these points

²⁹ AWEA incorporates herein by reference sections 4.b of our regional partner CalWEA’s comments on the DRECP draft plan for a more thorough discussion of these points.

funded through implementation fees and that the Natural Community Conservation Planning (“NCCP”) will be funded by implementation fees as well as other sources of private and public funding. However, many uncertainties surround these implementation fees, which will be required for all Covered Activities and will form a backbone of the DRECP’s funding structure: e.g., the Draft Plan provides virtually no description of, for instance, how such fees will be calculated, how they will be adjusted, or how these fees will be implemented. The final plan needs to have much more detail on how funding for the mitigation activities will work and how implementation fees will be assessed to cover all of the proposed activities.

X. Conclusion

AWEA appreciates the opportunity to comment on the Draft DRECP Plan. We look forward to our continued work with the agencies to address the fundamental design flaws within the DRECP approach and develop workable and reasonable siting/permitting processes that provide the flexibility needed to develop wind projects, and also achieve meaningful and long-term protection of wildlife, natural resources and other uses of our public and private lands. A process that meets all of these goals is the aim of the United States wind industry.

Sincerely,

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