



U.S. Fish and Wildlife Service



Bureau of Land Management

# **Environmental Assessment**

## **Ocotillo Wind Energy Facility Eagle Conservation Plan**

California

# **Finding of No Significant Impact**

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## I. Introduction

In accordance with the National Environmental Policy Act (NEPA) of 1969 (42 USC 4321 et seq.) and its implementing regulations (40 CFR 1506.6 and 43 CFR 46.300 ), we, the U.S. Fish and Wildlife Service (Service) and the Bureau of Land Management (BLM) prepared an Environmental Assessment (EA) analyzing the impacts to the human environment associated with permit issuance and ROW grant amendment (*Environmental Assessment –Ocotillo Wind Energy Facility Eagle Conservation Plan*) based on the Project’s Eagle Conservation Plan (ECP) (Ocotillo 2018) (EA Appendix A), as well as other alternatives. The EA (EA) is incorporated by reference into this Finding of No Significant Impact (FONSI) and provided as Attachment 1.

This FONSI addresses the Service’s issuance of an eagle incidental take permit pursuant to the Bald and Golden Eagle Protection Act (Eagle Act) (16 USC 668–668d) and its permitting regulations (50 CFR 22.26) for the operational Ocotillo Wind Energy Facility (Project), located in Imperial County, California. This FONSI also addresses the BLM’s decision to amend the Project’s right-of-way (ROW) grant to allow for discontinuation of the risk minimization system for golden eagles and installation of an aviation radar system, which would turn on the Federal Aviation Administration (FAA) -required flashing lights on turbines only when aircraft are in the area.

## II. Consistency with Land Use Plans, Laws, Regulations and Policies

**BLM:** The BLM’s purpose and need is to respond to a FLPMA ROW grant amendment application submitted by the applicant which seeks to modify or eliminate certain eagle protection measures within its currently required ECP that was evaluated in the FEIS/FEIR (BLM 2012a) and approved in the ROD (BLM 2012b). The Selected Alternative meets the BLM purpose and need because it responds directly to the Applicant’s ROW grant amendment request. As described in the Project’s FEIS/FEIR and the EA for this decision (Attachment 1), the Selected Alternative is in conformance with the application regulations and following the land use plan and BLM policies:

- BLM California Desert Conservation Area Plan of 1980, as amended by the Desert Renewable Energy and Conservation Plan 2016.
- Title V of the Federal Management and Policy Act (FLPMA) of 1976. 43 USC 1761, 1765.
- FLPMA right-of-way regulations, 43 CFR 2800.

**Service:** The Service’s purpose and need is to respond to an eagle act take permit application submitted by the applicant. Issuance of a permit must comply with the Eagle Act and all related regulatory requirements. The Selected Alternative meets the Service’s purpose and need because it responds directly to the Applicants eagle take permit request. As described in the EA for this decision (Attachment 1), the Selected Alternative is in conformance with the Service’s permit issuance regulations and policies. We have determined under the Selected Alternative:

- any take authorized under the Eagle Act is compatible with the Eagle Act’s preservation goal of maintaining stable or increasing breeding populations of eagles; and
- is in compliance with the Eagle Act and its implementing regulations and permit issuance criteria under 50 CFR 22.26 and 50 CFR 13.21.

### III. Alternatives Considered

The EA evaluated a No-Action Alternative and three action alternatives. The following is a brief description of the alternatives considered. For a complete description of alternatives considered, see EA Section 2.2.

#### Offsetting Compensatory Mitigation

Under alternatives 2 and 4, the Applicant would provide compensatory mitigation for eagles by retrofitting electric distribution poles. The intent is to minimize the potential for golden eagle electrocutions in this area and ensure that the effects of take caused by the Project are offset.

#### **Alternative 1: No Action – Operation of the Project without an Eagle Take Permit or ROW Grant Amendment, Continued Bio-Monitoring with Curtailment When Eagles Detected**

Under the No-Action Alternative, the Service would either take no action or deny the permit application and not issue an eagle take permit; the BLM would not amend the ROW grant. The Project would continue to operate without an eagle take permit being issued. Under this scenario, the Applicant would continue to implement the minimization, avoidance, and monitoring practices that are currently ongoing, as described in the BLM's ROD and the 2012 ECP. The wind Project would continue to operate without a take permit, and the Applicant would be subject to law enforcement action if unauthorized take of golden eagles occurred during operations.

#### **Alternative 2: Issue 5-Year Permit for Applicant's Revised ECP and Issue ROW Grant Amendment**

Under this alternative, the Service would issue a 5-year permit to take up to two golden eagles under the Applicant's implementation of the ECP with associated conditions, as allowed by regulation. The permit would incorporate all conservation commitments and implementation of ACPs described in the revised ECP (EA Appendix A). Additionally, this alternative would involve removal of the DeTect Merlin radar system and installation of an aviation radar system, which would turn on the Federal Aviation Administration (FAA) -required flashing lights on the turbines only when aircraft are in the area. This would be a change from the existing lighting regime, which regularly flashes lights on the turbines regardless of whether aircraft are in the vicinity. The BLM would issue a ROW grant amendment authorizing the proposed modifications to the radar system and FAA lighting.

#### **Alternative 3: Continued Operation of the Project without an Eagle Take Permit; Issue ROW Grant Amendment**

Under this alternative, the Service would deny the eagle take permit application and would not issue an eagle take permit; the BLM would amend the ROW grant to lift the requirement for the eagle risk minimization ACP which includes the DeTect Merlin radar system and radar-controlled video tracking system and the aviation radar system would be installed for the FAA-required flashing lights. The wind Project would continue to operate without a take permit being issued, and the Applicant would be subject to law enforcement action if unauthorized take of golden eagles occurred during operations. Under this alternative, the BLM would require that unless or until an eagle take permit is obtained, that the Applicant continue full time bio-monitoring and associated curtailment during daylight hours. Furthermore, the BLM would require that fatality monitoring occur at the Project using Service-approved standards. The ROW grant amendment would include language indicating additional adaptive management measures that may be necessary if an eagle is taken without a take permit.

## **Alternative 4: Issue a 30-Year Permit for Applicant’s Revised ECP with Additional Mortality Monitoring and Mitigation; Issue ROW Grant Amendment**

Under this alternative, the Service would issue a 30-year permit to take up to nine golden eagles throughout the life of the permit with associated conditions, as allowed by regulation. The permit would incorporate all conservation commitments described in the ECP (EA Appendix A). The Service would evaluate the 30-year permit at 5-year intervals. To offset the cumulative take from human activities to golden eagle populations, this alternative would also require a mitigation rate of 1.2 to 1. This equates to a range of 32 to 74 power pole retrofits for the first five-year term; additional mitigation would be dependent on monitoring results at the first five-year review, with an anticipated maximum of 97 to 221 retrofit poles over 30 years. The BLM ROW grant amendment would refer to the 30-year eagle take permit for eagle fatality monitoring requirements. All other aspects of the ECP and BLM ROW grant amendment associated with Alternative 4 would be the same as those described under Alternative 2.

### **Evaluation of Alternatives**

The EA evaluated potential impacts that could result from the issuance of the programmatic eagle take permit based on the proposed ECP or alternatives to the proposed ECP, as well as the potential impacts that could result from amending the ROW grant to allow discontinuation of the current eagle risk management system and installation of the aviation radar system. In the analysis of alternatives, we consider the degree to which each alternative would conform to the permit issuance criteria for take permits under the Eagle Act (50 CFR 22.26(f)(1–6) (2009 Eagle Rule) or required determinations under 50 CFR 22.26 (f)(1-7) (Eagle Rule 2016a).

## **IV. Selected Alternative**

The Selected Alternative for issuance of a programmatic eagle take permit and ROW grant amendment for the Ocotillo Wind Energy Facility is Alternative 2 of the EA. The entirety of Alternative 2 without omissions, and without deletions, and without additions from other Alternative in the EA we find to have no significant impacts.

### **Effects of Implementation**

As described in the EA, the implementation of any of the identified action alternatives would result in no significant impacts to any of the environmental resources identified in the EA. The amendment of the ROW grant allows the Applicant to reduce the high cost of the previous experimental golden eagle risk minimization system while still promoting conservation of eagles through the implementation of the revised ECP. Therefore, implementing Alternative 2 as the Selected Alternative would result in no significant impacts to any of the environmental resources identified in the EA. Our Selected Alternative is consistent with the purpose and need stated in the EA. A summary of the impact analysis, mitigation measures, EA conclusions, and effects on visual resources, migratory birds, and species listed under the ESA follows.

### **Eagles**

In determining the significance of effects of each alternative on eagles, we screened each alternative against the Eagle Act’s permit issuance criteria (EA Section 1.5.2) using the quantitative tools available in our ECP Guidance (Service 2013). The Service independently evaluated the potential impacts from Project operations along with the implications for direct, indirect, and cumulative effects. We developed conservative risk estimates for the Project and our cumulative effects analysis to be protective of the species.

## **Risk Estimate**

In the ECP Guidance (Service 2013), we provide a mathematical model that estimates fatality risk at wind Project sites. Under the Selected Alternative, we estimate that up to two golden eagles will be taken over the duration of the 5-year permit. The predicted take of golden eagles conservatively estimates impacts to eagles. We have purposefully used these estimates to be protective of eagles and ensure that take authorization is not over-allocated across the population. The mortality monitoring requirements outlined in the ECP under the Selected Alternative will allow us to evaluate the Project's risk after the 5-year permit and provide statistically meaningful results.

## **Cumulative Effects**

To evaluate cumulative impacts for the local-area population, we followed the guidance provided in Appendix F of the ECP Guidance (Service 2013) and as described in the 2016 PEIS (Service 2016b). Using this process, we estimated annual golden eagle fatality rates within a 109-mile radius around the Project area (EA Figure 1-2). We incorporated data provided by the Applicant, our own data on permitted take and other documented eagle mortalities in determining cumulative impacts to the Location Area Population (LAP).

## **Visual Resources**

Under the Selected Alternative, the Applicant would install an aviation detection system that would result in the lit turbines flashing only when aircraft are in the area. The alternative would therefore affect the visual resources in the Project vicinity by reducing the occurrence of flashing lights to the time only when aircraft are in the area. Visual impacts would be altered as a result of a decrease in frequency of blinking FAA lights, which would only occur when aircraft are in the vicinity of the Project. This would reduce the visual impacts of night time lights to nearby residents, but the change is not significant.

## **Migratory Birds**

As described in Section 4.6.2 of the EA (Attachment 1) there may be minor changes in the impacts to birds under the Selected Alternative. Potential adverse impacts to individual raptor at the wind facility could increase a small amount. The eagle risk minimization system will no longer curtail wind turbines when an eagle or large raptor whose identification was unconfirmed and turbines curtailed as a precaution. The compensatory mitigation, retrofitting power poles to prevent eagle electrocutions could also result in beneficial affects to individual raptors and small beneficial effects to raptor populations.

There is some potential for beneficial impacts to nocturnal migrating birds by reducing the occurrence of flashing lights, which would only flash when aircraft are in the vicinity of the Project.

## **Species Listed Under ESA**

As described in EA Section 4.5.1 (Attachment 1) the effects of authorizing incidental eagle take and amending the ROW grant is not expected to have effects to species protected by the ESA.

## **V. Public Comment**

The Service published a Notice of Availability of the Draft EA in the FR on November 1, 2018, opening a 30-day comment period.

We received four submissions; one from the Applicant, two from nongovernmental organizations (NGOs), and one from a Native American tribe. One NGO comment letter combined comments from three different environmental groups. Our responses to the comments on the Draft EA are presented in Attachment 2.

## VI. Changes Made to EA

We made the following minor changes to the Draft EA based on comments received:

- Added information on the take evaluation under the curtailment program.
- Added information on the electric utility pole retrofit process for mitigation and explained why a range was provided for the number of retrofits needed.
- Added information about depositing funds into our NFWF Eagle Mitigation Account.

We also made some minor changes to the EA to improve clarity.

## VII. Significance Criteria

The Selected Alternative will not have a significant effect on the human environment. This conclusion is based on an examination of the significance criteria defined in 40 CFR 1508.27, and on the analysis in the EA. In making this FONSI, the following criteria have been considered, in accordance with the CEQ, 40 CFR 1508.27.

### Context

NEPA requires consideration of the significance of an action in several contexts, such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend on the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant in accordance with 40 CFR 1508.27(a). For purposes of analyzing the Selected Alternative, the appropriate context for potential impacts associated with the Selected Alternative is local and regional, because the Selected Alternative does not affect statewide or national resource values. The context of the Selected Alternative points to no significant unmitigated environmental impact considering the following (as discussed in EA Sections 4.3 through 4.6):

- The Applicant will offset golden eagle take through compensatory mitigation. This will ensure that the impacts of issuing an eagle take permit and amending the ROW grant on the local and regional golden eagle populations will be less than significant.
- The Selected Alternative may have a beneficial effect on visual effects, due to the replacement of the radar and video tracking system with an aviation detection system, which would limit the amount of flashing lights to periods when planes are in the vicinity of the Project, but this effect would not be anticipated to be significant.
- Migratory bird species may be affected by implementation the Selected Alternative. Some of these effects may be beneficial (i.e., some electrocution-prone non-eagle raptor species may benefit from power-pole retrofits) and some may be adverse (i.e., removal of the observer-curtailment program may increase the risk of non-eagle avian collisions with turbines). However, overall through implementation of the adaptive management plans in the ECP and the ABPP, impacts to migratory bird species of issuing an eagle take permit and amending the ROW grant will be less than significant.
- Authorizing incidental eagle take and amending the ROW grant is not expected to have effects to species protected by the ESA at the operational wind facility. With implementation of avoidance and minimization measures, the required eagle compensatory mitigation, retrofitting electric utility poles, is not likely to adversely affect ESA protected species. As described above in EA Section 4.5.1, the Service will evaluate the proposed mitigation once the location is selected, and if there is potential for impacts to species listed under the ESA that could not be minimized

and avoided as described, we would conduct an additional NEPA analysis and reinitiate our Intra-Service ESA Section 7 Consultation.

## Intensity

The term "intensity" refers to the severity of a proposed action's impact on the environment. In determining the intensity of an impact, the NEPA regulations direct federal agencies to consider ten specific factors, each of which is discussed below in relation to the Selected Alternative for the Project.

1. *Impacts can be both beneficial and adverse and a significant effect may exist regardless of the perceived balance of effects.*

While consideration of the intensity of Project impacts must include analysis of both beneficial and adverse effects, only a significant adverse effect triggers the need to prepare an environmental impact statement (EIS) (40 CFR 1508.27). The potential beneficial effects and adverse impacts of the Selected Alternative are discussed briefly below.

**Beneficial Effects.** As described in Chapter 4 of the EA, issuance of a programmatic eagle take permit under the Selected Alternative would result in beneficial effects, primarily to golden eagle populations, but may also benefit other raptors impacted by wind energy generation. Our analysis is in comparison to the No-Action Alternative, under which the Project continues to operate without an eagle take permit's compensatory mitigation and adaptive-management and monitoring commitments. The impacts to visual resources that would occur by installing the aviation radar system would be anticipated to be overall beneficial, by reducing the occurrence of flashing lights, which would only flash when aircraft are in the vicinity of the Project. There is some potential for beneficial impacts to nocturnal migrating birds by installing the aviation radar system and reducing the occurrence of flashing lights. In addition, issuance of this permit will allow the Project to operate in compliance with the Eagle Act should eagle take occur.

**Adverse Effects.** As described in detail in Chapter 4 of the EA, the operation and maintenance of the Project and the discontinuation of the eagle risk management system may result in adverse impacts primarily to individual raptors and golden eagles. All known adverse impacts have been mitigated to the extent practicable by designing the Selected Alternative to avoid risks raptors and golden eagles as much as possible. Even so, individual birds, including eagles, can be injured and killed by collision with wind turbines. The Applicant's revised ECP (EA Appendix A) and Avian and Bat Protection Plan (ABPP) (EA Appendix B) describe commitments to avoid, minimize, and otherwise mitigate impacts to eagles, birds and bats. Avian and bat mortality will be monitored and mitigated through an adaptive management plan that has been crafted to address impacts as operational data are gathered. There are no population level impacts to eagles, birds or bats. Mitigation included in the EA addresses and substantially reduces the potential impacts to less than significant levels under NEPA.

**Summary.** The analysis in the EA and implementation of the measures identified in the Selected Alternative (including those in the ECP, ABPP, and previous commitments) support the conclusion that the Selected Alternative will not have a significant effect on the quality of the human environment.

2. *The degree to which the selected alternative will affect public health or safety.*

As discussed in Chapter 1 of the EA, the proposed action is issuance of a programmatic eagle take permit to the operational Ocotillo Wind Energy Facility. This action will have no effect on public health or safety.

3. *Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farm lands, wetlands, wilderness, wild and scenic rivers, or ecologically critical areas.*

Impacts to historic and cultural resources, parks lands, prime farmlands, wetlands, wild and scenic rivers, and ecologically critical areas were all considered in the EIR and EIS analyses conducted by the BLM in 2012. The relevant EIS analyses were incorporated by reference in the EA. Issuance of a programmatic eagle take permit to the operational Project would have no further impacts to these resources.

4. *The degree to which the effects on the quality of the human environment are likely to be highly controversial.*

No effects of the Selected Alternative were identified as highly controversial. As a factor for determining within the meaning of 40 CFR 1508.27(b)(4) whether to prepare a detailed EIS, controversy is not equated with the existence of opposition to a use. The NEPA implementation regulations (43 CFR 46.30) define controversial as “circumstances where a substantial dispute exists as to the environmental consequences of the proposed action and does not refer to the existence of opposition to a proposed action, the effect of which is relatively undisputed.” Comment letters we received on the EA provided no expert scientific evidence supporting claims that issuance of an eagle take permit or amendment to the ROW will have significant effects, or that it is highly controversial.

5. *The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.*

As summarized in the ECP and EA, impacts of wind power generation to birds and bats, including eagles, have been previously analyzed in the FEIS/FEIR conducted by the BLM when a permit was sought to build and operate the Project in 2012. The revised ECP for the Project was developed to address any uncertainty regarding impacts to eagles. Post-construction mortality studies are underway at Ocotillo, as required by BLM’s ROW grant, to determine Project-level impacts to birds and bats (monitoring 30 percent of the turbines twice per month).

The adaptive management process will further reduce and monitor potential impacts to eagles by the Project. Implementation of the ECP and ABPP and issuance of the permit will prevent significant impacts to avian and bat populations.

As a result, there are no predicted effects of the Selected Alternative on the human environment that are considered to be highly uncertain or involve unique or unknown risks.

6. *The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.*

Issuance of an eagle take permit to Ocotillo Express LLC does not set precedent for, or automatically apply to other eagle take permit applications the Service is reviewing or could review in the future. Each permit request will be evaluated on a case-by-case basis. Therefore, the Selected Alternative does not establish precedents for future actions or represent a decision in principle about a future action. Moreover, this Project will not limit the Service’s discretion when processing future eagle take permit applications under the Eagle Act’s permitting regulations.

7. *Whether the action is related to other actions with individually insignificant but cumulatively significant impacts-which include connected actions regardless of land ownership.*

**Golden Eagles.** We evaluated cumulative effects on golden eagles as required by NEPA ( 40 CFR 1508.8) and the Eagle Act’s permitting regulations (see EA Section 4.3.6). Under 50 CFR 22.26 when

reviewing a permit application, the Service is required to evaluate and consider effects of take permits on eagle populations at three scales: (1) the eagle management unit/bird conservation region, (2) local area, and (3) Project area. Our evaluation also considers cumulative effects. We incorporated data provided by the Applicant, our own data on permitted take and other documented eagle mortalities, and additional available information on population-limiting effects, in determining cumulative impacts to golden eagles.

Our cumulative effects analysis contained within the EA (EA Section 4.3.4) estimated that issuance of a permit to the Applicant would result in 0.01% cumulative authorized take, and less than 5% cumulative unauthorized take of the LAP taken annually. Therefore, there are no significant adverse cumulative effects contributed under the Selected Alternative.

8. *The degree to which the action may adversely affect districts, sites, highways, structures, or other objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.*

The action of amending the ROW grant and issuing a programmatic eagle take permit to the operational Project will have no adverse effect on significant scientific, cultural, or historical resources (see EA Section 1.8.2, BLM FEIS Section 5.2.3 [BLM 2012a] and BLM ROD Section 3.2.2 [BLM 2012b]).

9. *The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973, or the degree to which the action may adversely affect a species proposed to be listed as endangered or threatened or proposed critical habitat.*

**Project site:** Before construction and operations began, the BLM requested formal consultation from the Service on its proposed issuance of a ROW grant for the Project pursuant to Section 7 of the Endangered Species Act of 1973, as amended (16 USC 1531 et seq.). The BLM included a biological assessment in the FEIS/FEIR in which it assessed the effects of its proposed action on federally listed species identified in the Project area (BLM 2012a). The Service issued a biological opinion, dated April 26, 2012, in which we analyzed the effects of the proposed action on the federally endangered peninsular bighorn sheep and federally endangered least Bell’s vireo. The Service concluded that the proposed action (granting of ROW and subsequent construction and operation of the Project) was not likely to jeopardize the continued existence or significantly impair the recovery of these species, and the ROD required that all terms and conditions in the Biological Opinion be followed. Issuance of a programmatic eagle take permit to the Project and amending the ROW grant under the Selected Alternative would have no additional impacts to species protected by the ESA.

**Compensatory Mitigation Effects.** As described in EA Section 4.5.1 (Attachment 1) the effects of authorizing incidental eagle take to the Applicant would not have adverse effects to species protected by the ESA. The Service would require that the utility comply with the ESA and implement avoidance and minimization measures for all compensatory mitigation electric utility pole retrofit work.

10. *Whether the action threatens a violation of Federal, State, or local law requirements imposed for the protection of the environment.*

The Selected Alternative will not violate any federal, state, or local law.

**Determination:** Under the Selected Alternative, we estimate that 0.28 eagle will be killed annually, and up to two eagles will be killed over a 5-year period. The Selected Alternative includes an

adaptive-management procedure and continued fatality monitoring at the Project. Adaptive management measures will be implemented based on the number of fatalities. The Selected Alternative issues a ROW grant amendment to remove the golden eagle risk minimization system and allow for the installation of an aviation radar system to control the flashing lights on the turbines. Our Resource Equivalency Analysis shows that 32-74 retrofits (depending on type of retrofit used) will mitigate the loss of two eagles and addresses cumulative effects concerns to the local area eagle population. Based on the intensity and context of these effects and consideration of the elements associated with the Selected Alternative, issuance of a programmatic eagle take permit to Ocotillo as analyzed in the attached EA is not expected to result in significant adverse effects on the human environment.

## **VIII. Final Eagle Conservation Plan**

The EA analyzed the revised ECP submitted in August 2018 (EA Appendix A). Issuance of a programmatic eagle take permit to Ocotillo will require implementation of the August 2018 ECP.

## **IX. Finding of No Significant Impact**

The Service developed the EA and FONSI in cooperation with the BLM in accordance with the National Environmental Policy Act of 1969, as amended, and the Council on Environmental Quality's (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500-1508). The Service and the BLM conclude that, with the implementation of the avoidance, minimization, and mitigation measures outlined in the EA, ECP, and ABPP, the Selected Alternative for issuance of an eagle take permit to the Ocotillo Wind Energy Facility and amending the ROW grant for the Project will result in no significant impacts to the quality of the human environment, individually or cumulatively with other actions in the general area.

The Service's Migratory Bird Program and the BLM El Centro Field Office interdisciplinary review and analysis determined that the proposed action would not trigger significant impacts on the environment based on criteria established by regulations, policy, and analysis.

Based on the findings discussed herein, we, the Deputy Chief, Migratory Birds and the BLM Field Manager, conclude that the proposed action is not a major Federal action and will result in no significant impacts to the environment, individually or cumulatively with other actions in the general area. No environmental effects meet the definition of significance in context or intensity as defined in 40 CFR 1508.27 and do not exceed those effects described in applicable land use plans. Therefore, preparation of an EIS to further analyze possible impacts is not required pursuant to Section 102(2)(c) of NEPA.

This determination is based on the rationale that the significance criteria, as defined by the CEQ (40 CFR 1508.27) have not been met. "Significantly" as used in NEPA requires considerations of both context and intensity.



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## X. Literature Cited

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**Attachment 1**  
**Environmental Assessment—Ocotillo Wind Energy**  
**Facility Eagle Conservation Plan**

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**Attachment 2**  
**Response to Comments on Draft Environmental**  
**Assessment**

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