

Appendix B. Tribal Coordination



United States Department of the Interior

FISH AND WILDLIFE SERVICE

P.O. Box 1306
Albuquerque, NM 87103-1306



In Reply Refer To:
FWS/IR06-IR08/MB/076605

The Honorable Name
Title, Organization
Street Address
City, State, Zip code

Dear:

The U.S. Fish and Wildlife Service (Service) is reviewing a permit application for the incidental take of golden eagles (*Aquila chrysaetos*) at the Oso Grande Wind Energy Project, approximately 18 miles west of the town of Lovington, New Mexico. The enclosed handout will provide you with an overview of the wind facility and the history of the application process. We are requesting your views, comments, or concerns regarding the proposed permit authorizing incidental take of golden eagles at the Oso Grande Wind Energy Project.

Pursuant to the National Historic Preservation Act of 1966, and the American Indian Religious Freedom Act of 1978, this letter is notification of a Federal action proposed for private land in Chaves, Lea, and Eddy counties, New Mexico. As provided under the National Historic Preservation Act, the Service recognizes that eagles are species of cultural and spiritual significance to many Indian Tribes. The Service has determined that disturbance of eagles can affect the free exercise of American Indian religious practices, as provided under the American Indian Religious Freedom Act.

The Service looks forward to working with you to promote the conservation of all eagles while ensuring the protection of tribal trust resources, rights, and cultural and religious values. Although there is no mandatory time limit for your response, we are requesting your reply by April 30, 2022, so that we may further advise the permit applicant and proceed with our evaluation of the permit application.

Please direct your comments to MB_nepacomments@fws.gov. If you would like to arrange a consultation, please contact Westley Foster, Native American Affairs Liaison at 480-421-8889 or westley_foster@fws.gov. Thank you for your review and consideration.

Sincerely,

Chief, Division of Migratory Birds

Enclosure



Eagle Incidental Take Permit Application for the Oso Grande Wind Energy Project

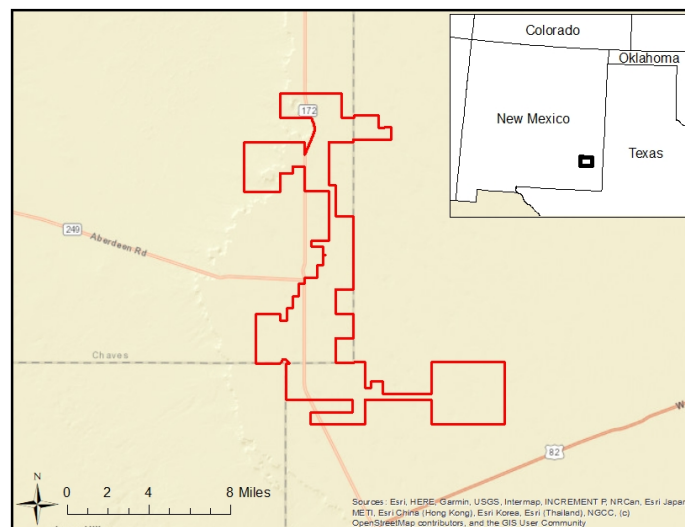
Oso Grande Wind Facility

- Owned and operated by Tucson Electric Power Company; 10,322 hectares (25,507 acres), predominantly on private lands in Chaves, Lea, and Eddy counties, New Mexico.
- Operational since May 2021. Comprised of 62 wind turbines (48 SG 145 4.5-megawatt turbines with 108-m [354-ft] hub height and 145-m [476-ft] rotor diameter, and 14 SWT 108 2.415-megawatt turbines with 80-m [262-ft] hub height and 108-m [354-ft] rotor diameter), a substation, access roads, collection lines, a 55-km (34 mile) gen-tie transmission line, and two permanent meteorological towers. Produces approximately 250 megawatts (MW) of electricity.

Permit History

Tucson Electric Power Company applied for a 30-year eagle incidental take permit in March 2021. The application included a project-specific Eagle Conservation Plan (ECP) developed by Tucson Electric Power Company and a contractor (Western EcoSystems Technology, Inc.), in collaboration with Southwest Region Division of Migratory Birds staff.

- The Draft Environmental Assessment (EA) is expected to be released for public comment in March 2022 and will be open for a 45 day comment period.



Surveys and Monitoring

- Oso Grande has undertaken eagle nest surveys (2019), eagle use surveys (2018-2019), and mortality monitoring since December 2021.
- Modeled fatality predictions estimate the potential to incidentally take 7 golden eagles annually.

Proposed Compensatory Mitigation

- Tucson Electric Power Company will complete compensatory mitigation, by retrofitting power poles to reduce electrocution of eagles, to fully offset the authorized take.





Eagle Take Permitting Rules

Eagles are protected by:

- Migratory Bird Treaty Act
- Bald and Golden Eagle Protection Act (BGEPA)

No person may take, possess, import, export, transport, sell, purchase, barter, or offer for sale, purchase, or barter, any migratory bird, or the parts, nests, or eggs of such birds **except as may be permitted under terms of a valid permit.**

Definition of “Take”

- Migratory Bird Treaty Act: Pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect.
- Bald and Golden Eagle Protection Act: Same, but also includes shoot at, poison, or molest or disturb.

2016 Rule Revision

- BGEPA requires that any authorized take of eagles be “compatible with the preservation” of bald eagles and golden eagles. The Service now defines this preservation standard to mean “consistent with the goals of maintaining stable or increasing breeding populations in all eagle management units and the persistence of local populations throughout the geographic range of each species.”
- A cumulative effects analysis is required for the Local Area Population (LAP) for both species as a part of permit issuance decisions. Cumulative take within a LAP may not exceed 5% of the LAP unless it is demonstrated why allowing such take is compatible with the preservation of eagles.
- Permits can be valid up to a maximum of 30 years, with mandatory re-evaluations every 5 years and mandatory adaptive management plans as conditions of the permit.
- Wind developers who wish to apply for an eagle take permit must use the survey protocols in the rule (which come from the Eagle Conservation Plan Guidance).
- Permittees who hold permits that have durations longer than 5 years must conduct monitoring using independent, qualified entities who report directly to the Service.

