



# United States Department of the Interior

FISH AND WILDLIFE SERVICE



P.O. Box 1306

Albuquerque, NM 87103-1306

In Reply Refer To:  
FWS/R2/MB/080097

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 bald eagles (*Haliaeetus leucocephalus*) and golden eagles (*Aquila chrysaetos*) at the Goodnight I Wind Energy Project, located approximately 4 miles east of the town of Goodnight, Texas. The enclosed handout will provide you with an overview of the wind facility and the history of the facility's application process. We are requesting your views, comments, or concerns regarding the proposed permit authorizing incidental take of bald and golden eagles at the Goodnight I 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 Armstrong County, Texas. 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 is committed to the conservation of eagles throughout the United States. The Bald and Golden Eagle Protection Act (Eagle Act) prohibits take (disturbance, injury, or death) of bald eagles and golden eagles except pursuant to federal regulations, and the Eagle Act requires the Service to determine that any take of eagles it authorizes is "compatible with the preservation of bald eagles or golden eagles." The take permitting system provides an effective means for the Service to work proactively with public and private entities to reduce eagle take, and permit regulations provide an opportunity to secure avoidance, minimization, and compensatory mitigation measures to reduce and offset impacts to eagles. However, our take permitting system is voluntary and as such the Service cannot require any entity to apply for an eagle take permit (except under court mandated agreements). This results in some project proponents building and operating without eagle take permits in areas where eagles are likely to be taken. When this occurs, the opportunity for conservation of eagles is lost. For that reason, the Service believes that permitting activities that are likely to incidentally take eagles—including working with project proponents to minimize the impacts, securing compensatory mitigation, and ensuring conservation benefit—is preferable to foregoing that opportunity.

If an eagle take permit is issued, the project would be required to monitor impacts to eagles throughout the duration of the permit term, implement avoidance and minimization measures that

are expected to reduce risk to eagles, and implement an adaptive management plan that would result in more extensive or focused conservation measures if take is higher than predicted. All authorized take of golden eagles requires compensatory mitigation at a 1.2 to 1 ratio, offsetting take at a ratio of 1.2 eagles saved for 1 eagle taken. To achieve this offset ratio, permitted projects are required to retrofit priority electric poles that have a high risk of causing eagle electrocution to provide a net benefit to eagle populations. The avoidance, minimization, and adaptive management measures, along with the compensatory mitigation, are designed to ensure that the permit is compatible with the preservation of the bald and golden eagle. The voluntary eagle take permit program is our only available avenue to require the implementation of these conservation measures. Incidental take permits for eagles are not legally required for the operation of a wind facility, although any take of eagles at a project without a permit would be a violation of the Eagle Act. Additional information on eagle take permitting rules is found in the attached handout.

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 time limit for your response, we are requesting your reply by February 1, 2024, so that we may further advise the permit applicant and proceed with our evaluation of the permit application.

Please direct your comments or to request additional time beyond this date to [MB\\_nepacommits@fws.gov](mailto:MB_nepacommits@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](mailto: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 Goodnight I Wind Energy Project

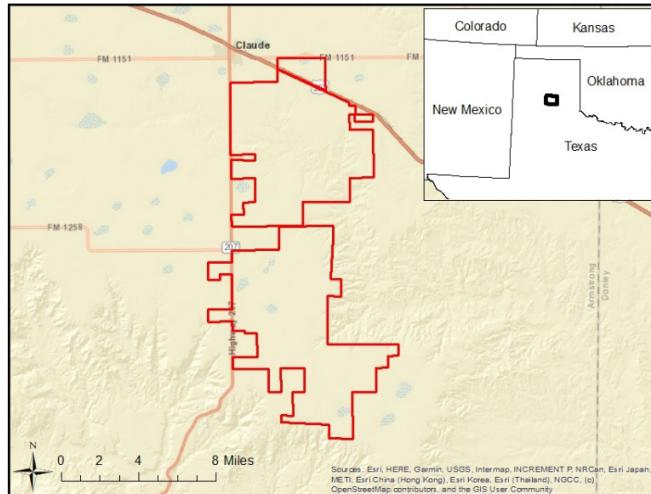
### Goodnight I Wind Facility

- Owned and operated by FGE Goodnight I, LLC; 7,957 hectares (19,662 acres), on private lands in Armstrong County, Texas.
- Construction commenced September 2022 and operation expected December 2023. Comprised of 59 wind turbines (4.5-megawatt turbines with 82-m [269-ft] hub height and 136-m [446-ft] rotor diameter), a substation, access roads, collection lines, a 7.9-km (4.9 mile) gen-tie transmission line, and a permanent meteorological tower. Produces approximately 265.5 megawatts of electricity.

### Permit History

FGE Goodnight I, LLC applied for a 30-year eagle incidental take permit in March 2023. The application included a project-specific Eagle Conservation Plan (ECP) developed by FGE Goodnight I, LLC 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 December 2023 and will be open for a 45 day comment period.



### Surveys and Monitoring

- Goodnight I has undertaken eagle nest surveys (2011, 2014, 2023) and avian use surveys (2011-2013).
- Modeled fatality predictions estimate the potential to incidentally take 6 bald eagles and 6 golden eagles annually.

### Proposed Compensatory Mitigation

- FGE Goodnight I, LLC will complete compensatory mitigation, by retrofitting power poles to reduce electrocution of eagles, to fully offset the authorized take of golden eagles.



## Eagle Take Permitting Rules

### **Eagles are protected by:**

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

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**

- Eagle Act 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.