

U.S. FISH AND WILDLIFE SERVICE
SOUTHWEST REGIONAL OFFICE
P.O. BOX 1306
ALBUQUERQUE, NEW MEXICO 87103-1306

FINDING OF NO SIGNIFICANT IMPACT

Sterling Wind Project, Lea County, New Mexico

The U.S. Fish and Wildlife Service (the Service) proposes to issue a 30-year permit (ITP) for take of Golden Eagles (*Aquila chrysaetos*) that is incidental to otherwise lawful activities associated with the operation of the Sterling Wind Project in Lea County, New Mexico (Project), under authorization of the Bald and Golden Eagle Protection Act (16 U.S.C. §§ 668-668d and 50 Code of Federal Regulations [CFR] § 22.26). The permit would authorize non-purposeful (incidental) take of up to 3 Golden Eagles over the 30-year life of the permit. The Service will monitor the Project's eagle take, coordinate with the Applicant every 5 years to reassess the ITP (eagle mortality rates, measures to reduce take, compensatory mitigation, and eagle population status, as needed), and adjust the ITP as necessary to maintain compliance with the preservation standards of the Bald and Golden Eagle Protection Act.

The Service prepared an Environmental Assessment (EA) that tiered off the Service's Programmatic Environmental Impact Statement for the Eagle Rule Revision, December 2016 (PEIS; Service 2016) to analyze the environmental effects of one permit alternative and the no action alternative for authorizing take of eagles. The Service incorporates the EA by reference into this Finding of No Significant Impact (FONSI). Together they constitute the Service's NEPA finding.

As the responsible official, I have evaluated the effects of the proposed action and alternatives relative to the definition of significance established by the CEQ Regulations (40 CFR 1508.13). I have reviewed and considered the EA and documentation included in the project record, and I have determined that the proposed action and alternatives will not have a significant effect on the quality of the human environment. As a result, no environmental impact statement will be prepared. My rationale for this finding is as follows.

Purpose and Need for Action

The purpose of this action is to issue an Eagle Act permit to Sterling Wind, LLC that will authorize potential lethal take of Golden Eagles that is incidental to otherwise lawful activities associated with the operation of the Sterling Wind Project. The need for the action is to respond to the application from Sterling Wind's parent company, AEM Wind, LLC, requesting a permit to legally authorize that take.

The Service has analyzed one no action alternative for the proposed action. A second Alternative was considered but not evaluated.

Proposed Action – Issue 30-year Golden Eagle ITP (preferred alternative)

The Service would issue an eagle ITP for the non-purposeful take of up to 3 Golden Eagles for

the 30-year period, with associated permit conditions.

Alternative 1 – No Action

The Service would take no further action on the permit application. The Service assumes that the applicant will implement all measures required by other agencies and jurisdictions to conduct the activity at this site, but the conservation measures proposed in the ITP application package would not be required.

The Service selected Proposed Action Alternative over the other alternative

| Effect | Proposed Action - ITP | Alternative 1 - No Action |
|----------------------------------|--|----------------------------------|
| Eagle Take Levels | 3 eagles over 30 years | 3 eagles over 30 years |
| Avoidance and Minimization | No additional avoidance or minimization proposed beyond what has been completed relative to the ECP | None required |
| Compensatory Mitigation | Retrofitting of 78 power poles and transformers | None provided |
| Unmitigated Eagle Take | Zero | Up to 3 eagles over 30 years |
| Adaptive Management | Further retrofitting would be performed to mitigate for additional eagle fatalities | None |
| Data Collected by USFWS | Annual post-construction monitoring (PCM) report after year 1, and final post-construction monitoring report after year 2. After year 2 and staff training, internal monitoring for eagle fatalities. 1-2 years of PCM will be required every 5-year period. | None |
| Company Liability for Eagle Take | None (if in compliance with permit conditions) | Yes |

The Proposed Action Alternative allows the Service to monitor and manage take of Golden Eagles throughout the life of the Project without significantly affecting regional or local eagle populations. It is preferable to the other alternative for the following reasons.

- With the issuance of the permit under the Proposed Action, the 78 power pole and transformer retrofits provide a benefit by reducing the electrocution risk to eagles and other migratory birds.
- The avoidance and minimization measures associated with the Proposed Action, along with the additional adaptive management measures, are designed to further ensure that the permit is compatible with the preservation of Golden Eagles.
- Because no measures would be implemented to avoid or minimize risk to eagles under this No-Action Alternative, the risk to eagles is expected to be higher under this alternative as compared to the Proposed Action. Under this alternative, direct impacts on

the Golden Eagle population over the 30-year life of the Sterling Wind Project are anticipated to be the loss of three eagles (0.099 eagles per year over 30 years). No adaptive management measures would be triggered should take exceed that level and none of the impacts to Golden Eagles would be offset by compensatory mitigation.

The Service concludes that issuing an eagle permit under Proposed Action Alternative would result in the following non-significant environmental, social, and economic effects:

Environmental effects would be limited to the direct take of Golden Eagles (fatalities via collisions with turbines), which is well within the limits of the take thresholds analyzed in the 2016 PEIS. Small changes in local population dynamics may occur under either Alternative but we expect the overall effect on Golden Eagle take at the Project to be minor. The Service does not anticipate that nest disturbance or territory loss effects to occur at the Project. The EA concludes that there will be no significant effects on migratory birds, including any threatened and endangered bird species that could potentially occur in Lea County.

On January 30, 2019, the Service emailed and mailed an information handout and a letter to all Tribes within the Southwest Region, providing details on the Project, the regulatory process, and informing them that the Draft EA would be posted to the Migratory Bird Program Permits NEPA Reviews webpage. On February 14, 2019, the Service released the Draft EA for public comment, identifying two alternatives, including the preferred alternative. The Draft EA was available for 45 days and it was posted on the Region 2 Migratory Bird Program Permits NEPA Reviews webpage. The Service received responses to the Draft EA from the four Tribes listed below indicating no concerns.

- Choctaw Nation of Oklahoma
- Pawnee Nation of Oklahoma
- Pueblo of Santa Ana
- Pascua Yaqui Tribe

Cumulative effects

The Proposed Action in this EA is the issuance of a permit authorizing take. The issuance of this permit to allow take in itself does not necessarily result in mortality of an eagle, but the cumulative mortality from multiple factors may result in the Service re-evaluating the take threshold. The estimated 3 Golden Eagles over 30 years is substantially below the Central Flyway Eagle Management Unit and Local Area Population cumulative allowable take of 14 Golden Eagles annually. Small changes in population dynamics may occur, but the Service concludes that the overall effect of Golden Eagle take at the Project under the proposed alternative will be minor. We do not expect nest disturbance or territory loss effects to occur at the Project.

Issuance of the eagle ITP for the Sterling Wind Project will result in continued monitoring and maintenance of 78 power poles and transformers, retrofitted prior to permit application as voluntary mitigation. At this time, no other proposed wind projects in the analysis region have obtained eagle take permits or have applied for one. It is not known if projects proposed as

described above or other future development will apply for permits. However, if permit applications are submitted, the resulting retrofits will have a beneficial cumulative impact on the Golden Eagle population since modifying extensive sections of high-risk power lines will contribute to reducing eagle fatalities from electrocution.

Measures to mitigate and/or minimize adverse effects would be required in the proposed action. In addition, the applicant has already implemented several measures in anticipation of applying for a permit. These measures include:

Avoidance and Minimization

- The Applicant altered proposed turbine locations and reduced the number of turbines prior to construction, eliminating a second phase of the Project.
- The Applicant incorporated minimization and avoidance recommendations from the Eagle Conservation Plan Guidance.
- Site development that involves additional turbines would require additional NEPA analysis to assess take of eagles and may require amendments to the conditions set forth in this permit or development of a new permit application.

Monitoring

- The terms and conditions outlined in a permit from the Service authorizing incidental take, would require all eagle mortality monitoring and bias correction trials to meet design approval and third party requirements as outlined in the 2016 Eagle Rule. At least one year of eagle mortality monitoring and bias correction trials will be required during each five-year review period.
- At each 5-year permit review, based on estimated actual take during the preceding 5 years, the Service will, if appropriate, adjust predicted (not-to-exceed) take for the next 5 years, and maximum authorized take over the full 30-year permit. The Service will estimate actual take based on the observed levels of take at the project. Once this review is complete, the Service will adjust compensatory mitigation requirements accordingly.

Compensatory Mitigation

- Issuance of the eagle ITP for the Sterling Wind Project will result in continued monitoring and maintenance of 78 power poles and transformers, retrofitted prior to permit application as voluntary mitigation.

Significance

Significance, as used in NEPA, requires considerations of both context and intensity. Context means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. The covered area, a wind facility of 2,023 ha (5,000 acres) is limited to a small area within the nearly 3,000,000 acres of Lea County, New Mexico. Although southeastern New Mexico does not

appear to contain an important breeding area, golden eagles are known to disperse through southeastern New Mexico in the winter. In 2016, the Eagle Rule Revision incorporated a Local Area Population (LAP) cumulative effects analysis into permit issuance. This LAP analysis involves compiling information on permitted anthropogenic mortality of eagles within a specified distance (derived from each eagle species' natal dispersal distance) of the permitted activities' boundary. If permitted eagle take exceeds 1% of the estimated population size of either species within the LAP area, additional take is a concern. The LAP analysis for the area encompassing the Sterling Wind Project is 285 golden eagles. Under the Proposed Action, it is estimated that 0.099 golden eagles may be taken annually, and three eagles taken over the life of the permit (i.e., 30 years). This prediction is based on a conservative approach that is expected to overestimate annual and cumulative take at the outset of the permit. Therefore, we consider the context of the impacts (both negative and beneficial) to be negligible for the State and the remainder of the Nation.

Intensity refers to the severity of the impacts. We have considered the following regulatory factors (as detailed in the EA) in evaluating intensity.

- (1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

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 C.F.R. 1508.27). The potential beneficial effects and adverse impacts of the Selected Alternative are discussed briefly below.

Beneficial Effects. The Selected Alternative includes implementation of the ECP and adaptive management, which includes mortality monitoring that will benefit the Service's understanding of mortality of golden eagles at the Project. Our analysis is in comparison to the No Action Alternative under which the Project continues to operate without any eagle ITP requirements or conservation commitments. Issuance of this permit will allow the Project to operate in compliance with the Eagle Act should eagle take occur, while also providing the Service with valuable data from monitoring requirements. The issuance of an eagle ITP may have a minor beneficial effect on eagles and other large-bodied birds through the maintenance of power pole retrofits to prevent electrocutions.

Adverse Effects. As described in the EA, the Applicant has worked with the Service in development of the ECP to ensure that it contains commitments to avoid and minimize adverse effects on eagles. The Proposed Action Alternative incorporates these measures. Even so, birds, including eagles, can be injured and killed by collision with wind turbines. The Project's ECP describes commitments to avoid and minimize impacts to eagles. Eagle mortality will be monitored and an adaptive management plan will be implemented to address impacts as operational data are gathered.

In summary, the analyses in the EA and implementation of the measures identified in the Proposed Action Alternative (including those in the ECP) 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 proposed action affects public health or safety.

We do not expect either the issuance of an eagle ITP to affect public health and safety. Therefore, we did not consider public health and safety issues for further analysis in the EA.

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

The issuance of an eagle ITP is not expected to impact wetlands, wild or scenic rivers, ecologically critical areas, or park lands; and these resources do not occur within the covered area. There are no previously recorded artifacts or archaeological sites within the boundary of the project. We describe our analysis of these resources in detail in Sections 4 and 6 of the EA.

- (4) The degree to which the possible effects on the quality of the human environment are likely to be highly controversial.

We have no evidence to suggest that the effects on the quality of the human environment are likely to be highly controversial.

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

The ECP prepared for the Project and the Service's CRM to estimate eagle take were developed to address any uncertainty regarding impacts. The Proposed Action Alternative requires a rigorous mortality monitoring design to reduce uncertainty regarding impacts to eagles. The adaptive management process will further reduce and monitor potential impacts to eagles from operation of the Project. Issuance of the permit and the implementation of the ECP will also reduce impacts to avian populations.

Additionally, we did not identify predicted effects to any other environmental resources or values from operation and maintenance of the Project that are 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.

Review of future actions will be on their own merits, regulated by all surveys, monitoring, and analyses required by the Service. Thus, the issuance of the requested permit would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

- (7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

The proposed project is not directly related to any other future action. We evaluated cumulative effects on bald eagles as required by NEPA (C.F.R. 1508.8) and the Eagle Act's permitting regulations. As noted above, the LAP size for the area encompassing the Project is 285 eagles. To date, no other permits have been issued within the LAP. The Service has established take limits for golden eagle populations by EMU in the Final Environmental Assessment (FEA) for the 2009 Eagle Act take regulations and these were revised in the PEIS. This Project is within the Central Flyway EMU, which has an annual take threshold of zero golden eagles per year (USFWS 2016b). The predicted take of golden eagles at the Project is less than one golden eagle per year, however this exceeds the EMU take limit. Therefore, the Applicant is required to offset this take through compensatory mitigation (78 power pole retrofits already completed) and as a result, there will be no significant adverse cumulative effects contributed by the Project under the Proposed Action Alternative.

- (8) The degree to which the action may adversely affect districts, sites, highways, structures, or 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.

No adverse impacts to districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places; or, significant scientific, cultural, or historical resources are expected to result from the proposed action, since none are known from the covered area.

- (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.

No species currently listed under the Endangered Species Act are expected to occur in the project area. The northern aplomado falcon (*Falco femoralis*) is the only species listed in the county as an experimental population and non-essential (USFWS 2018b). Habitat in most of the project area would be considered poor and unlikely to support breeding of this species. No federally-listed species were observed during any of the pre-construction surveys.

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

The issuance of a Permit does not violate applicable Federal, State, or local laws or requirements imposed for the protection of the environment. All permits state that the permit holder is responsible for ensuring that the permitted activity is in compliance with all federal, tribal, state, and local laws and regulations applicable to eagles.

The Service concluded that neither the proposed action nor any of the alternatives will have any significant adverse effects on wetlands and floodplains, pursuant to Executive Orders 11990 and 11988 because:

The Project is already built and operational. Issuing a permit authorizing incidental take of Golden Eagles under any of the action alternatives will not affect wetlands or floodplains.

The Service has thoroughly coordinated the proposed action with all interested and/or affected parties. Parties contacted include:

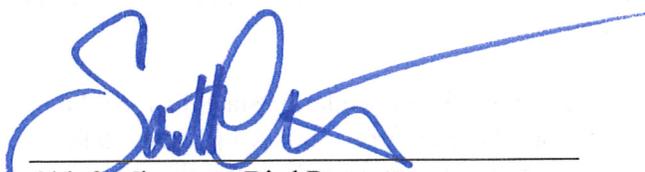
In January 2019, the Service emailed and mailed an information handout and a letter to the New Mexico State Historic Preservation Office, New Mexico Department of Game and Fish, and all Tribes within the Southwest Region. In February 2019, the Service released the EA for public comment for 45 days and posted it on the Region 2 Migratory Bird Program Permits NEPA Reviews webpage. The Service received responses to the Draft EA from four Tribes indicating no concerns.

I conclude, based on the analysis of potential environmental impacts in the attached EA, that issuing a 50 C.F.R. § 22.26 Eagle Act incidental take permit to AEM, LLC for the Sterling Wind Project will not have any significant effects on the human environment:

For this proposal, the Service's authority is limited to authorizing incidental take of eagles by the Project, and not Project construction, which is complete. The permit, with its required conditions, will not have any significant effects on natural resources, environmental justice, floodplains, prime and unique farmlands, wetlands, air quality, climate change, communication signals, Federal Aviation Administration transportation, geology/hydrogeology, human health and safety, land use, noise, radar signals, sub-surface minerals, vegetation, visual resources, waters of the U.S., socioeconomic resources, or any other aspect of the human environment.

Therefore, it is my determination that the proposal does not constitute a major Federal action significantly affecting the quality of the human environment under the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (as amended). As such, an environmental impact statement is not required. The Service has prepared an environmental assessment in support of this finding. The EA and FONSI are available upon request to the FWS facility identified above or on the Region 2 Migratory Bird Program Permits NEPA Reviews webpage.

References: Final Environmental Assessment for the Proposed Issuance of an Eagle Incidental Take Permit for the Sterling Wind Project, 2019.



Chief, Migratory Bird Program
U.S. Fish and Wildlife Service, Southwest Region

9/4/2019

Date