

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
INLAND DESERTS REGION
3602 INLAND EMPIRE BLVD SUITE C-202
ONTARIO, CA 91764



AMENDMENT NO. 1
(A Major Amendment)
California Endangered Species Act
Incidental Take Permit No. 2081-2019-048-06
Mesa Wind Power Corporation
Mesa Wind Repower Project in Riverside County

INTRODUCTION

On May 20, 2021, the California Department of Fish and Wildlife (CDFW) issued Incidental Take Permit No. 2081-2019-048-06 (ITP) to Mesa Wind Power Corporation (Permittee) authorizing take of Agassiz's Desert Tortoise (*Gopherus agassizii*) (collectively, the Covered Species) associated with and incidental to the Mesa Wind Repower project in Riverside County, California (Project). The Project as described in the ITP originally issued by CDFW is a repower project that includes the construction of pad sites for eight new wind turbine generators (WTGs) along with widening access roads, operation, and maintenance (O&M) facilities. The repower project will replace the existing turbines on the 98 acres with 8 new WTG's. In issuing the ITP, CDFW found, among other things, that Permittee's compliance with the Conditions of Approval of the ITP would fully mitigate impacts to the Covered Species and would not jeopardize the continued existence of the Covered Species.

On August 11, 2021, Mesa Wind Power Corporation submitted an ITP Amendment Application to amend the ITP to authorize incidental take of Mojave Desert tortoise in connection with the proposed decommissioning of the 460 legacy wind turbines, and restoration of associated pads and access roads, located on the 401-acre Bureau of Land Management (BLM) Right-of-Way (ROW) area for the Mesa Wind site as covered activities in the ITP. Mesa Wind Power Corporation did not include these activities as part of its initial ITP application to CDFW for the repower project because decommissioning is authorized under existing ROW grants from BLM (the issuance of which was evaluated under the National Environmental Policy Act). However, after consulting with CDFW following issuance of the ITP for the repower project, Mesa Wind filed the ITP Amendment Application for the proposed decommissioning of the legacy turbines.

Decommissioning activities occur in limited areas within a 401-acre Bureau of Land Management Right-Of-Way (ROW) area for the Mesa Wind energy facility. Within the ROW area, decommissioning activities occur in the 98-acre area addressed in the ITP, and an additional 17.4 acres outside of the 98-acre area, which include turbines, pads, and 9 miles of access and spur roads that will be restored, totaling 115.4 acres. The

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existing turbines will be removed, salvaged, recycled, and the infrastructure and appurtenant facilities will be disposed. Foundations that do not have desert tortoise burrows under them will be removed to a foot below the ground surface and backfilled with native soil. Areas within the legacy turbine pads and the approximately 9 miles of access/spur roads leading to the legacy turbines will be restored. The compacted soils will be ripped up, soil amendment will be applied, and a drill seeder will be used to install a native seed mix. ProGanics™ biotic soil media, or comparable soil amendment that enhances soils in arid climates or nutrient poor sites, will be applied to the restoration areas to increase biotic nutrients and increase soil development. ProGanics™ or comparable soil amendment will be applied at a rate of 5,000 lbs/acre. Decommissioning activities would be temporary and completed over a period of up to 5 months.

This Major Amendment No. 1 (Amendment) makes the following changes to the existing ITP:

First, this Amendment will add the decommissioning of 460 legacy turbines and the restoration of the roads and pads within an additional 17.4 acres as a covered activity.

AMENDMENT

The ITP is amended as follows (amended language in ***bold italics***; deleted language in ~~strikethrough~~):

1. The Project Location, page 1 shall be amended to read:

Project Location:

The Mesa Wind Repower Project is located on ~~98~~ ***115.4 acres, within the 401-acre Mesa Wind site***, of Bureau of Land Management (BLM)-administered lands in Riverside County, 11 miles northwest of the City of Palm Springs in southern California. The Project area is rural, open space that is sparsely populated (Figure 1). Access to Project location is via Interstate 10 (I-10) exit at Haugen-Lehmann Way toward Haugen-Lehmann Way, Cottonwood Road, and Rockview Drive to three parcels of land outside the BLM gate.

2. The first paragraph under Project Description, page 2 shall be amended to read:

The Project is a repower ***and decommissioning*** of the existing Mesa Wind energy facility located on land administered by the Bureau of Land Management (BLM). The repower project has a total disturbance area of about 98 acres including access roads, pad sites for wind turbine generators (WTGs), ~~and~~ operations and maintenance (O&M) facilities. ***Decommissioning of 460 legacy turbines occurs within the 98 acres and an additional 17.4 acres and includes decommissioning of 114 legacy turbines,***

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and restoration of roads and pads for 82 of those legacy turbines within the 98 acres and decommissioning of 346 legacy turbines and restoration of 9 miles of roads and pads on 17.4 acres. The repower project will replace the existing turbines on the 98 acres with 8 new WTG's. The repower will produce up to a total of 30 megawatts (MW) of power.

3. The Decommissioning section under Project Description, page 3 will be amended to read:

Decommissioning

460 Legacy Turbines

All decommissioning activities would occur within access roads, turbine pads, and other areas disturbed during initial construction and O&M activities. The lattice towers will be disassembled at their bases with a shearing tool attached to an excavator. The towers would then be pushed or pulled over in a safe, controlled manner onto existing disturbed roadways and/or turbine pads. Underground power cables and communication lines to the existing turbines will be decommissioned in place. Underground cables will be cut off at ground surface.

The concrete foundations would be removed completely for 32 existing turbines within the Repower footprint, where the 8 new WTG's will be placed, and the concrete would be hauled offsite for recycling. For all other turbines, foundations that do not have desert tortoise burrows under them would be removed 12 inches below the surface and covered with native soil. Removed concrete at these locations will be buried within the existing disturbance area and covered with native soil before revegetation of the disturbance areas. Foundations outside of the 98-acre repower area will be left in place if a burrow suitable burrow for desert tortoise is identified by the Authorized Biologist.

8 New Turbines

Prior to termination of the right-of-way (ROW) authorization, a Decommissioning Plan specific to the 8 WTGs addressed in this ITP and impacts to the Covered Species would be developed by the Permittee and approved by CDFW. The Decommissioning Plan would include site reclamation and monitoring. All management plans, best management plans (BMPs), and other stipulations developed for the repower construction phase would be applied to similar activities during decommissioning. All WTGs and other Project structures would be removed from the site. All foundations to a certain depth would be removed. All areas of disturbed soil would be reclaimed. All vegetation cover, composition, and diversity would be restored.

4. The second and third paragraph under section Impacts of the Taking on Covered Species, page 4 will be amended to read:

Incidental take of individuals of the Covered Species in the form of mortality ("kill") may occur as a result of Covered Activities such as: collision with, or crushing by, vehicles or heavy equipment; crushing or burial of individuals or eggs in burrows; destruction of burrows and refugia; and increased predation. Incidental take of individuals of the Covered Species may also occur from the Covered Activities in the form of pursue, catch, capture, or attempt to do so of the Covered Species as well as, capture and relocation activities. More specifically, relocation of Covered Species out of harm's way may disrupt the behavior and social structure of resident individuals. The areas where authorized take of the Covered Species is expected to occur is within the ~~98-acre~~ **115.4-acre** impact area for the ***decommissioning of 460 legacy turbines, including the restoration of roads and pads, and the*** repower project site.

The Project is expected to cause the permanent loss of 18.2 acres and temporary loss of ~~79.8~~ **97.2** acres (total ~~98.00~~ **115.4** acres) of habitat for the Covered Species. Impacts of the authorized taking also include adverse impacts to the Covered Species related to temporal losses, increased habitat fragmentation and edge effects, and the Project's incremental contribution to cumulative impacts (indirect impacts). These impacts include: stress resulting from noise and vibrations, displacement from preferred habitat, increased competition for food and space, and increased vulnerability to predation.

5. Section 8.18 Raven Management, page 19 will be amended to read:

The Permittee shall prepare a Raven Management Plan to minimize the potential to attract common ravens to the site and submit it to CDFW for review and approval. In addition, the Permittee shall provide funds to the Renewable Energy Action Team (REAT) account established with the National Fish and Wildlife Foundation (NFWF) to contribute to a region-wide raven control plan to help address raven predation on the tortoise. This contribution shall be used to address raven predation on a regional basis and shall be calculated as a one-time payment of \$105 per acre of project disturbance. Based on this calculation the Permittee shall provide a one-time payment at \$105.00 for ~~98.0~~ **115.4** acres for a total of ~~\$10,290.00~~ **\$12,117.00** to the REAT account established with NFWF's Raven Management Plan fund. A minimum of 15 days prior to the start of Covered Activities these funds shall be provided to NFWF using appropriate deposit document (Attachment 4) and proof of paying this fee shall be provided to CDFW within 24 hours after the funds have been provided to NFWF.

6. Section 8.24 Revegetation, page 20 will be amended to read:

Revegetation and Restoration. Plantings and seed mix shall be approved by CDFW prior to application. Plantings and seed mix shall be comprised of only native plant material from the same geographic range as the Project. ***Monitoring of restoration efforts will be conducted in accordance with the Revegetation Plan, including adherence to success criteria. The Revegetation Plan will be submitted to CDFW for review and approval.***

7. Under Section 8 Take Minimization Measures a new subsection 8.26 will be added, page 20 and will be amended to read:

8.26 Legacy Turbine Concrete Foundations. For burrows at foundation locations that are confirmed to be unoccupied by the Authorized Biologist and are determined to be suitable for later use by desert tortoise, the tower will be removed but the foundation will be left in place, unless the foundation is located within the repower footprint. The foundations would be removed completely for the 32 existing turbines within the repower footprint and the concrete would be hauled offsite for recycling. For the remaining 428 legacy turbines without a burrow underneath, foundations would be removed 12 inches below the surface and covered with native soil.

8. Section 9, the second paragraph in the Habitat Management Land Acquisition section, page 21 will be amended to read:

To meet this requirement, the Permittee shall either purchase ~~443.4~~ **151.8** acres of Covered Species credits from a CDFW-approved mitigation or conservation bank (Condition of Approval 9.2) OR shall provide for both the permanent protection and management of ~~443.4~~ **151.8** acres of Habitat Management (HM) lands pursuant to Condition of Approval 9.3 below and the calculation and deposit of the management funds pursuant to Condition of Approval 9.4 below. Permanent protection and funding for perpetual management of compensatory habitat must be complete before starting Covered Activities, or within 18 months of the effective date of this ITP if Security is provided pursuant to Condition of Approval 10.1 below for all uncompleted obligations.

9. The Cost Estimates Section 9.1.1 through 9.1.4, page 21 will be amended to read:

9.1.1. Land acquisition. Land acquisition costs for HM lands identified in Condition of Approval 9.3 below, estimated at \$4,000.00/acre for ~~443.4~~ **151.8** acres: ~~\$572,400.00~~ **\$607,200.00**. Land acquisitions costs are estimated using local fair market current value for lands with habitat values meeting mitigation requirements, and all other costs

necessary to review and acquire the land in fee title and record a conservation easement.

9.1.2. Start-up costs. Start-up costs for HM lands, including initial site protection and enhancement costs as described in Condition of Approval 9.3.5 below, estimated at \$4000.00/acre for ~~443.4~~ **151.8** acres: ~~\$572,400.00~~ **\$607,200.00**.

9.1.3. Interim management. Interim management period funding as described in Condition of Approval 9.3.6 below, estimated at \$600.00/acre for ~~443.4~~ **151.8** acres: ~~\$85,860.00~~ **\$91,080.00**.

9.1.4. Long-term management. Long-term management funding as described in Condition of Approval 9.4 below, estimated at \$3,100.00/acre for ~~443.4~~ **151.8** acres: ~~\$443,610.00~~ **\$470,580.00** Long-term management funding is estimated initially for the purpose of providing Security to ensure implementation of HM lands management.

10. Section 9.2 Covered Species Credits, pg. 22 shall be amended to read:

Permittee shall purchase ~~443.4~~ **151.8** acres of Covered Species credits from a CDFW-approved mitigation or conservation bank prior to initiating Covered Activities, or no later than 18 months from the issuance of this ITP if Security is provided pursuant to Condition of Approval 10.1 below.

11. Section 10.1 Security Amount, pg. 26 shall be amended to read:

The Security shall be in the amount of ~~\$1,677,270.00~~ **\$1,779,060.00**. This amount is based on the cost estimates identified in Condition of Approval 9.1 above.

All terms and conditions of the ITP and MMRP that are not expressly amended herein remain in effect and must be implemented and adhered to by the Permittee.

FINDINGS

Issuance of this Amendment will increase the amount of take of the Covered Species compared to the Project as originally approved; however, by implementing the minimization and mitigation measures within the original ITP and the additional 8.7 acres of compensatory mitigation, it is not expected that this Amendment will increase Project impacts on these species (i.e., "impacts of taking" as used in Fish and Game Code Section 2081, subd. (b)(2)).

Discussion: This Amendment reflects a change in the acreage of impacts to the Covered Species by 17.4 acres through the decommissioning of an additional 346

legacy turbines and the restoration of roads and pads within those areas. This change in take assessment is based on the current decommissioning plan for the existing Mesa Wind Site. This Amendment will not increase other Project impacts on the Covered Species because, in all other respects, the general provisions, notification and reporting requirements, and take minimization measures will remain unchanged, and compensatory mitigation requirements will be adjusted to include the additional acreage of impacts.

Issuance of this Amendment does not affect CDFW's previous determination that issuance of the ITP meets and is otherwise consistent with the permitting criteria set forth in Fish and Game Code section 2081, subdivisions (b) and (c).

Discussion: CDFW determined in May 2021 that the Project, as approved, met the standards for issuance of an ITP under CESA. This determination included findings that, among other things, the impacts of the taking would be minimized and fully mitigated and that the Project would not jeopardize the continued existence of the Covered Species. Those findings are unchanged with respect to this Amendment because the Project and ITP as amended: (1) will have no effect on the severity of Project impacts on the Covered Species, as discussed above, and (2) does not substantively alter the measures that will be undertaken to minimize and mitigate previously authorized impacts on the Covered Species. This Amendment acknowledges an increase in the amount of impacts that will increase the compensatory mitigation obligations of the Permittee to fully mitigate for the Covered Species. Permittee's continued adherence to and implementation of the avoidance and minimization measures set forth in the ITP's Conditions of Approval and MMRP will minimize and fully mitigate impacts of the taking on the Covered Species.

None of the factors that would trigger the need for subsequent or supplemental environmental analysis of the Project under Public Resources Code section 21166 or California Code of Regulations, title 14, sections 15162 and 15163, exist as a result of this Amendment.

Discussion: CDFW issued the ITP in May 2021 as a lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) after, among other things, adopting a mitigated negative declaration for the Project (SCH No. 2021030614). As explained in the findings below, CDFW finds for purposes of CESA that this Amendment would significantly modify the scope of the permitted activity compared to the Project as originally approved. However, as explained above and as further documented in the CDFW Addendum prepared for this proposed Amendment, CDFW finds as the CEQA lead agency that: (1) the previously adopted MND for the Project retains and provides significant informational value relevant to CDFW's consideration of the proposed Amendment under CEQA; and (2) while the Amendment would modify the previously approved Project and ITP, no new significant or

substantially more severe effects on the environment would result. CDFW finds as a lead agency, accordingly, that no new subsequent environmental analysis or a supplement to the previously adopted MND are needed to approve the Amendment, beyond the Addendum prepared and adopted by CDFW.

CDFW finds that this Amendment is a Major Amendment, as defined in California Code of Regulations, title 14, section 783.6, subdivision (c)(5).

Discussion: This Amendment will add the decommissioning of 346 legacy turbines and the restoration of the roads and pads within an additional 17.4 acres of existing pads and roads as a covered activity. As described above, these changes increase the impacts to the Covered Species habitat by 17.4 acres. Compensatory mitigation will increase by 8.7 acres to offset the increase in impacts and will fully mitigate all impacts to the Covered Species. Therefore, this Amendment will significantly modify the scope or nature of the permitted Project activity, but not the minimization, mitigation, or monitoring measures in the ITP. CDFW finds the modification to the scope or nature of the permitted Project activity as described constitutes a Major Amendment as defined in California Code of Regulations, Title 14, section 783.6, subdivision (c)(5).

ATTACHMENT 1 Amended Mitigation Monitoring and Reporting Program

The authorization provided by this Amendment is not valid until Permittee signs and dates the acknowledgement below. Digital signatures facilitated by CDFW will be automatically returned and shall comply with Government Code section 16.5. Wet signatures on duplicate original paper copies shall be returned by the Permittee via registered first class mail or overnight delivery to the following address:

Habitat Conservation Planning Branch
California Department of Fish and Wildlife
Attention: CESA Permitting Program
Post Office Box 944209
Sacramento, CA 94244-2090

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APPROVED BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

on 9/13/2021

DocuSigned by:
Leslie MacNair
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Leslie MacNair
Regional Manager
Inland Deserts Region

ACKNOWLEDGMENT

The undersigned: (1) warrants that he or she is acting as a duly authorized representative of the Permittee, (2) acknowledges receipt of the original ITP and this Amendment, and (3) agrees on behalf of the Permittee to comply with all terms and conditions of the ITP as amended.

By: *Berk Gursoy* Date: 9/14/2021
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Printed Name: Berk Gursoy Title: Vice President, Business Development

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