

Variance Request Form



Ocotillo Express Wind LLC
Pier 1 Bay 3
San Francisco CA 94111
415-283-4000

Variance: _036_
Request No.: Rev 0
Date Submit: _11/27/2012
Date Approval Needed: _12/4/2012
Date Agency Received: _____
Agency Approval Reference No.: _____

Request Prepared by: Joan Inlow / James Dermody

Spread/ Location: T167

(Milepost): all

Net acreage affected: 0.56 acres

Alignment Sheet/Sta. All

No.:

Tract No:

Landowner: BLM

In or within 50 feet of a wetland: Yes No

Within 50 feet of a water body: Yes No

Current Land Use/ Vegetative Cover: undeveloped/desert vegetation

Nearby Features (Water body, T&E Habitat, Wetland, Noxious Weed): CDFG Habitat

Area, Residence, Cultural Resource Site (distance, etc.):

Variance Level: Level 1 Level 2 Level 3

(To Be Assigned by Designated Representative)

Variance From: Permit Plan/Procedure Specification Drawing Mitigation Measure Other:

Detailed Description of Variance: Attachments? Yes No Photos? Yes No

Variance 036 includes modifications to Turbine 167 site disturbance areas and location (see map attachment). Turbine 167 will shift a total distance of 81 feet as a result of Variance 036, with 104 feet of associated road realignment leading to the turbine.

Variance Justification:

The proposed disturbance area modification is located within areas previously surveyed during the environmental review completed for the Final EIS/EIR. The modification to site disturbance areas at Turbine 167 is required in order to mitigate geotechnical siting considerations.

As identified in Section 5 of the ECCMP, construction site conditions and subsequent environmental surveys could result in the need for changes from the approved work spaces. Changes to previously approved work spaces are handled in the form of variance requests submitted by OE LLC to be reviewed and approved or denied by the BLM. The variance procedures outlined in Section 5 of the ECCMP specify three different levels that a variance request may fall under.

In accordance with the procedures and guidance provided in the ECCMP, OE LLC is requesting a Level 2 Variance to modify Turbine 167. As identified in the ECCMP, Level 2 Variance requests generally involve project changes that would affect an area outside the previously approved work area, but within the areas previously surveyed for cultural resources, sensitive species, and biological resources. The areas where the proposed shift in infrastructure will occur was previously surveyed during preparation of the Final EIS/EIR and the proposed variance is an anticipated result of implementing measures to provide more effective protection of sensitive environmental resources.

Mitigation measures incorporated as part of the Final EIS/EIR require efforts to be completed by OE LLC in order to minimize environmental impacts. The proposed modifications would be conducted in accordance with the same impact avoidance, minimization, monitoring and mitigation measures that apply to all other project impact areas. Such measures include those specified in BLM's ROD, and approved plans and permits for specific types of activities.

For (Company Name) Use Only			
Additional Surveys Required	Surveyed Corridor Description		Additional Surveys Completed
Cultural Survey <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No T&E(biological) Survey <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Reporting Document Survey:			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Sign-off (as appropriate)	Name (print)	Approval Signature	Conditions (See Attached)
Contractor Sup't. or Env. Coordinator Lead Environmental Inspector Spread Supervisor Environmental Field Manager ROW Agent	Derek Price Shelby Howard Michael Baksh Joan Inlow		<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> No
For BLM Project Manager or Compliance Contact Use Only			
Variance Approved: <input checked="" type="checkbox"/> Variance Denied: <input type="checkbox"/>		Date: 12/19/12	
Signature: <i>Carri Simmons</i>			
For Compliance Manager and Monitor Use Only			
Variance Approved: Variance Denied		Date:	
Signature:			
Stipulations			
Spread:		OPPC Variance Request No.:	
VARIANCE CONDITIONS			
Name:		Title:	Organization:
Conditions:			
Name:		Title:	Organization:
Conditions:			

Name:

Title:

Organization:

Conditions:

Documentation of NEPA Adequacy (DNA)

U.S. Department of the Interior
Bureau of Land Management (BLM)

BLM Office: El Centro Field Office **Lease/Serial/Case File No:** CACA-051552
1661 So. 4th Street **DNA Number:** DOI-BLM-CA-D070-2013-0032-DNA
El Centro, CA 92243 **Tiered Off EIS No.:** ES-2011-15+1793

Proposed Action Title/Type: The proposed action is to approve a request from Ocotillo Express LLC (OE LLC) to microsite Wind Turbine #167 and its associated access road and collection line. This variance request also proposes minor alterations to the disturbance limits at this wind turbine location.

As shown on the attached Exhibit, the proposed action would microsite Wind Turbine #167 a distance of 81 feet to the east and would result in the need to realign approximately 104 feet of the associated access road and collection circuit corridor as currently approved in the Record of Decision (ROD) and right-of-way (ROW) Grant dated May 11, 2012. The proposed micrositing of these onsite facilities would result in an additional 0.56 acres of disturbance compared to the currently approved plan.

The proposed modifications are within the current boundaries of the Ocotillo Wind Energy Facility (OWEF) site and are within areas that were previously surveyed as part of the Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) environmental review. The OWEF project ROW grant and associated amendment to the California Desert Conservation Area Plan (CDCA) was approved in a ROD signed on May 11, 2012. The ROD approved the Project configuration identified as the Preferred Alternative in the Final EIS/EIR, referred to as the Refined Project.

Location of Proposed Action: The OWEF Project is on 10,151 acres of BLM-managed public lands near the town of Ocotillo, Imperial County, California. The micrositing of Wind Turbine #167 and realignment of the associated access road and collection circuit corridor proposed by this Variance request is within the project boundaries analyzed in the Final EIS/EIR (March 2012).

Applicant (if any): Ocotillo Express LLC (OE LLC)

A. Description of the Proposed Action and any applicable mitigation measures:

The proposed action will microsite Wind Turbine #167 approximately 81 feet to the east, realign the associated access road and collection circuit corridor, and modify the wind turbine pad site disturbance limits. Approval of this variance will result in a net impact increase of approximately 0.56 acres.

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The purpose of this variance is to avoid potential hazards from seismic features consistent with Mitigation Measure (MM) PHS-3 (*Avoid Geologic Hazards*), which states “the Applicant shall determine the final siting of project facilities based on the results of the geotechnical study and implement recommended measures to minimize geologic hazards”. In order to avoid geotechnical hazards, this variance proposes to microsite Wind Turbine #167, realign the associated access road and collection circuit corridor, and modify the wind turbine pad site disturbance limits. In accordance with the procedures and guidance provided in the ROD, OE LLC is requesting a level 2 variance to allow deviations in the siting of the approved infrastructure locations to help further reduce potential impacts.

The micrositing of Wind Turbine #167 and realignment of the associated access road would not result in new impacts or substantially intensify impacts analyzed in the Final EIS/EIR. The affected area for the proposed wind turbine micrositing and access road realignment is located within the areas previously surveyed for cultural and sensitive wildlife and plant species in support of the OWEF Final EIS/EIR. The geographic and resource conditions in the affected areas are the same as those addressed in the Final EIS/EIR. The associated grading and construction associated with the infrastructure shifts would be performed at the same time as the OWEF Project construction and conducted in accordance with the same impact avoidance, minimization, monitoring, and mitigation measures that apply to the Project impact areas. Such measures include those specified in the Project’s ECCMP, BLM’s ROD, the Project’s ROW grant, and approved plans and permits for specific activities related to the construction of the Project. Consequently, the potential impacts associated with the modified disturbance footprint have been addressed and analyzed in the Final EIS/EIR and have been mitigated through measures identified in the Final EIS/EIR and adopted by the ROD.

B. Land Use Plan Conformance:

LUP Name: California Desert Conservation Area *Dates Approved:* 1980, as amended

Other documents: California Desert Conservation Area Land Use Plan Amendment
Date Approved: May 9, 2012

The proposed action is in conformance with the applicable LUP because it is specifically provided for in the following LUP decisions:

California Desert Conservation Area Plan, 1980, as amended (CDCA Plan). BLM lands in California Desert District are managed pursuant to the CDCA Plan. The CDCA Plan establishes four multiple-use classes (MUC); MUC guidelines; and plan elements for specific resources or activities, such as motorized vehicle access, recreation, and vegetation.

The majority of the project site is within the Multiple Use Class (MUC), Limited Use (L). Wind energy is an allowable use on Class L lands after NEPA requirements are met. The FEIS and

Documentation of NEPA Adequacy (DNA)

ROD is the mechanism for complying with those NEPA requirements. The proposed micrositing of Wind Turbine #167, realignment of the associated access road and collection circuit corridor, and modification to the wind turbine pad site disturbance limits is in conformance with the CDCA Plan because the construction activities would remain within the same BLM CDCA-designated area as the approved OWEF Project. Thus, a CDCA Plan amendment is not required for the proposed micrositing and work space modification within the approved OWEF Project site.

C. Identify applicable NEPA document(s) and other related documents that cover the proposed action.

Bureau of Land Management and the County of Imperial. 2012. *Proposed Plan Amendment and Final Environmental Impact Statement/Final Environmental Impact Report for the Ocotillo Wind Energy Facility*. DOI Control No. DES 11-20, SCH No. 2010121055. February 2012.

Bureau of Land Management. 2012. Record of Decision for the Ocotillo Wind Energy Facility and Amendment to the California Desert Conservation Area Plan, DOI Control No. FES11-20, Case File Number: CACA-051552. El Centro, California: Bureau of Land Management, El Centro Field Office. May 2012.

U.S. Fish and Wildlife Service. 2012. *“Formal Section 7 Opinion on the Proposed Ocotillo Express Wind Project, Imperial County, California (3031-P) CAD000.06.”* Memorandum from the Field Supervisor, Carlsbad Fish and Wildlife Office, transmitting the Biological Opinion to the District Manager, California Desert District Office, Bureau of Land Management. April 2012.

Bureau of Land Management, U.S. Army Corps of Engineers, Ocotillo Express LLC, the California State Historic Preservation Officer, and the Advisory Council on Historic Preservation. 2012. *Memorandum of Agreement Among the Bureau of Land Management- California, the U.S. Army Corps of Engineers, Ocotillo Express LLC, the California State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding the Ocotillo Express Wind Energy Project*, Imperial County, California. May 8, 2012.

Bureau of Land Management. 2012. *Ocotillo Express Wind Energy Facility Environmental and Construction Compliance Monitoring Plan*. El Centro California: Bureau of Land Management, El Centro Field Office. May 2012.

Bureau of Land Management. 2012. *“Right-of-Way Grant.”* Serial No. CACA-051552. El Centro California: Bureau of Land Management,” El Centro Field Office.

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D. NEPA Adequacy Criteria

- 1. Is the new proposed action a feature of, or essentially similar to, an alternative analyzed in the existing NEPA document(s)? Is the project within the same analysis area, or if the project location is different, are the geographic and resource conditions sufficiently similar to those analyzed in the existing NEPA document(s)? If there are differences, can you explain why they are not substantial?**

YES. The proposed modifications would not result in new facilities or substantially change the geographic location of any proposed Project facilities or result in modifications to the Project boundary. To the extent that minor realignments and work space adjustments are proposed, these changes would not be substantial and would be sufficiently similar to those analyzed in the Final EIS/EIR. In particular, the geographic and resource conditions in the area where the changes would take place are virtually the same as those approved in the Final EIS/EIR. Therefore the proposed micro-siting of Wind Turbine #167, realignment of the associated access road and collection circuit corridor, and modification to the wind turbine pad site disturbance limits are within the project area and considered part of the same action previously analyzed in the Final EIS/EIR and would not result in impacts beyond the scope of those analyzed in the Final EIS/EIR.

- 2. Is the range of alternatives analyzed in the existing NEPA document(s) appropriate with respect to the new proposed action, given current environmental concerns, interests, and resource values?**

YES. The proposed changes are within the range of alternatives evaluated in the Final EIS/EIR. Each of the action alternatives evaluated in the Final EIS/EIR included the wind turbines and access roads as described in Final EIS/EIR Section 2.1.3 Features Common to all Alternatives (Final EIS/EIR Section 2, Proposed Action and Alternatives). In addition, the work areas and access roads were considered in the impact analysis in Sections 4.2 through 4.21 of the Final EIS/EIR. Therefore, the proposed micro-siting of Wind Turbine #167, realignment of the associated access road and collection circuit corridor does not affect or indicate a need to modify the range of alternatives analyzed in the Final EIS/EIR. No additional NEPA review is required.

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- 3. Is the existing analysis valid in light of any new information or circumstances (such as, rangeland health standards assessments, recent endangered species listings, and updated lists of BLM-sensitive species)? Can you reasonably conclude that new information and new circumstances would not substantially change the analysis of the proposed action?**

YES. The slight modifications to infrastructure alignments and work areas are within the areas previously surveyed for cultural, geotechnical, and sensitive wildlife and plant species in support of the OWEF Final EIS/EIR. The associated surveys and studies identified the need to employ specific and general mitigation for project related impacts to environmentally sensitive resources on-site. The analyses and conclusions in the Final EIS/EIR are valid as of March 2012 and apply to all project related activities, including the proposed access road realignment and micrositing. Cultural and biological resource surveys were performed from 2009 through 2012. The avoidance and minimization measures as well as compensatory mitigation to offset direct, indirect, and cumulative impacts on wildlife resources would assure compliance with state and federal laws aimed at protecting these resources. There is no new information and no new guidance associated with the proposed micrositing of Wind Turbine #167, realignment of the associated access road and collection circuit corridor that would trigger the need for additional analyses beyond the analyses presented in the Final EIS/EIR.

- 4. Are the direct, indirect, and cumulative effects that would result from implementation of the new proposed action similar (both quantitatively and qualitatively) to those analyzed in the existing NEPA document?**

YES. The direct, indirect and cumulative effects of micrositing the access road and wind turbine are within the OWEF Project site and would be substantially the same to those analyzed in Section 4 of the Final EIS/EIR for the approved OWEF Project. The potential for micrositing of project facilities was considered in the environmental review completed for the approved OWEF Project. Further, any OWEF related project activities, including disturbance within the proposed micrositing areas, would be conducted in accordance with the same impact avoidance, minimization, monitoring, and mitigation measures that apply to all other Project impact areas. Such measures include those specified in the Project's ECCMP, BLM's ROD and approved plans and permits for specific types of related activities. Consequently, the direct, indirect and cumulative effects of micrositing Wind Turbine #167, realigning the associated access road and collection circuit corridor would be within the scope of those analyzed and mitigated for in the Final EIR/EIS for the approved OWEF Project.

Documentation of NEPA Adequacy (DNA)

5. Are the public involvement and interagency review associated with existing NEPA document(s) adequate for the current proposed action?

YES. Public review and comment on the OWEF Project were extensive. Public scoping and frequent agency meetings were completed as described in the Final EIS/EIR, Section ES.8, Public Participation and Chapter 5. All public comments received on the Draft EIS/EIR were carefully analyzed and agency responses are included in the Final EIS/EIR. Appendix O (Comment Letters) and Appendix N (Response to Comments) include all of the written comment letters received by the BLM and County of Imperial in response to the Notice of Availability and the responses to these comment letters. Additionally, 12 protests of the associated plan amendments were considered and resolved by the Director of the BLM prior to the issuance of the ROD for the OWEF.

As described above, the proposed micrositing of Wind Turbine #167, realignment of the associated access road and collection circuit corridor is within a portion of the Project site that was previously surveyed in support of the OWEF EIS/EIR. The proposed modification of these on-site facilities would not result in impacts beyond those analyzed previously as part of the Final EIS/EIR. Therefore, further public involvement and interagency review of the proposed changes is not required.

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E. Persons/Agencies/BLM Staff Consulted

Nicollee Gaddis
Nicollee Gaddis, Planning & Environmental Coordinator

12/19/12
Date

Carrie Simmons
Carrie Simmons, Acting Resources Branch Supervisor

12/19/12
Date

Conclusion:

Based on the review documented above, I conclude that this proposal conforms to the applicable land use plan and that the NEPA documentation fully covers the proposed action and constitute BLM's compliance with the requirements of NEPA.

Carrie Simmons

FDY
Signature of Project Lead

Nicollee Gaddis

Signature of NEPA Coordinator

Margaret L. Goodro *ACTING*

Signature of Responsible Official:
Margaret L. Goodro, Field Manager

12/19/2012
Date

United States Department of the Interior
BUREAU OF LAND MANAGEMENT

El Centro Field Office

1661 South 4th Street

El Centro, CA 92243

www.blm.gov/ca/elcentro/

CA-670-13-057/ DOI-BLM-CA-D070-2013-0032-DNA /CACA-051552/(8100)P

Memorandum

To: Field Manager, El Centro Field Office

From: Archaeologist, El Centro Field Office

Subject: Agency Findings and Determinations under Section 106 of the National Historic Preservation Act

Project: Ocotillo Wind Energy Project Variance 036, Imperial County, California

The Bureau of Land Management (BLM) El Centro Field Office has received a Variance Request (036) from Ocotillo Express LLC to approve a set of micrositing changes to the approved Ocotillo Wind Energy Facility Project (Project) as analyzed in the Final Environmental Impact Statement/Environmental Impact Report. Variance 036 includes realignment of the access road and a footprint shift at wind turbine 167 in order to mitigate geotechnical siting considerations.

Identification and evaluation efforts for the Project are described in the draft BLM Class III report titled *Archaeological Survey Report for the Ocotillo Express Wind Energy Project, Imperial County, California* (Tierra Environmental Services, March 2018) and included the Project area covered by this Variance Request. The area covered by Variance 036 had been previously surveyed with no archaeological resources recorded within the Variance 036 disturbance area. In support of the Variance 036 Request and in accordance with the final *Management Plan for Archaeological Monitoring, Post-Review Discovery and Unanticipated Effects*, April 2018 (Management Plan), Tierra Environmental Services personnel (consultant) conducted a re-survey of the proposed Variance area. This is documented in their confidential letter report to Ms. Carrie Simmons dated November 28, 2012. In regards to this Variance Tierra makes the following recommendations:

“Based on this analysis, Variance 036 would not result in any additional impacts to significant cultural resources in addition to those already identified/described in the Final Environment Impact Statement/Environmental Impact Report and associated documents. Similarly, even though the proposed Variance is located within an area that has been identified as a Traditional Cultural Property (TCP), which the BLM has assumed is eligible to the National Register of Historic Places for purposes of analysis; it is our recommendation that Variance 036 would not change the previously identified adverse effects to this TCP.

Based on the project documentation as discussed above, it is our recommendation that no significant archaeological or historical resources would be affected by the proposed Variance.”

Pursuant to the Project’s Memorandum of Agreement (MOA)¹, fully executed on May 8, 2012, BLM professional cultural resources staff has reviewed this proposed Variance Request. The BLM concurs with the contractor’s recommendations and based on the above documentation, the MOA, and the BLM Record of Decision for this Project, compliance with the following actions are required as part of issuance of an approval of Variance 036:

- **CUL-2 – Avoid and protect potentially significant resources**
- **CUL-3 – Implement Management Plan for Archaeological Monitoring, Post-Review Discovery, and Unanticipated Effects**
- **CUL-5 – Monitor construction at known ESAs**
- **CUL-8 – Monitor construction in areas of high sensitivity for buried resources as applicable and consistent with CUL-1 based on prior and recent surveys of the shift area**
- **Ocotillo Express LLC will also continue to comply with all other relevant cultural resources mitigation measures as outlined in the Memorandum of Agreement and the ROD as appropriate.**

All archaeological sites and all potentially culturally sensitive areas that are within 150 feet of construction activities shall be demarked as ESAs and protected as exclusionary zones. Additionally, archaeological and Native American monitors are to be on-site during the temporary fencing and during any ground disturbing activities near designated ESAs.

Prior Section 106 review and consultation for the MOA for the Project provide that the required conditions and mitigation measures listed above are adequate to identify and protect historic properties on public lands that might be affected by Variance Request 036. Therefore, the BLM staff archaeologist has recommended that there would be no adverse effect on historic properties if the above measures are implemented.

The BLM makes the following findings for this undertaking.

- 1. The activities covered by the Variance will take place within the defined APE for the Project.**
- 2. The BLM finds that there will be *no additional adverse effects to historic properties* by this micrositing modification to the Project provided the above mitigation measures are implemented as required by the MOA and the ROD.**
- 3. Accordingly, the Variance is covered by the prior consultations for the Project. No additional consultation is required pursuant to the NHPA.**

This memorandum documents the recommendations of the cultural resources staff, the acceptance of these recommendations by the Agency Official (as defined in 36 CFR §800.2(a), Protection of Historic Properties), and constitutes the formal statement of Agency findings and

¹Memorandum of Agreement Among the BLM (California), the United States Army Corps of Engineers, Ocotillo Express LLC, the California State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding the Ocotillo Express Wind Energy Project, Imperial County, California (May 8, 2012).

determinations for Section 106 of the National Historic Preservation Act with respect to Variance Request 036.

Recommended by:

Christine McCollum Christine McCollum 12-19-12
Archaeologist, El Centro Field Office Date

Approved by:

Carri Simmons 12/19/12
Archaeologist, El Centro Field Office Date

Acceptance by the Agency Official:

[Signature] ASJAG 12/19/2012
Field Manager, El Centro Field Office Date

OCOTILLO WIND PROJECT: IMPERIAL COUNTY, CALIFORNIA

VARIANCE 36 - NOVEMBER 27, 2012

Variance 36
Net Acreage Impact: +0.56 acre
Distance for Turbine Move: 81 ft
Total Length of Road Realignment: 104 ft



Legend

- Approved Turbine Locations
- Variance 36 Turbine Microsite
- Approved Access Roads
- Variance 36 Road Realignment
- Approved Impact Area
- Variance 36 Disturbance Area

bing

0 37.575 150 225 300 Feet