



COMSEARCH
January 20, 2006

19700 Janelia Farms Blvd
Ashburn, VA 20147
703-726-5500

Mr. Karl Nebbia
U. S. Department of Commerce
1401 Constitution Avenue N.W.
Washington DC 20230

**RE: Notification of the Marble River Wind Farm Development in Clinton County,
New York**

Dear Mr. Nebbia:

This letter and its attachments will serve as the notice to the government that Marble River, LLC plans to install a Wind Energy Facility in Clinton County, NY. The installation will be called the Marble River Wind Farm.

Enclosed are a data table and maps that describe the location of the Marble River Wind Farm development in northern New York State.

Table 1 contains the NAD 83 coordinates of the 109 turbine towers to be installed at the Marble River Wind Farm.

Figure 1 is a map of the general area showing the outline of the proposed wind energy facility boundaries in New York.

Figure 2 is a local map of the proposed wind energy facility showing its boundaries and the layout of the turbines.

The dimensions of the Wind turbines to be installed at this facility are:

Turbine Tower Hub Height - 78 meters

Turbine Blade Diameter - 90 meters

Top of Turbine Blade - 123 meters

If you have any questions with regard to this notification, please call Kurt Oliver (703) 726-5675 or me at (703) 726-5860.

Sincerely,

COMSEARCH

Lester E. Polisky
Senior Principal Engineer
Field Services Department

Attachments

Table 1. Turbine Locations for the Marble River Wind Farm

| ID Name | Longitude | Latitude |
|---------|-----------------|----------------|
| 1-A | -73.91354444820 | 44.99820404950 |
| 100-R | -73.92467013290 | 44.88692746210 |
| 102-L | -73.97079883910 | 44.88520952740 |
| 104-L | -73.97825650800 | 44.88569109590 |
| 105-L | -73.97825216090 | 44.88236027910 |
| 106-L | -73.98921365320 | 44.87534616320 |
| 107-L | -73.99124522150 | 44.87718255470 |
| 109 | -73.92508665220 | 44.88224128910 |
| 10A | -73.91714924420 | 44.97791190260 |
| 11 | -73.94181010680 | 44.98039357860 |
| 112 | -73.82009448080 | 44.99419803900 |
| 113-R | -73.81632203870 | 44.99072025750 |
| 114 | -73.82867973370 | 44.99188290930 |
| 115 | -73.83609938770 | 44.98695369710 |
| 116 | -73.83113645790 | 44.99771432900 |
| 117 | -73.83995104770 | 44.99095374460 |
| 119 | -73.83827803340 | 44.99464553370 |
| 12 | -73.90735235100 | 44.89547234380 |
| 120 | -73.88255906830 | 44.98984831250 |
| 122 | -73.88109960050 | 44.98662032790 |
| 123 | -73.89362983950 | 44.98213341930 |
| 124 | -73.89046880630 | 44.98030235880 |
| 125 | -73.87381990430 | 44.98136364380 |
| 126 | -73.87144736010 | 44.97945881230 |
| 13 | -73.96338618830 | 44.97750380660 |
| 132 | -73.86299433030 | 44.97398278440 |
| 133 | -73.85973649290 | 44.97134873140 |
| 134-S | -73.86000953360 | 44.96524812020 |
| 135 | -73.85782562720 | 44.95453193850 |
| 136 | -73.89763790160 | 44.96823714420 |
| 137-W | -73.85570798130 | 44.98898827190 |
| 138 | -73.86139713030 | 44.98996333810 |
| 139 | -73.86372536530 | 44.99283114130 |
| 140 | -73.86422003990 | 44.99668888960 |
| 141 | -73.87568205100 | 44.94773259860 |
| 146-R | -73.85906096110 | 44.95105151350 |
| 147 | -73.86458639030 | 44.94664159410 |
| 148 | -73.92973721890 | 44.97620317820 |
| 15 | -73.94044309220 | 44.97404352330 |
| 150-W | -73.96539762430 | 44.92910931210 |
| 151 | -73.96275793210 | 44.95747771040 |
| 153 | -73.91721138830 | 44.97056688930 |
| 155 | -73.84705285650 | 44.98727186070 |
| 156 | -73.82946402720 | 44.98825416810 |
| 161 | -73.94621938480 | 44.86792522870 |

| | | |
|-------|-----------------|----------------|
| 172 | -73.96673939830 | 44.96593065980 |
| 19 | -73.96844432900 | 44.97339070400 |
| 2-A | -73.91297341880 | 44.99552504210 |
| 21 | -73.92555912990 | 44.97174397860 |
| 28 | -73.93894598990 | 44.96169691840 |
| 3 | -73.93153489000 | 44.99276559360 |
| 31 | -73.97208483770 | 44.96056871120 |
| 33 | -73.95212662620 | 44.95645344430 |
| 34 | -73.95693561700 | 44.95903603270 |
| 35 | -73.96927825110 | 44.95586237900 |
| 36-A | -73.96389192080 | 44.95364415400 |
| 4-A | -73.90186582540 | 44.99254714940 |
| 42 | -73.95225721920 | 44.93603809080 |
| 43 | -73.92411745300 | 44.93353493180 |
| 44 | -73.94647812540 | 44.93325730690 |
| 45 | -73.96249176130 | 44.93284579650 |
| 46 | -73.93630637510 | 44.93162366460 |
| 47 | -73.92271257330 | 44.93004690380 |
| 48-W | -73.93472287170 | 44.92679281590 |
| 5-A | -73.91287973460 | 44.98920187230 |
| 50 | -73.92096215350 | 44.92471917600 |
| 51 | -73.92410559060 | 44.92127404770 |
| 52 | -73.96110123650 | 44.91859192950 |
| 53 | -73.96117944640 | 44.91565797220 |
| 55 | -73.93508188590 | 44.91422030600 |
| 56 | -73.92920493990 | 44.91209487550 |
| 57 | -73.96049178930 | 44.91163679710 |
| 58 | -73.95079457490 | 44.91056688650 |
| 59 | -73.95798942500 | 44.90990359890 |
| 6 | -73.92922358260 | 44.98812594930 |
| 60 | -73.92088039160 | 44.90675030510 |
| 62 | -73.94273062650 | 44.90403802860 |
| 63 | -73.94965087860 | 44.90311166290 |
| 64 | -73.91903305230 | 44.90190772300 |
| 66 | -73.94032297240 | 44.90133309380 |
| 67 | -73.94158410300 | 44.89265778040 |
| 70-R | -73.92701442480 | 44.89228775510 |
| 73-W | -73.92957062420 | 44.90058465940 |
| 74 | -73.93717495890 | 44.91682339550 |
| 75A-W | -73.92359122950 | 44.91786862410 |
| 77 | -73.96399462040 | 44.92185895290 |
| 78 | -73.95664028930 | 44.92845350400 |
| 175 | -73.92475080840 | 44.98550538980 |
| 81 | -73.92339916350 | 44.92653358360 |
| 83 | -73.95694127200 | 44.94052796910 |
| 84 | -73.95856929540 | 44.94372053880 |
| 85 | -73.94820555620 | 44.94137504920 |
| 87 | -73.94839964130 | 44.94879449190 |
| 89-R | -73.92702637260 | 44.88892108510 |
| 90 | -73.93890387750 | 44.86830021060 |

| | | |
|------|-----------------|----------------|
| 91 | -73.94102928980 | 44.87182176640 |
| 93 | -73.95816998020 | 44.87956821690 |
| 94 | -73.92033289660 | 44.87263570050 |
| 95 | -73.92300641710 | 44.87361567040 |
| 96-S | -73.94210710100 | 44.88899877540 |
| 97 | -73.94052072320 | 44.88642747270 |
| 98 | -73.94004312500 | 44.88416351350 |
| 9A | -73.92314679650 | 44.98138035900 |
| 173 | -73.89749816480 | 44.99074968640 |
| 174 | -73.90537315570 | 44.98588500690 |
| 202 | -73.91303221170 | 44.89679209110 |
| 206 | -73.93884313590 | 44.91148056070 |
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| 157 | -73.95794760860 | 44.86894277140 |

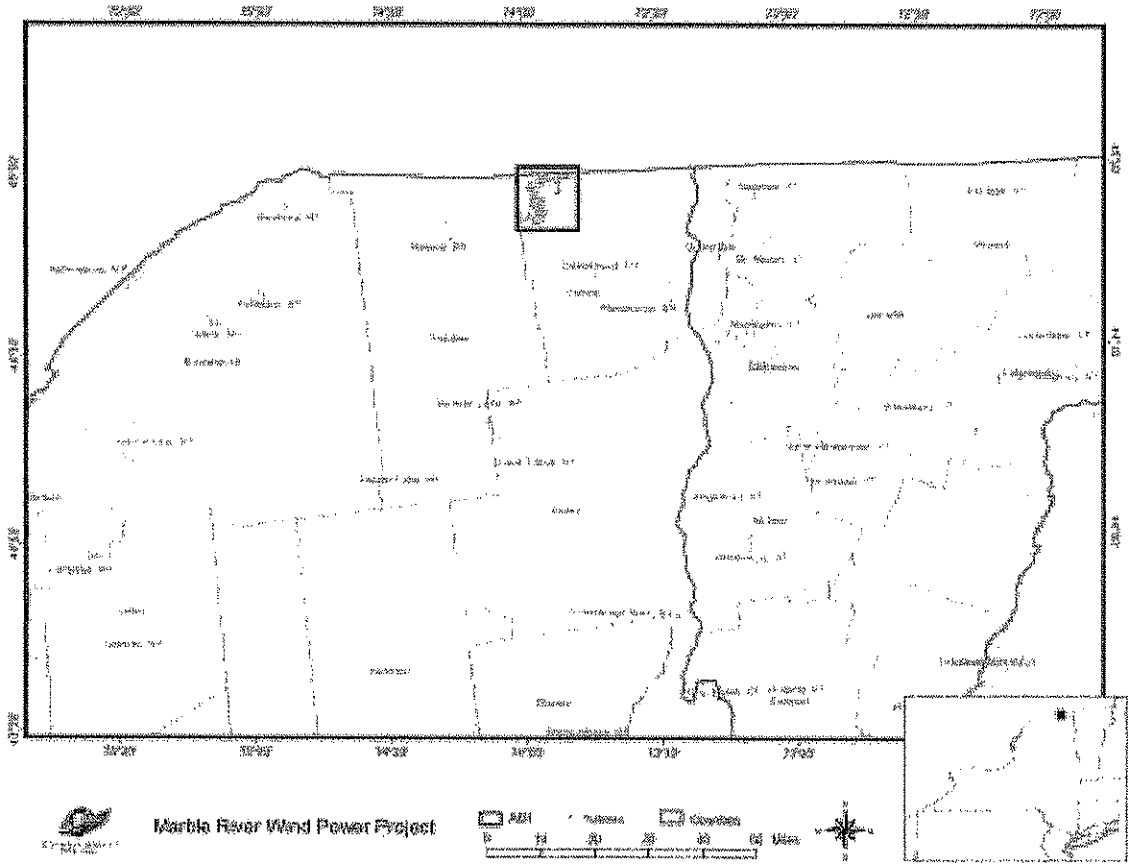


Figure 1. General Area of Marble River Wind Farm

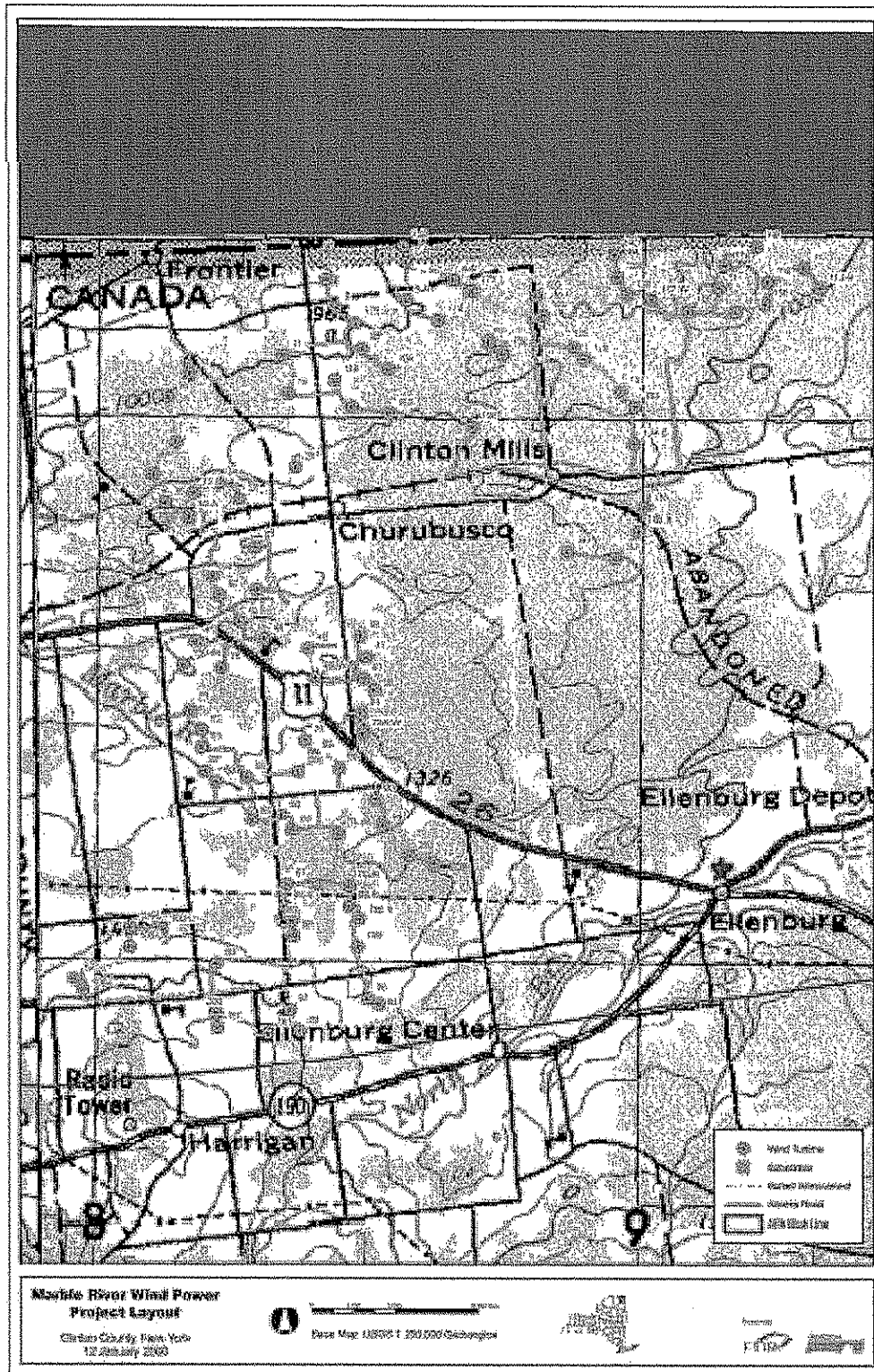


Figure 2. Local Area of Marble River Wind Farm

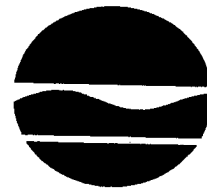
New York State Department of Environmental Conservation

Division of Environmental Permits, 4th Floor

625 Broadway, Albany, New York 12233-1750

Phone: (518) 402-9167 • FAX: (518) 402-9168

Website: www.dec.state.ny.us



Denise M. Sheehan
Commissioner

January 11, 2006

Mr. Daniel A. Spitzer
Partner
Hodgson Russ Attorneys LLP
One M&T Plaza Suite 2000
Buffalo, New York 14203-2391

**Re: State Environmental Quality Review (SEQR)
Marble River, LLC
Town of Ellenburg, Clinton County, New York**

Dear Mr. Spitzer:

New York State Department of Environmental Conservation (DEC) staff have performed an initial review of the information and material provided with the Notice of Intent to Act as Lead Agency for coordinated SEQR review from the Town of Ellenburg Board, dated December 7, 2005, related to an application to the Town from Marble River, LLC, for rezoning to create a Wind Overlay Zone and special use permit pursuant to the Town of Ellenburg Wind Energy Facilities Law. The project sponsor proposes construction of up to 21 Wind Energy Conversion Systems (WECS), with related infrastructure, within the Town. As noted in a letter from the project sponsor to the Town, dated November 16, 2005, this action is part of a larger proposal to construct up to 95 additional WECS in the neighboring Town of Clinton. Additionally, a separate application has been filed by Noble Environmental Power to the Towns of Clinton and Ellenburg for construction of up to 122 WECS in the two towns, and an anticipated application to the Town of Altona for construction of 67 WECS.

DEC recommends that a single Lead Agency be designated and one environmental impact statement (EIS) be prepared to address potential impacts related to the entire 116-WEC Marble River proposal in the two towns. This approach would address concerns regarding segmentation of the SEQR process that could occur if applications to each town are considered separately. This can be accomplished through the use of an inter-municipal agreement that formally assigns responsibilities for completing the steps of the SEQR process, and has recently been used successfully with another wind energy project, sponsored by Flat Rock Wind Power LLC, in Lewis County. Please keep in mind that due to the existence of a second, distinct application for a similar project in the same general location, the SEQR review should consider impacts associated with all proposed wind power projects in the area.

The general comments provided below are in support of our recommendation to prepare a single EIS. Detailed comments regarding recommended studies will be reserved until the scoping phase of the EIS process, should one be required.

1) **Lead Agency**. DEC has no objections to a local authority being designated as Lead Agency, but recommends a single Lead Agency be established, as stated above. Since DEC may have limited jurisdiction (see below), and since the majority of potential impacts are primarily local in nature, it is appropriate for an involved agency with local land use approval authority to serve as the lead agency.

2) **Department Jurisdiction**. Based on the information provided with the December 7, 2005 notice, it appears the potential authorizations required from DEC include a Clean Water Act Section 401 Water Quality Certification, an Article 15 Stream Disturbance permit and Article 24 Freshwater Wetlands permit. Compliance is also required with the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activities (GP-02-01). The actual breadth of DEC jurisdiction can not be determined definitively until the location of the WECS, access roads, electrical interconnection lines, laydown areas, etc. are fully described.

3) **Project Impacts**. Based on experience with existing and proposed wind farms, the following impacts are of primary concern to the Department:

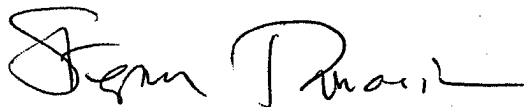
a) **Bird and Bat Impacts**. DEC has received a copy of the *Work Plan for 2005 Avian and Bat Studies for the Proposed Churubusco Wind Energy Facility Site, Towns of Clinton and Ellenburg, Clinton County, New York*, prepared by Woodlot Alternatives, Inc., May 2005. DEC would encourage the project sponsor to set up a meeting in the near future to discuss the results of this study. The EIS should include the analysis conducted to describe and address potential impacts to birds and bats. If birds or bats will be adversely impacted by the project, appropriate mitigation strategies will need to be evaluated.

b) **Visual Impacts**. DEC recommends that a visual analysis be prepared by the project sponsor consistent with the Department's existing visual policy (Assessing and Mitigating Visual Impacts, DEP-00-2). The analysis should indicate which of the 15 resource categories listed in section V (A) of the policy may be impacted by the project, and should also identify the specific resources under each category. Because of the proximity of the project area to the Adirondack Park, particular attention should be paid to categories 4 and 12 of Section V(A). Following such procedure, a comprehensive visual analysis of facility visibility should be prepared, based on definition of landscape characteristics, landscape similarity zones, impacted viewpoint selection, user group definition and characterization, forecast of future conditions, analysis of seasonal variation and comparison of alternate project sites and scales. Since a wind farm represents a large landscape alteration, the assessment should examine an area greater than 5 miles from the turbines if there are any potential sensitive receptors as described in section V (B) of the DEC Program Policy.

- c) Natural Resource Impacts. The project sponsor should identify the natural resources of the project area, including state and federal wetlands, streams and open water bodies, and describe any potential impacts and efforts to avoid or minimize them.
- d) Natural Heritage/Threatened or Endangered Species. The SEQR Full EAF indicates that preliminary responses from the U.S. Fish and Wildlife Service and New York Natural Heritage Program have not identified rare, threatened or endangered species in the project area. However, field observations have confirmed the presence of northern harrier, a state-listed threatened species. A survey of resident avian species within the project area should be completed to address the presence of threatened and endangered species. Analysis should be conducted to describe and address potential impacts to threatened and endangered species.
- e) Cultural and Archeological Resources. The project sponsor should provide documentation of consultation with the NYS Office of Parks, Recreation and Historic Preservation (OPRHP) with a determination from that agency regarding the potential of the project to adversely impact historic, cultural or archeological resources. Based on OPRHP recommendations, appropriate avoidance and/or mitigation actions should be incorporated into the project scope of work.
- f) Agricultural Impacts. The SEQR Full EAF indicates that portions of the affected project area lie in Agricultural Districts certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304. Projects that impact lands in state agricultural districts are subject to review requirements of the NYS Department of Agriculture and Markets. The project sponsor should incorporate *Guidelines for Agricultural Mitigation for Windpower Projects* prepared by that agency into the project scope of work, and include a discussion of agricultural impacts and proposed mitigation measures in the EIS.

In conclusion, DEC staff appreciate the opportunity to comment on the project at this early stage and look forward to working with the Town of Ellenburg throughout the remainder of the SEQR and permit review process. DEC is eager to participate in the scoping process to fully develop the range of issues that should be considered in the review. If you have any questions, please contact me at (518) 486-9955.

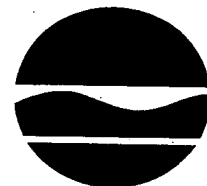
Sincerely,



Stephen Tomasik
Project Manager

CC: Brent Trombly
Patrick Doyle
D. May, NYS DPS
J. Saintcross, NYSERDA
T. Hall, NYSDEC Region 5
T. Sullivan, USFWS
DEC Review Team

New York State Department of Environmental Conservation
Division of Environmental Permits, 4th Floor
625 Broadway, Albany, New York 12233-1750
Phone: (518) 402-9167 • **FAX:** (518) 402-9168
Website: www.dec.state.ny.us



Denise M. Sheehan
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January 11, 2006

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Hodgson Russ Attorneys LLP
One M&T Plaza Suite 2000
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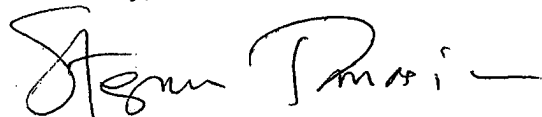
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In conclusion, DEC staff appreciate the opportunity to comment on the project at this early stage and look forward to working with the Town of Clinton throughout the remainder of the SEQR and permit review process. DEC is eager to participate in the scoping process to fully develop the range of issues that should be considered in the review. If you have any questions, please contact me at (518) 486-9955.

Sincerely,



Stephen Tomasik
Project Manager

cc: Michael Fillion
Patrick Doyle
D. May, NYSDPS
J. Saintcross, NYSERDA
T. Hall, NYSDEC Region 5
T. Sullivan, USFWS
DEC Review Team

Steve Wood

From: andrew_davis@dps.state.ny.us
Sent: Tuesday, February 07, 2006 2:09 PM
To: Doug Ward
Subject: Re: Marble River Scope

Doug -

please consider the following comments on the outline/scope:

Section 3.1 Geology, Soils and Topography Soils, geologic and topographic limitations on siting (such as substation interconnection and communications grounding issues) and impact minimization (such as relating severe erosion hazards to downslope water resources, etc.) should be assessed. Alternatives evaluation to address engineering and siting problems should be developed, as appropriate.

Section 3.2 Water Resources

The study should specifically address any significant problem locations (such as relating sites with high erosion hazards to downslope water resources).

Section 3.5 "Aesthetic/Visual Resources"

The study scope should specify how the assessment will assess changes, minimize contrasts and evaluate mitigation strategies.

Section 3.8 Traffic and Transportation

The study area of traffic and transportation needs to encompass the anticipated routes of delivery through the region, and not be limited to the project area as described at section 2.1. The scope should identify heavy haul/oversize equipment delivery routes to the project area on a broad scale. Constraints including highway limitations on delivery of 140 feet long turbine blades, planned major highway work or road closures, and potential relocation needs of overhead utility facilities.

Section 7.0 Cumulative Impacts

Cumulative analysis of any pending major land use developments, including but not limited to any other wind energy projects, should be addressed as appropriate.

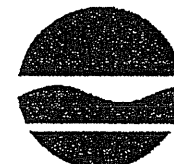
ACDavis
518 - 486 - 2853

Reflexion Control Panel <<https://asp-3.reflexion.net/login.jsp>> Login

To: <<https://asp-3.reflexion.net/detail.jsp?aID=313647&wiz=1&uID=275>>
dward@youngsommer.com Please contact the administrator to Block messages from this sender
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andrew_davis@dps.state.ny.us

This message arrived because the sender is always allowed to send you mail.

New York State Department of Environmental Conservation
Division of Fish, Wildlife & Marine Resources
New York Natural Heritage Program
625 Broadway, 5th floor, Albany, New York 12233-4757
Phone: (518) 402-8935 • FAX: (518) 402-8925
Website: www.dec.state.ny



Erin M. Crotty
Commissioner

March 9, 2004

Anntonette Z Alberti
Tetra Tech FW, Inc
1 Kelmik Drive
Saratoga Springs, NY 12866

Dear Ms. Alberti:

(s.k.1)

In response to your recent request, we have reviewed the New York Natural Heritage Program database with respect to an Environmental Assessment for the proposed potential Energy Development Project - Wind Turbine Project - area as indicated on the map you provided, located in Northwest Clinton and Northeast Franklin Counties.

Enclosed is a report of rare or state-listed animals and plants, significant natural communities, and other significant habitats, which our databases indicate occur, or may occur, on your site or in the immediate vicinity of your site. The information contained in this report is considered sensitive and may not be released to the public without permission from the New York Natural Heritage Program.

The presence of rare species may result in this project requiring additional permits, permit conditions, or review. For further guidance, and for information regarding other permits that may be required under state law for regulated areas or activities (e.g., regulated wetlands), please contact the appropriate NYS DEC Regional Office, Division of Environmental Permits, at the enclosed address.

For most sites, comprehensive field surveys have not been conducted; the enclosed report only includes records from our databases. We cannot provide a definitive statement on the presence or absence of all rare or state-listed species or significant natural communities. This information should not be substituted for on-site surveys that may be required for environmental impact assessment.

Our databases are continually growing as records are added and updated. If this proposed project is still under development one year from now, we recommend that you contact us again so that we may update this response with the most current information.

Sincerely,
Betty Ketcham
Betty Ketcham, Information Services
NY Natural Heritage Program

Encs.

cc: Reg. 5, Wildlife Mgr.
Al Hicks, Endangered Species Unit, Albany
Adirondack Parks Agency, Ray Brook

Natural Heritage Report on Rare Species and Ecological Communities



Prepared 4 March 2004 by NY Natural Heritage Program, NYS DEC, Albany, New York

This report contains SENSITIVE information that should be treated in a sensitive manner -- Please see cover letter. Refer to the Users' Guide for explanations of codes, ranks, and fields. We do not always provide maps of locations of species most vulnerable to disturbance, nor of some records whose locations and/or extents are not precisely known or are too large to display.

* County
** Town

Scientific Name,
COMMON NAME, &
Group Name

NY Legal Status,
Heritage Rank, &
Federal Status

EO Rank &
Last Seen

Detailed Location

General Habitat
and Quality

Office
Use

Page 1

* FRANKLIN
** BELLMONT

BAT HIBERNACULUM
Other

UNPROTECTED
S?

E
1985-04-28

CAVE

4407368
S

1 Records Processed

Clinton Site

Natural Heritage Report on Rare Species and Ecological Communities

Prepared 4 March 2004 by NY Natural Heritage Program, NYS DEC, Albany, New York

This report contains SENSITIVE information that should be treated in a sensitive manner -- Please see cover letter. Refer to the Users' Guide for explanations of codes, ranks, and fields. We do not always provide maps of locations of species most vulnerable to disturbance, nor of some records whose locations and/or extents are not precisely known or are too large to display

* County
** Town

Scientific Name,
COMMON NAME, &
Group Name

NY Legal Status,
Heritage Ranks, &
Federal Status

EO Rank &
Last Seen

Detailed Location

General Habitat
and Quality

Office
Use

* CLINTON
** DANNEMORA

Gavia immer
COMMON LOON
Bird

PROTECTED - SPECIAL
CONCERN
G5 S3S4

UPPER CHATEAUGAY LAKE

Upper chateaugay lake, west side of Clinton County. Nest found at the south end of the lake.

4407363
S
ESU

For information on the population at this location and management considerations, please contact the NYS DEC Regional Wildlife Manager or NYS DEC Endangered Species Unit at 518-402-8859.

* FRANKLIN
** BELLMONT

Icthyophaga exilis
LEAST BITTERN
Bird

THREATENED
G5 S3B,SIN

INGRAHAM STREAM WETLAND

The birds are located in a wetland between Owl's Head and Mountain View. Access is from the east side of Route 27 (Pond Road).

4407462
ESU

For information on the population at this location and management considerations, please contact the NYS DEC Regional Wildlife Manager or NYS DEC Endangered Species Unit at 518-402-8859.

Gavia immer
COMMON LOON
Bird

PROTECTED - SPECIAL
CONCERN
G5 S3S4

RAGGED LAKE

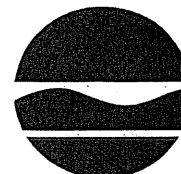
Ragged lake, from owls head, east on Indian Lake road to ragged Lake Road to ragged lake.

4407461
S
ESU

For information on the population at this location and management considerations, please contact the NYS DEC Regional Wildlife Manager or NYS DEC Endangered Species Unit at 518-402-8859.

3 Records Processed

New York State Department of Environmental Conservation
Division of Fish, Wildlife & Marine Resources
New York Natural Heritage Program
625 Broadway, 5th floor, Albany, New York 12233-4757
Phone: (518) 402-8935 • FAX: (518) 402-8925
Website: www.dec.state.ny.us



Erin M. Crotty
Commissioner

November 3, 2005

Brian Schwabenbauer
Environmental Design & Research
238 West Division St
Syracuse, NY 13204

RECEIVED
NOV 07 2005
EDR, P.C.

Dear Mr. Schwabenbauer:

In response to your recent request, we have reviewed the New York Natural Heritage Program databases with respect to an Environmental Assessment for the proposed Marble River Wind Power Project #05-024, area as indicated on the map you provided, located in the Towns of Ellenburg and Clinton, Clinton County.

We have no records of known occurrences of rare or state-listed animals or plants, significant natural communities, or other significant habitats, on or in the immediate vicinity of your site.

PLEASE NOTE: For Windpower Projects, we extended our record search for any avian records within a 10-mile buffer. We also extended our search for Indiana bat hibernaculum within a 40-mile buffer.

The absence of data does not necessarily mean that rare or state-listed species, natural communities or other significant habitats do not exist on or adjacent to the proposed site. Rather, our files currently do not contain any information which indicates their presence. For most sites, comprehensive field surveys have not been conducted. For these reasons, we cannot provide a definitive statement on the presence or absence of rare or state-listed species, or of significant natural communities. This information should not be substituted for on-site surveys that may be required for environmental assessment.

Our databases are continually growing as records are added and updated. If this proposed project is still under development one year from now, we recommend that you contact us again so that we may update this response with the most current information.

This response applies only to known occurrences of rare or state-listed animals and plants, significant natural communities and other significant habitats maintained in the Natural Heritage Data bases. Your project may require additional review or permits; for information regarding other permits that may be required under state law for regulated areas or activities (e.g., regulated wetlands), please contact the appropriate NYS DEC Regional Office, Division of Environmental Permits, at the enclosed address.

Sincerely,


Betty A. Ketcham, Information Services
New York Natural Heritage Program

Enc.

cc: Reg. 5, Wildlife Mgr.
Mark Wothal, Bureau of Habitat, Albany
Jack Nasca, Environmental Permits, 4th floor, Albany

USERS GUIDE TO NY NATURAL HERITAGE DATA

New York Natural Heritage Program, 625 Broadway, 5th Floor, Albany, NY 12233-4757 phone: (518) 402-8935

NATURAL HERITAGE PROGRAM: The NY Natural Heritage Program is a partnership between the NYS Department of Environmental Conservation (NYS DEC) and The Nature Conservancy. Our mission is to enable and enhance conservation of rare animals, rare plants, and significant communities. We accomplish this mission by combining thorough field inventories, scientific analyses, expert interpretation, and the most comprehensive database on New York's distinctive biodiversity to deliver the highest quality information for natural resource planning, protection, and management.

DATA SENSITIVITY: The data provided in the report are ecologically sensitive and should be treated in a sensitive manner. The report is for your in-house use and should not be released, distributed or incorporated in a public document without prior permission from the Natural Heritage Program.

EO RANK: A letter code for the quality of the occurrence of the rare species or significant natural community, based on population size or area, condition, and landscape context.

A-E = Extant: A=Excellent, B=Good, C=Fair, D=Poor, E=Extant but with insufficient data to assign a rank of A-D.

F = Failed to find. Did not locate species during a limited search, but habitat is still there and further field work is justified.

H = Historical. Historical occurrence without any recent field information.

X = Extirpated. Field/other data indicates element/habitat is destroyed and the element no longer exists at this location.

U = Extant/Historical status uncertain.

Blank = Not assigned.

LAST REPORT: The date that the rare species or significant natural community was last observed at this location, as documented in the Natural Heritage databases. The format is most often YYYY-MM-DD.

NY LEGAL STATUS – Animals:

Categories of Endangered and Threatened species are defined in New York State Environmental Conservation Law section 11-0535. Endangered, Threatened, and Special Concern species are listed in regulation 6NYCRR 182.5.

E - Endangered Species: any species which meet one of the following criteria:

- Any native species in imminent danger of extirpation or extinction in New York.
- Any species listed as endangered by the United States Department of the Interior, as enumerated in the Code of Federal Regulations 50 CFR 17.11.

T - Threatened Species: any species which meet one of the following criteria:

- Any native species likely to become an endangered species within the foreseeable future in NY.
- Any species listed as threatened by the U.S. Department of the Interior, as enumerated in the Code of the Federal Regulations 50 CFR 17.11.

SC - Special Concern Species: those species which are not yet recognized as endangered or threatened, but for which documented concern exists for their continued welfare in New York. Unlike the first two categories, species of special concern receive no additional legal protection under Environmental Conservation Law section 11-0535 (Endangered and Threatened Species).

P - Protected Wildlife (defined in Environmental Conservation Law section 11-0103): wild game, protected wild birds, and endangered species of wildlife.

U - Unprotected (defined in Environmental Conservation Law section 11-0103): the species may be taken at any time without limit; however a license to take may be required.

G - Game (defined in Environmental Conservation Law section 11-0103): any of a variety of big game or small game species as stated in the Environmental Conservation Law; many normally have an open season for at least part of the year, and are protected at other times.

NY LEGAL STATUS – Plants:

The following categories are defined in regulation 6NYCRR part 193.3 and apply to NYS Environmental Conservation Law section 9- 1503.

E - Endangered Species: listed species are those with:

- 5 or fewer extant sites, or
- fewer than 1,000 individuals, or
- restricted to fewer than 4 U.S.G.S. 7 ½ minute topographical maps, or
- species listed as endangered by U.S. Department of Interior, as enumerated in Code of Federal Regulations 50 CFR 17.11.

T - Threatened: listed species are those with:

- 6 to fewer than 20 extant sites, or
- 1,000 to fewer than 3,000 individuals, or
- restricted to not less than 4 or more than 7 U.S.G.S. 7 and ½ minute topographical maps, or
- listed as threatened by U.S. Department of Interior, as enumerated in Code of Federal Regulations 50 CFR 17.11.

R - Rare: listed species have:

- 20 to 35 extant sites, or
- 3,000 to 5,000 individuals statewide.

continued on back



New York State Office of Parks, Recreation and Historic Preservation
Historic Preservation Field Services Bureau
Peebles Island, PO Box 189, Waterford, New York 12188-0189

518-237-8643

April 17, 2006

ESS rec'd 4/20/06

Sarah K. Faldetta
ESS Group, Inc.
888 Worcester Street, Suite 240
Wellesley, MA 02482

Dear Ms. Faldetta:

Re: CORPS/PSC
Marble River, LLC Wind Farm Project
Clinton/Ellenburg, Clinton County
06PR00069

The State Historic Preservation Office (SHPO) has reviewed the information submitted for this project. Our review has been in accordance with Section 106 of the National Historic Preservation Act and relevant implementing regulations.

The SHPO has reviewed the Work Plan for the Marble River Wind Farm Project. The SHPO approves the proposed scope of work to comply with our guidance for testing Wind Farm Projects.

Our office would like to clarify the terminology for **farm roads** since there may be misunderstanding regarding the definition as it relates to their removal from archeological consideration. These farm roads are generally informal routes enabling the farmer access between fields or woodlots within confines of a farm property. Most of the time there was little effort to "create" the road except possibly filling limited low wet areas with some gravel. Limited use of these without major modifications would not be a concern. However, the SHPO would recommend that farm roads/access roads that meet this definition be considered in the areas to be tested if grading is proposed.

Finally, the SHPO would like a Table included in the Phase IB report that includes the percent of each local habitat in the project area as well as the percent of the habitat tested.

Please include the PR number noted in the heading on all future correspondence for this project. If you have any questions, please call me at (518) 237-8643, extension 3288.

Sincerely,

Cynthia Blakemore
Historic Preservation Program Analyst

CMB:bsa

cc: Patrick J. Heaton, John Milner Associates, Inc.

Marble R.
815.1



New York State Office of Parks, Recreation and Historic Preservation
Historic Preservation Field Services Bureau
Peebles Island, PO Box 189, Waterford, New York 12188-0189

518-237-8643

Bernadette Castro
Commissioner

January 30, 2006

Mr. Daniel A. Spitzer
Hodgen Russ, LLP
1 M&T Plaza, Suite 2000
Buffalo, NY 14203

Re: SEORA Marble River Wind Farm
Clinton/Ellenburg, Clinton County
06PR00069

Dear Mr. Spitzer:

Thank you for the recent correspondence regarding the town of Clinton's review of the proposed Marble River Find Farm. As the state agency responsible for the assessment of the state's historic and cultural resource, we welcome an opportunity to work with your client town in providing comments/guidance on the potential impacts to historic/cultural properties associated with the development of a wind farm.

Earlier this month my staff had an opportunity to meet with the project's cultural resources consultant, John J. Milner Associates. At that time we presented the company with the scope of cultural resources survey work that is recommended by this office. I have enclosed a copy of this scope of work for your review. These guidelines would be the minimum level of review that would be acceptable to this office.

At this point in time the company has come to us and asked that we provide comments on potential impacts to historic/cultural properties in the project's area of potential effect (APE). Once we have had an opportunity to review the work completed by the project sponsor we will forward our evaluation on to the community for inclusion in their environmental review process.

If you, or your client community would like to discuss the scope of work or potential or have any questions, please do not hesitate to contact me at 518-237-8643, ext.3263.

Sincerely,

John A. Bonafide
Historic Preservation Services
Coordinator

- enc: NYSHOP Wind Farm Survey Guide
- cc: Mr. Michael Filion, Supervisor (Town of Clinton)
- Mr. Patrick Doyle, Horizon Wind Energy

New York State Historic Preservation Office

Guidelines for Wind Farm Development Cultural Resources Survey Work

The New York State Historic Preservation Office has established the following guidelines for the assessment of historic and cultural resources associated with the development of wind farm projects in New York State.

Survey for Historic Buildings

1. Establish a five-mile Area of Potential Effect (APE) around the project site.
 - i. Establish boundary of APE using topographic survey to determine where project may be visible from.
2. Conduct field survey within the positive visual APE as defined by topographic study.
3. Using NYSHPO data, the survey will initially identify all buildings/sites within the study area that were previously determined eligible for inclusion in or are already listed in the New York State and National Registers of Historic Places.
4. The survey will assess all buildings 50 years old or older within the study area. Surveyors will determine potential State and National Register eligibility of each resource using the National Register Criteria for Evaluation.
 - i. Surveyor will schedule a meeting with NYSHPO staff prior to undertaking survey work to verify the APE.
 - ii. Surveyor will schedule a meeting with NYSHPO staff after completion of survey of mile-1 "ring" of study area to verify eligibility determination methodology. Meeting will review properties determined eligible and will provide a sampling of resources determined not-eligible.
 - iii. After evaluation methodology is verified by the NYSHPO, survey of remaining APE area will be completed.
 - iv. All properties previously listed in the State and/or National Registers in addition to all properties determined eligible prior to the survey and as part of the project survey are to be marked using a single GPS point. The single point should be taken at the edge of the property generally at the mid-point of the property's street frontage.
 - v. The GPS data will be linked to the street address and/or SHPO Unique Site Number (if one already exists).
 - vi. All survey data will be provided to the NYSHPO in a standardized format that will be discussed at the initial pre-survey meeting.

Archaeological Survey

1. Phase I Archaeological Survey is recommended for all wind farm project areas. The goal of this work is to augment the state's understanding of upland locations and small site types.

2. Archaeological Survey will be limited to the *Archaeological Area of Potential Effect (APE)* associated with the construction of the project. This smaller core of the project APE is composed of areas that will experience ground disturbing activity during the construction phase of the project. These areas include but are not limited to:
 - i. Turbine sites
 - ii. Construction staging areas
 - iii. Borrow pits
 - iv. New/Access Roads
 - v. Utility corridors
 - vi. New building locations
 - vii. Other areas where the current ground surface may be modified as a result of the project.

3. Phase I survey will be conducted by sampling Environmental Zones. Necessary steps in this process include:
 - i. Determining the total acreage of the *Archaeological APE*.
 - ii. Determining the total number of shovel tests recommended for the *Archaeological APE* by multiplying the acreage by 16 shovel tests per acre.
 - iii. Identifying the various environmental zones within the *Archaeological APE* following Robert E. Funk's 1993 work, *Archaeological Investigations in the Upper Susquehanna Valley, New York State* (Chapter 5).

4. Once the zones are defined, the archaeological consultant will divide up the total number of shovel tests previously determined and apply an equal percentage of tests to each defined environmental zone. Any previously identified archaeological site(s) or map documented structure (MDS) must be included in the Phase IB testing.

5. Within each zone shovel testing will be conducted using a five meter interval or other acceptable methods such as plowing/disking for previously plowed farm land.

6. Prior to implementing a proposed testing methodology the project consultant will schedule a meeting with SHPO staff to consult on the proposed plan. A copy of the plan will be provided for SHPO staff review in advance of the meeting.

7. Sites, identified as part of the survey process will be documented using standard practices (such as site forms or approved data bases) and will all be located using a single GPS point.

8. Once the Phase I survey is completed a report will be provided to the SHPO using the established New York SHPO Phase I Archaeological Report Format Requirements and the Standards for Cultural Resource Investigations and the Curation of Archaeological Collections in New York State.

Electronic Survey Data

1. Project sponsors will provide the following data sets to the SHPO as part of their submission. Sponsors or their consultants should contact the SHPO staff to verify specific data requirements.
 - i. GIS data coverage defining the five-mile survey area.
 - ii. GIS data locating (as best as practical) each of the proposed tower locations.
 - iii. GPS data locating by single point each building, structure, object or site identified as being eligible for or listed in the New York State and/or National Registers of Historic Places.
 - iv. GIS data locating the boundary of all archaeologically tested areas.
 - v. Final archaeological reports should be provided in bound format (see New York SHPO Phase I Archaeological Report Format Requirements) as well as in PDF format on CD.

2. Project's consultant should contact SHPO staff to determine exact format of data to be submitted.

For more information about the New York State Historic Preservation Office, please call us at 518-237-8643 or visit our web site at <http://nysparks.state.ny.us> then select **HISTORIC PRESERVATION**. Select the **On Line Resources** option to find specific information regarding historic and cultural resources in any community in the state.



United States Department of the Interior

FISH AND WILDLIFE SERVICE

3817 Luker Road
Cortland, NY 13045



April 15, 2004

Ms. Annetonette Z. Alberti
Project Manager
Tetra Tech FW, Inc.
1 Kelmik Drive
Saratoga Springs, NY 12866

Dear Ms. Alberti:

This responds to your transmittal of February 25, 2004, requesting information on the presence of endangered or threatened species in the vicinity of a proposed energy development project, Site I, in the Towns of Chateaugay, Clinton, Ellenburg, and Mooers, Clinton and Franklin Counties, New York.

It appears that the proposed project may affect species under U.S. Fish and Wildlife Service (Service) jurisdiction, however, further information is necessary to adequately make any determinations. This additional information includes a more detailed project description (e.g., estimate of the operational lifespan of the project, the length of roads to be constructed; whether transmissions lines will be buried or overhead), as well as information on bird and bat use within the project area. We are providing the following comments pursuant to the Migratory Bird Treaty Act (16 U.S.C. 703-712) (MBTA), the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.) (ESA), and the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d). In addition to these comments, we may provide additional future comments under other legislation such as the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.).

One purpose of this letter is to advise the project sponsor of the prohibitions and permitting aspects of the applicable Federal wildlife laws. We do this so your client can make an informed decision regarding site selection, project design, the risk of violating these acts, and whether applying for a permit to cover the anticipated take of the species is appropriate, where such a mechanism is available.

Migratory Birds

Migratory birds, such as waterfowl, passerines, and raptors are Federal trust resources and are protected by provisions of the MBTA and the Service is the primary Federal agency responsible for administering and enforcing the MBTA. This act prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests except when specifically authorized by the Service. The word "take" is defined as "to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture,

or collect." The unauthorized taking of even one bird is legally considered a "take" under the MBTA and is a violation of the law. Neither the MBTA nor its implementing regulations, 50 CFR Part 21, provide for permitting of "incidental take" of migratory birds that may be killed or injured by wind projects. However, we recognize that some birds may be killed at structures such as wind turbines even if all reasonable measures to avoid it are implemented. Depending on the circumstances, the Service's Office of Law Enforcement may exercise enforcement discretion. The Service focuses on those individuals, companies, or agencies that take migratory birds with disregard for their actions and the law, especially when conservation measures have been developed but are not properly implemented.

Operational wind turbines can adversely affect wildlife in a variety of ways. Foremost, the potential exists for bird and bat collision within the rotor-swept area of each turbine. It has been documented that wind turbines cause bat and bird mortality in a variety of species (Erickson et al. 2001). Research to date indicates that raptors are prone to wind turbine collisions. Songbirds, particularly those individuals migrating at night under poor visibility conditions, are even more susceptible. Recently, it has been reported that large numbers of bats have also been killed by these structures located on ridges.

Recognizing the potential impacts to wildlife due to development of wind power projects, the Service developed *Interim Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines* (Guidelines). A copy of this document may be obtained from our office or found on the Internet at www.fws.gov/r9dhcbfa/windenergy.htm. These Guidelines include recommendations for: 1) proper evaluation of wind resource areas; 2) proper siting and design of turbines within development areas; and 3) pre- and post-construction research and monitoring to identify and/or assess impacts to wildlife. We suggest the project sponsor review this information during the development of the project design.

The potential for bat and bird mortality from this type of project appears to be dependent on factors such as wildlife abundance, presence of a migration corridor, geographic location, and particular landscape features. As specified in the Guidelines, the project site should be evaluated for habitat features such as the presence of breeding, feeding, and roosting areas. Unique habitats, such as wetlands, must also be considered.

A bat and bird risk assessment should be conducted by the project sponsor. This assessment should include a review of all available data and literature relevant to bat and bird use of this site. In addition, the assessment should identify potential impacts as a result of collisions with turbines including the potential effects on, but not limited to, raptors, passerines, and bats, as well as cumulative effects of collision mortality from the proposed turbines. The physical disturbance, direct loss, and fragmentation of grassland and forest habitat should also be included in the evaluation. This information should be incorporated into the project's environmental documents for review.

If the results of the risk assessment indicate there may be the potential for adverse effects, we may recommend pre-construction studies of bird use of the proposed project site. Pre-construction studies of bats for this location are recommended (see endangered species comments). These studies should be of sufficient rigor to determine the temporal and spatial distribution of resident and migrating bat and bird species in and adjacent to the project area during various weather conditions (e.g., fog, rain, low cloud ceilings, clear skies, etc.). Information on monitoring the project site for bird species can be obtained from "Studying Wind Energy/Bird Interactions: A Guidance Document. Metrics and Methods for Determining or

Monitoring Potential Impacts on Birds at Existing and Proposed Wind Energy Sites" (National Wind Coordinating Committee 1999).

In order to determine the potential collision-hazard for a particular site, the spatial and temporal uses of the airspace by birds and bats needs to be defined during a multi-year period. This can best be accomplished by using remote sensing technology (radar, acoustic, and infrared) to collect data in various spatial and temporal scales (day and night, season to season, and year to year). Traditional sampling protocols (e.g., visual observation and/or mist netting) may be appropriate to supplement the remote sensing work and would likely be necessary to ground truth the data for individual species. Survey techniques are currently evolving and the applicant should work closely with this office and the New York State Department of Environmental Conservation (State) to develop a draft study design prior to conducting any studies. Survey results should also be submitted to us for review and comment, along with proposed project-specific avoidance and minimization methods to reduce the risk of bat and bird mortality.

Finally, the Service recommends that all wind power projects that proceed to construction be monitored for impacts to wildlife following construction and during turbine operation. Therefore, we recommend monitoring for the newly proposed turbines. Post-construction bat and bird mortality monitoring should occur for a minimum of three years. Methods should be coordinated with both the Service and the State. Information gained from post-construction monitoring will continue to aid the Service and project sponsors as we learn more about the potential impacts, or lack thereof, to wildlife (including listed species - see below) in the project area.

Endangered Species

Section 9 of the ESA prohibits the take of any Federally-listed animal species by any person subject to the jurisdiction of the United States. The term "person" is defined as "...an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal government, of any State, municipality, or political subdivision of a State, or any other entity subject to the jurisdiction of the United States." Section 11 of the Act provides for both civil and criminal penalties for those convicted of Section 9 violations.

As defined in the ESA, take means "...to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such conduct." "Harm" in the definition of take means an act which kills or injures wildlife. Such an act may include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR Part 17.3). "Harass" means an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering.

Take, incidental to an otherwise lawful activity, may be authorized by one of two procedures. If a Federal agency is involved with the permitting, funding, or carrying out of the project and a listed species will be adversely affected, then initiation of formal consultation between that agency and the Service pursuant to Section 7 of the ESA is required. Such consultation would result in a biological opinion addressing the anticipated effects of the project to the listed species, and may authorize a limited level of incidental take. If a Federal agency is not involved in the project, and Federally-listed species may be taken as a result of the project, then an incidental

take permit pursuant to Section 10(a)(1)(B) of the ESA should be obtained. The Service may issue such a permit upon completion of a satisfactory habitat conservation plan for the listed species that would be taken by the project. With respect to this project, it is not clear whether any Federal agency is involved in project permitting, funding, or authorization.

The Indiana bat (*Myotis sodalis*) is a Federally-listed endangered species that may be affected by the proposed project. The Indiana bat is known to winter in six counties in New York State. While we have learned a great deal about the wintering population with standardized counts organized by the State, we are continuing to study Indiana bat migratory patterns and summer habitat use within New York. Previous research has documented Indiana bat movements of up to 330 miles between hibernacula and summer habitats (Kurta and Murray 2002). However, that study (as well as the majority of research on Indiana bats) took place in the Midwest. In the Northeast, multiple agencies are investigating Indiana bat movements and the most recent studies of bats from a hibernaculum in Essex County, New York, provide additional information.

In the Essex County study, twenty-two female and two male Indiana bats were captured as they exited their wintering site and marked with radio transmitters. Nineteen females were subsequently tracked and observed at spring roosts and maternity colony sites 8-26 miles from the hibernaculum (in the Lake Champlain Valley) (Service unpub. data). Prior to extending the findings of this study to all of New York, it is important to consider factors such as the sample size of this study, as well as specific information for each project site (e.g., topography, presence of suitable habitat, source population size). In addition, it is important to note that the study results do not include information on distances Indiana bats travel from their roosts and maternity colonies to foraging areas. We will continue to learn more about migration and summer habitat use in the next few years with additional radio telemetry studies.

For this project, there are three known hibernacula for the Indiana bat within 75 miles from the proposed site. Bats from these and/or other potential nearby hibernacula could be affected by the proposed wind turbine project. Specifically, bats migrating through the area to and from their summer roosting habitats or maternity colonies may fly through the turbine field. Bat mortalities have previously been observed at various turbine sites (e.g., Buffalo Ridge, MN; Foote Creek Rim, WY; Backbone Mountain, WV). Based on current information, it appears that most fatalities have occurred during late summer and early fall migration (Johnson *in press*). This further emphasizes our concern about the potential for adverse effects to migrating Indiana bats. In addition to our concerns about migrants, there may be resident bats using roost trees in the vicinity of the project and/or using the site for foraging habitat. While the majority of fatalities documented to date has involved migratory tree bats, impacts to cave bats have also been observed and there is still much to learn about potential impacts of wind projects on all bat species.

To determine the likelihood of adverse effects on Indiana bats, we recommend that the applicant conduct pre-construction monitoring of bats at this location using radar, acoustical studies, and/or other appropriate sampling techniques. As stated above, the applicant should work closely with this office and the State to develop a draft study design prior to conducting any studies. These surveys should be conducted during the active Indiana bat flight period (April through October), with the number of survey years to be determined through the study design process. All survey results should be provided to this office as they will be used to evaluate potential impacts to the Indiana bat, and to determine the need for further coordination or consultation pursuant to the ESA.

Except for the Indiana bat and occasional transient individuals, no other Federally listed or proposed endangered or threatened species under our jurisdiction are known to exist in the project impact area. In addition, no habitat in the project impact area is currently designated or proposed "critical habitat" in accordance with provisions of the ESA. Should project plans change, or if additional information on listed or proposed species or critical habitat becomes available, this determination may be reconsidered. The most recent compilation of Federally listed and proposed endangered and threatened species in New York* is available for your information.

The small-footed bat (*Myotis leibisi*) is found at the same hibernacula as the Indiana bat, as well as additional locations in the project vicinity. The small-footed bat is considered a species of concern (formerly known as Category 2 Candidate species) by the Service and its status is being monitored throughout much of its range. Species of concern do not receive substantive or procedural protection under the ESA; however, the Service does encourage Federal agencies and other appropriate parties to consider these species in the project planning process.

The Indiana bat is listed as endangered and the small-footed bat is considered a species of special concern by the State of New York. The information requested above should be coordinated with both this office and with the State. The State contact for the Indiana bat and small-footed bat is Mr. Peter Nye, Endangered Species Unit, 625 Broadway, Albany, NY 12233 (telephone: [518] 402-8859).

For additional information on fish and wildlife resources or State-listed species, we suggest you contact the appropriate State regional office(s),* and:

New York State Department of Environmental Conservation
New York Natural Heritage Program Information Services
625 Broadway
Albany, NY 12233-4757
(518) 402-8935

Since wetlands may be present, you are advised that National Wetlands Inventory (NWI) maps may or may not be available for the project area. However, while the NWI maps are reasonably accurate, they should not be used in lieu of field surveys for determining the presence of wetlands or delineating wetland boundaries for Federal regulatory purposes. Copies of specific NWI maps can be obtained from:

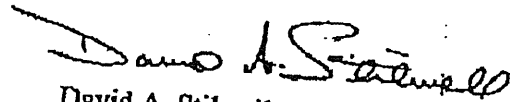
Cornell Institute for Resource Information Systems
302 Rice Hall
Cornell University
Ithaca, NY 14853-5601
(607) 255-6520
web: <http://iris.css.cornell.edu>
email: cornell-iris@cornell.edu

Work in certain waters of the United States, including wetlands, may require a permit from the U.S. Army Corps of Engineers (Corps). If a permit is required, in reviewing the application pursuant to the Fish and Wildlife Coordination Act, the Service may concur, with or without recommending additional permit conditions, or recommend denial of the permit depending upon potential adverse impacts on fish and wildlife resources associated with project construction or

implementation. The need for a Corps permit may be determined by contacting the appropriate Corps office(s).*

If you require additional information or assistance please contact Michael Stoll or Timothy Sullivan at (607) 753-9334.

Sincerely,



David A. Stilwell
Field Supervisor

*Additional information referred to above may be found on our website at:
<http://nyfo.fws.gov/es/esdesc.htm>.

References:

- Erickson, W.P., G.D. Johnson, M.D. Strickland, D.P. Young, Jr., K.J. Semka, and R.E. Good. 2001. Avian collisions with wind turbines: A summary of existing studies and comparisons to other sources of avian collision mortality in the United States. National Wind Coordinating Committee publication.
- Johnson, G.D. In press. What is known and not known about bat collision mortality at windplants? *In*: R.L. Carlton (ed.). Avian interactions with wind power structures. Proceedings of a workshop held in Jackson Hole, Wyoming, USA, October 16-17, 2002. Electric Power Research Institute, Concord, CA.
- Kurta, A., and S.W. Murray. 2002. Philopatry and migration of banded Indiana bats (*Myotis sodalis*) and effects of radio transmitters. *Journal of Mammalogy* 83(2):585-589.
- National Wind Coordinating Committee. 1999. Studying Wind Energy/Bird Interactions: A Guidance Document. Metrics and Methods for Determining or Monitoring Potential Impacts on Birds at Existing and Proposed Wind Energy Sites.
- U.S. Fish and Wildlife Service. 2003. Interim guidelines to avoid and minimize wildlife impacts from wind turbines. Web site address:
<http://www.fws.gov/r9dhcbfa/WindTurbineGuidelines.pdf>
- cc: NYSDEC, Ray Brook, NY (Environmental Permits)
NYSDEC, Albany, NY (Natural Heritage)
NYSDEC, Albany, NY (Endangered Species Unit, Attn: P. Nyc/A. Hicks)
EPA, Div. of Environmental Planning & Protection, New York, NY
COE, New York, NY



United States Department of the Interior

FISH AND WILDLIFE SERVICE

3817 Luker Road
Cortland, NY 13045



October 20, 2005

RECEIVED

OCT 24 2005

EDR, P.C.

Mr. Brian Schwabenbauer
Environmental Analyst
EDR, P.C.
238 West Division Street
Syracuse, NY 13204

Dear Mr. Schwabenbauer:

This responds to your letter of September 19, 2005, requesting information on the presence of Federally-listed or proposed endangered or threatened species in the vicinity of an area under study for potential development of a wind energy facility in the Towns of Ellenburg and Clinton, Clinton County, New York. We will address listed species, but will also provide information regarding the potential for other wildlife-related concerns first.

It appears that siting a wind energy facility in that area could affect species under U.S. Fish and Wildlife Service (Service) jurisdiction; however, further information is necessary to adequately make any determinations. This additional information includes a more detailed project description (*e.g.*, estimate of the operational lifespan of the project, the length of roads to be constructed, whether transmissions lines will be buried or overhead), as well as information on habitat and bird and bat use within the project area. We are providing the following comments pursuant to the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712), the Endangered Species Act of 1973 (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*), and the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d). In addition to these comments, we may provide additional future comments under other legislation such as the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*).

The Service supports use of renewable energy resources when developed in an environmentally responsible manner. Renewable energy sources, such as solar and wind, can reduce the environmental impacts of extraction and emissions associated with burning fossil fuels. To ensure that environmental benefits of renewable energy development outweigh potential impacts, we will work with the project sponsor in identifying ways that protect wildlife.

One purpose of this letter is to advise the project sponsor of prohibitions and permitting aspects of the applicable Federal wildlife laws. We do this so the project sponsor can make an informed decision regarding site selection, project design, the risk of violating these acts, and whether applying for a permit to cover the anticipated take of the species is appropriate, where such a mechanism is available.

Migratory Species

Background

Migratory birds, such as waterfowl, passerines, and raptors are Federal trust resources and are protected by provisions of the MBTA; the Service is the primary Federal agency responsible for administering and enforcing the MBTA. This act prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests except when specifically authorized by the Service. The word “take” is defined as “to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect.” The unauthorized taking of even one bird is legally considered a “take” under the MBTA and is a violation of the law. Neither the MBTA nor its implementing regulations, 50 CFR Part 21, provide for permitting of “incidental take” of migratory birds that may be killed or injured by wind projects. However, we recognize that some birds may be killed at structures such as wind turbines even if all reasonable measures to avoid it are implemented. Depending on the circumstances, the Service’s Office of Law Enforcement may exercise enforcement discretion. The Service focuses on those individuals, companies, or agencies that take migratory birds with disregard for their actions and the law, especially when conservation measures have been developed but are not properly implemented.

Operational wind turbines can adversely affect wildlife in a variety of ways. Foremost, the potential exists for bird and bat collision within the rotor-swept area of each turbine. It has been documented that wind turbines cause bat and bird mortality in a variety of species (Erickson et al. 2001). Research to date indicates that raptors are prone to wind turbine collisions. Songbirds, particularly those individuals migrating at night under poor visibility conditions, are even more susceptible. Recently, it has been reported that large numbers of bats have also been killed by these structures located on ridges. Habitat loss, fragmentation, and degradation are also potential impacts from wind energy development projects. Turbines can affect breeding and feeding behavior in some species, as well.

Recognizing potential impacts to wildlife due to development of wind power projects, the Service developed *Interim Guidelines to Avoid and Minimize Wildlife Impacts from Wind Turbines* (Guidelines) (Service 2003). A copy of this document may be obtained from our office or found on the Internet at www.fws.gov/r9dhcbfa/wind.pdf. These Guidelines include recommendations for: 1) proper evaluation of wind resource areas; 2) proper siting and design of turbines within development areas; and 3) pre- and post-construction research and monitoring to identify and/or assess impacts to wildlife. We suggest the project sponsor review this information during development of the project design.

The potential for bat and bird mortality from this type of project appears to be dependent on factors such as wildlife abundance, presence of a migration corridor, geographic location, and particular landscape features. As specified in the Guidelines, the project site should be evaluated for habitat features such as the presence of breeding, feeding, and roosting areas. Unique habitats, such as wetlands, should also be considered.

Recommendations

The Service recommends that a bat and bird risk assessment should be conducted by the project sponsor. This assessment should include a review of all available data and literature relevant to bat and bird use of this site. In addition, the assessment should identify potential impacts as a

result of collisions with turbines including the potential effects on, but not limited to, raptors, passerines, and bats, as well as cumulative effects of collision mortality from the proposed turbines. The physical disturbance, direct loss, and fragmentation of grassland and forest habitat should also be included in the evaluation. This information should be incorporated into the project's environmental documents for review.

As part of the risk assessment process, we recommend that pre-construction studies of bird use of the proposed project site be completed. These studies should be of sufficient rigor to determine the temporal and spatial distribution of resident and migrating bat and bird species in and adjacent to the project area during various weather conditions (*e.g.*, fog, rain, low cloud ceilings, clear skies, etc.). One source of information on monitoring the project site for wildlife species can be obtained from "Studying Wind Energy/Bird Interactions: A Guidance Document. Metrics and Methods for Determining or Monitoring Potential Impacts on Birds at Existing and Proposed Wind Energy Sites" (National Wind Coordinating Committee 1999).

In order to determine the potential collision-hazard for a particular site, and to account for annual variability, the spatial and temporal uses of the project airspace by birds and bats needs to be defined during a multi-year period. This can best be accomplished by using remote sensing technology (radar, acoustic, and infrared) to collect data in various spatial and temporal scales (day and night, season to season, and year to year). Traditional sampling protocols (*e.g.*, visual observation and/or mist netting) may be appropriate to supplement the remote sensing work and would likely be necessary to ground truth the data for individual species. Survey techniques are currently evolving and the project sponsor should work closely with this office and the New York State Department of Environmental Conservation (NYSDEC) to develop a draft study design prior to conducting any studies. Survey results should also be submitted to us for review and comment, along with proposed project-specific avoidance and minimization methods to reduce the risk of bat and bird mortality.

Finally, the Service recommends that all wind power projects that proceed to construction be monitored for impacts to wildlife following construction and during turbine operation. Therefore, we recommend mortality monitoring be completed on a systematic basis around the turbines. Post-construction bat and bird mortality monitoring should occur for a minimum of three years. Methods should be coordinated with both the Service and the NYSDEC. Information gained from post-construction monitoring will continue to aid the Service and project sponsors about the potential impacts, or lack thereof, to wildlife (including listed species - see below) in the project area.

Federally-listed Threatened or Endangered Species

Except for occasional transient individuals, no Federally-listed or proposed endangered or threatened species under our jurisdiction are known to exist in the project impact area. In addition, no habitat in the project impact area is currently designated or proposed "critical habitat" in accordance with provisions of the ESA. Should project plans change, or if additional information on listed or proposed species or critical habitat becomes available, this determination may be reconsidered. The most recent compilation of Federally-listed and proposed endangered and threatened species in New York* is available for your information. If the proposed project is not completed within one year from the date of this determination, we recommend that you contact us to ensure that listed species presence/absence information for the proposed project is current.

The above comments pertaining to endangered species under our jurisdiction are provided pursuant to the ESA. This response does not preclude additional Service comments under other legislation.

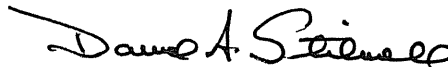
For additional information on fish and wildlife resources or State-listed species, we suggest you contact the appropriate State regional office(s),* and:

New York State Department of Environmental Conservation
New York Natural Heritage Program Information Services
625 Broadway
Albany, NY 12233-4757
(518) 402-8935

Work in certain waters of the United States, including wetlands, and streams may require a permit from the U.S. Army Corps of Engineers (Corps). If a permit is required, in reviewing the application pursuant to the Fish and Wildlife Coordination Act, the Service may concur, with or without recommending additional permit conditions, or recommend denial of the permit depending upon potential adverse impacts on fish and wildlife resources associated with project construction or implementation. The need for a Corps permit may be determined by contacting the appropriate Corps office(s).*

If you require additional information or assistance please contact Timothy Sullivan at (607) 753-9334. Future correspondence with us on this project should reference project file 52662.

Sincerely,



David A. Stilwell
Field Supervisor

*Additional information referred to above may be found on our website at:
<http://nyfo.fws.gov/es/esdesc.htm>.

References:

Erickson, W.P., G.D. Johnson, M.D. Strickland, D.P. Young, Jr., K.J. Semka, and R.E. Good. 2001. Avian collisions with wind turbines: A summary of existing studies and comparisons to other sources of avian collision mortality in the United States. National Wind Coordinating Committee publication.

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U.S. Fish and Wildlife Service. 2003. Interim guidelines to avoid and minimize wildlife impacts from wind turbines. Web site address:
<http://www.fws.gov/r9dhcbfa/WindTurbineGuidelines.pdf>

cc: NYSDEC, Region 5, Ray Brook, NY (Environmental Permits)
NYSDEC, Albany, NY (Natural Heritage)
NYSDEC, Albany, NY (Endangered Species Unit, Attn: P. Nye/A. Hicks)
EPA, Div. of Environmental Planning & Protection, New York, NY

Marble River, LLC
3 Columbia Place,
Albany
NY 12207

Mike Filion
Town Supervisor
Town of Clinton
Churubusco, NY 12923

4/4/2006

Dear Mr. Filion;

RE: Clarification of the waiver requests in the Supplemental Permit Application for the Marble River Wind Farm

This letter is to provide clarification in regard to the requests for setback waivers made in the cover letter of the Supplemental Permit Application for the Marble River Wind Farm dated January 6th, 2006. Pursuant to Article IV, Section 29 of the Local Law, the Applicant has made requests for waiver from Article II, Section 15 (E)(1) that requires each WECS to be setback 500 feet from the nearest non participating property line.

Based on input from the Town's advisors, we would like to further clarify this request for the Town Board as follows:

:

- 1) WECS 12 on Allen A Gartner – waiver of 124 feet from the property line of “State Land” to the south.
- 2) WECS 35 on Chester Sears – waiver of 400 feet from the property line of Larry Lagree to the east.
- 3) WECS 31 on Chester Sears – waiver of 80 feet from the property line of Larry Lagree to the south.
- 4) WECS 123 on William Wilkins – waiver of 25 feet from the property line of Chylinski-Polubinski Trust, Ksiazce to the west.
- 5) WECS 136 on Richard Cole - waiver of 241 feet from the property line of Chylinski-Polubinski Trust, Ksiazce to the east and 150 feet to the west.
- 6) WECS 172 on Stephen Hammond – waiver of 250 feet from the property line of Raymond Turner to the east and 100 feet to John Pizar to the west.
- 7) WECS 19 on Glen Fountain – waiver of 25 feet from the property line of Raymond Turner to the southeast.
- 8) WECS 174 on John Pollic – waiver of 25 feet from the property line of Chylinski-Polubinski Trust, Ksiazce to the south.
- 9) WECS 202 on Allen Gartner – waiver of 150 feet from the property line of Frank Drown to the north.
- 10) WECS 206 on Henry Buettner – waiver of 25 feet from the property line of Lawrence Skidders to the north.

Note that four of these requests for waivers are for sites where the waiver request may or may not be necessary as the, approximately, 25 foot waiver amounts fall well within the margin of error on GIS maps. The Applicant will be conducting a pre-construction survey to confirm the actual distance from the proposed improvements to neighboring property lines and, as noted in the Supplemental Permit Application of January 6th, the Applicant has and will continue to contact each of the affected property owners to seek their written consent. We are pleased to advise that Marble River has been successful in receiving the

consent of a number of the affected landowners and we continue with the process of contacting the remaining neighbors. In the event that an affected property owner does not provide their consent, the Applicant will remove the specific WECS from the site plans so as to assure 100% compliance with the town of Clinton Local Law #1.

Sincerely,

Patrick Doyle



UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and
Information Administration
Washington, D.C. 20230

FEB 20 2006

Mr. Lester E. Polisky
Comsearch
Senior Principal Engineer
Field Services Department
19700 Janelia Farms Blvd
Ashburn, VA 21147

RE: Marble River Wind Farm Development in Clinton County, NY

Dear Mr. Polisky:

In response to your request, the National Telecommunications and Information Administration provided to the federal agencies represented in the Interdepartment Radio Advisory Committee (IRAC) the plans for the Marble River Wind Farm Development in Clinton County, NY. After a 30 day period of review, the agencies have not identified any concerns regarding blockage of their radio frequency transmissions.

While the IRAC agencies did not identify any concerns regarding radio frequency blockage, this does not eliminate the need for the wind energy facilities to meet any other requirements specified by law related to these agencies. For example, this review by the IRAC does not eliminate any need that may exist to coordinate with the Federal Aviation Administration concerning flight obstruction.

Thank you for the opportunity to review these proposals.

Sincerely,

Karl B. Nebbia
Deputy Associate Administrator
Office of Spectrum Management