



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Ecological Services
Colorado Field Office
P.O. Box 25486, DFC (65412)
Denver, Colorado 80225-0486

IN REPLY REFER TO:

ES/CO: Solar Energy / El Paso County / Front Range-Midway Solar Project
TAILS: 06E24000-2014-TA-0805

JUL 29 2014

Ida Kitchen-Greenwell
Trade Wind Energy Inc.
16150 West 113th Street suite 105
Lenexa, KS 66219

Dear Ms. Kitchen-Greenwell:

Thank you for your email and letter to the U.S. Fish and Wildlife Service (Service) received July 16, 2014, regarding Trade Wind Energy's proposed Front Range-Midway solar photovoltaic (PV) project (project) located west of I-25 about 20 miles south of downtown Colorado Springs in El Paso County, Colorado.

Trade Wind Energy proposes to install and operate a solar array with capable of generating up to 100 MW of solar capacity on approximately 800 acres of vacant land, which is currently surrounded by infrastructure, including a regional landfill and a large electrical substation near the town of Fountain.

The PV panels will be affixed to a ground-mounted racking system supported by steel pylons driven into the ground. Light duty gravel service roads will be constructed within the solar array to provide access for ongoing maintenance. The solar array will be approximately 3 feet off ground surface and 1- feet in height, and will cover approximately 80% of the project area.

In preparation for a NEPA process and development of an Environmental Assessment you evaluated potential for threatened and endangered species to occur within the project area. Your report recommends that a habitat assessment be conducted to determine with greater certainty whether any T or E species habitats may be present in the area.

In response to your letter, we provide the following comments regarding:

1. Federally listed species;
2. Migratory birds;
3. Electrical transmission and distribution lines; and
4. State species of special concern, specifically the Gunnison's prairie dog.

The Service provides recommendations for threatened and endangered species under the authority of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*).

Protective measures for migratory birds are provided under the authority of the Migratory Bird Treaty Act of 1918 (MBTA), as amended (16 U.S.C. 703 *et seq.*), and the Bald and Golden Eagle Protection Act of 1940 (BGEPA), as amended (16 U.S.C. 668 *et seq.*). We consider other fish and wildlife resources under the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*) and the Fish and Wildlife Act (16 U.S.C. 742 *et seq.*).

1. Federally Listed Species

The proposed project is located within a developed area near the town of Fountain, Colorado. The primary vegetation type is grassland/herbaceous, which correlates to short-grass prairie with some scrub/shrub land cover. Given the land cover types, we would agree that an on-site habitat assessment should be conducted.

2. Migratory Birds and Bald and Golden Eagles

Activities associated with solar energy projects often include the removal of vegetation, underground burrows, or other structures used by migratory birds and eagles for nesting, roosting, perching, or foraging. During operation, solar energy facilities and their transmission lines may impact migratory birds by interrupting movements or by killing birds during collisions. Disturbed agricultural areas often provide foraging or ground nesting habitats for several migratory birds, such as the mountain plover (*Charadrius montanus*), and their conversion to solar farms may reduce or fragment available habitats. Therefore, we highlight the relevance of the MBTA and BGEPA to your project and provide recommendations intended to limit your project's impacts on migratory birds and eagles.

The Migratory Bird Treaty Act (MBTA):

The MBTA protects migratory birds, nests, and eggs from possession, sale, purchase, barter, transport, import, export, and take. Under the MBTA, it is unlawful unless permitted by regulations to pursue, hunt, take, capture, kill, or attempt to pursue, hunt, take, capture, or kill any migratory birds by any means or in any manner. The MBTA applies to 1,007 species of migratory birds identified in 50 CFR. § 10.13 and "take" is defined in 50 CFR § 10.12. The MBTA does not require intent to be proven, there is no incidental take statement, and the ESA does not absolve individuals or companies from liability under the MBTA. Unless permitted by the Service, the MBTA prohibits any intentional or unintentional activity that results in the take of migratory birds. Although the MBTA does not protect the habitats of migratory birds, activities that affect habitats and result in take of migratory birds do violate the MBTA.

The Bald and Golden Eagle Protection Act (BGEPA):

The BGEPA prohibits individuals and companies from knowingly, or with wanton disregard for the consequences of the Act, taking any bald or golden eagles or their body parts, nests, chicks, or eggs, which includes collection, molestation, disturbance, or killing. The BGEPA affords eagles additional protections beyond those provided by the MBTA by making it unlawful to "disturb" eagles. "Disturb" means to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, injury to an eagle or decreases its productivity or results in nest abandonment due to interference with breeding, feeding, or sheltering behaviors. A permitting

process provides limited exceptions to the BGEPA's prohibitions and the Service has issued regulations concerning the permit procedures in 50 CFR Part 22.

Removing nests, destroying nests, or causing nest abandonment may constitute a violation of the MBTA and BGEPA. Removal of any active migratory bird nest or nest tree is prohibited. For golden eagles, permits for inactive nests are restricted to activities involving resource extraction for human health and safety. No permits will be issued for any active nest of any migratory bird species, unless removal of the active nest is necessary for reasons of human health and safety. Therefore, if nesting migratory birds are present within or near the project area, timing of activities is a significant consideration and should be addressed in the early phases of project planning. Nest manipulation is not allowed without a permit. If a permit cannot be issued, your project may need to be modified to ensure that take of any migratory bird, eagle, young, eggs, or nests will not occur.

Recommendations for migratory birds and eagles:

To minimize impacts to migratory birds, the Service recommends that construction occur outside the typical breeding season for migratory birds. Although the provisions of the MBTA apply year-round, most nesting activity occurs between April 1 and July 15. However, some migratory birds nest outside of this loosely defined period. If proposed activities must occur during the nesting season, or at any other time that may result in the take of migratory birds or eagles, the Service recommends that qualified biologists conduct pre-work field surveys of the affected habitats or structures, during the nesting season, to verify the presence or absence of migratory birds and eagles. Contact the Service's Colorado Field Office for guidance if surveys identify birds or nests that may be affected by project activities.

Enclosed, please find a copy of Colorado Parks and Wildlife's "Recommended Buffer Zones and Seasonal Restrictions for Colorado Raptors" (2008). We recommend reviewing these guidelines and incorporating the seasonal and buffer restrictions into your project design to avoid and minimize impacts to raptors and other migratory birds protected by the MBTA.

While adoption of these recommendations is voluntary, we remind Trade Wind Energy that the MBTA and BGEPA prohibit the take of migratory birds and eagles unless permitted by regulations. As mandated by our trust responsibilities, we immediately notify the Service's Office of Law Enforcement of any incidents of take at energy facilities.

It is not possible to absolve individuals, companies, or agencies from liability under the MBTA or BGEPA, even if they implement the guidelines or similar protective measures at their facilities. However, the Service's Office of Law Enforcement focuses its resources on investigating and prosecuting individuals and companies that take migratory birds without identifying and implementing all reasonable prudent and effective measures to avoid that take. It remains the applicant's responsibility to minimize the effects of their projects on migratory birds and other resources. For more information on MBTA and BGEPA regulations and their relevance to your project, please contact Craig Hansen of the Colorado Field Office at (303) 236-4749.

3. Electrical Transmission and Distribution Lines:

Solar energy facilities often require the development of new transmission and distribution lines. Overhead electrical lines concern the Service because published studies indicate that power lines can negatively affect wildlife. Collisions with power lines, power poles, and associated infrastructure often electrocute and kill birds, bats, and other wildlife. Projects may also permanently displace wildlife when activities alter or remove key components of important habitats. Early planning, coordination, and the strategic placement of power lines and associated facilities can avoid or reduce these impacts.

The Avian Power Line Interaction Committee (APLIC) developed guidelines and resources intended to address and mitigate electrocutions and collisions between wildlife and power lines. We recommend that you review and consider implementing these guidelines during the construction and operation of your electrical facilities. APLIC resources are available online at the following address:

<http://www.aplic.org/mission>

In Colorado, electrocutions at power lines are a serious threat to the ferruginous hawk (*Buteo regalis*), the golden eagle (*Aquila chrysaetos*), and other large raptors. In open prairies or agricultural fields, electrical poles often provide suitable perches or nest sites for birds of prey. As birds perch or build nests on power poles, their long wingspans easily touch electrical lines and complete circuits, effectively disrupting electrical service and often fatally electrocuting the bird. Undergrounding electrical lines eliminates the threat of electrocution and avian-caused power outages. Therefore, the Service recommends undergrounding electrical facilities whenever possible.

However, if undergrounding any overhead electrical line is not possible, we recommend that the proponents build overhead electrical lines with at least 10-foot cross arms on 3 phase lines, or at least 5 feet of spacing between electrical phases. Larger distances better accommodate long wingspans and may reduce electrocutions and power outages caused by birds at your power lines. APLIC provides additional recommendations to prevent electrocutions and power outages by discouraging perching and nesting.

4. State Species of Concern:

Our comments address federally listed species, federally designated critical habitats, and migratory birds. Please contact Colorado Parks and Wildlife (CPW) at (303) 297-1192 regarding any State species of special designation in Colorado that are not federally listed and that may occur within your project area. For example, the open areas within your project area may support colonies of the black-tailed prairie dog (*Cynomys ludovicianus*), a State species of special concern in Colorado.

The black-tailed prairie dog is a ground dwelling squirrel that lives in grasslands, including those in urban areas, disturbed right-of-ways, agricultural fields, and road or utility easements. Many grassland species, such as the burrowing owl (*Athene cunicularia*) depend on the underground burrows and colonies built by black-tailed prairie dogs. Due to their important value to the

prairie ecosystem and the many species that rely on them, we strongly encourage the conservation of prairie dogs.

To avoid and minimize impacts to prairie dogs or their dependent species, we recommend conducting preconstruction surveys for prairie dogs and their associated species. Design the project to avoid disturbing active colonies. If the project cannot avoid active colonies, relocate prairie dogs or consider donating them to a black-footed ferret or raptor recovery program. Contact CPW for more information on the regulations and guidelines that address the capture, transportation, and relocation of prairie dogs in Colorado.

The Service appreciates the opportunity to work with Trade Wind Energy on the proposed solar PV project. If we can be of any additional assistance, please contact the Colorado Field Office at 303-236-4773. Thank you for your concern endangered species and other natural resources.

Sincerely,

A handwritten signature in blue ink that reads "Susan C. Linner".

Susan C. Linner
Colorado Field Supervisor

Enclosure: CPW's recommended buffer zones and guidelines for raptors (2008)
Available online: <http://bit.ly/WXJYEh>



RECOMMENDED BUFFER ZONES AND SEASONAL RESTRICTIONS FOR COLORADO RAPTORS

Tolerance limits to disturbance vary among as well as within raptor species. As a general rule, Ferruginous Hawks and Golden Eagles respond to human activities at greater distances than do Ospreys and America Kestrels. Some individuals within a species also habituate and tolerate human activity at a proximity that would cause the majority of the group to abandon their nests. Other individuals become sensitized to repeated encroachment and react at greater distances. The tolerance of a particular pair may change when a mate is replaced with a less tolerant individual and this may cause the pair to react to activities that were previously ignored. Responses will also vary depending upon the reproductive stage. Although the level of stress is the same, the pair may be more secretive during egg laying and incubation and more demonstrative when the chicks hatch.

The term "disturbance" is ambiguous and experts disagree on what actually constitutes a disturbance. Reactions may be as subtle as elevated pulse rate or as obvious as vigorous defense or abandonment. Impacts of disturbance may not be immediately evident. A pair of raptors may respond to human intrusion by defending the nest, but well after the disturbance has passed, the male may remain in the vicinity for protection rather than forage to feed the nestlings. Golden eagles rarely defend their nests, but merely fly a half mile or more away and perch and watch. Chilling and over heating of eggs or chicks and starvation of nestlings can result from human activities that appeared not to have caused an immediate response.

A 'holistic' approach is recommended when protecting raptor habitats. While it is important for land managers to focus on protecting nest sites, equal attention should focus on defining important foraging areas that support the pair's nesting effort. Hunting habitats of many raptor species are extensive and may necessitate interagency cooperation to assure the continued nest occupancy. Unfortunately, basic knowledge of habitat use is lacking and may require documentation through telemetry investigations or intensive observation. Telemetry is expensive and may be disruptive so a more practical approach is to assume that current open space is important and should be protected.

Although there are exceptions, the buffer areas and seasonal restrictions suggested here reflect an informed opinion that if implemented, should assure that the majority of individuals within a species will continue to occupy the area. Additional factors, such as intervening terrain, vegetation screens, and the cumulative impacts of activities should be considered.

These guidelines were originally developed by CDOW raptor biologist Gerald R. Craig (retired) in December 2002. To provide additional clarity in guidance, incorporate new information, and update the conservation status of some species, the guidelines were revised in January 2008. Further revisions of this document may become necessary as additional information becomes available.

RECOMMENDED BUFFER ZONES AND SEASONAL RESTRICTIONS

BALD EAGLE

Nest Site:

No surface occupancy (beyond that which historically occurred in the area; see 'Definitions' below) within ¼ mile radius of active nests (see 'Definitions' below). Seasonal restriction to human encroachment (see 'Definitions' below) within ½ mile radius of active nests from October 15 through July 31. This closure is more extensive than the National Bald Eagle Management Guidelines (USFWS 2007) due to the generally open habitat used by Colorado's nesting bald eagles.

Winter Night Roost:

No human encroachment from November 15 through March 15 within ¼ mile radius of an active winter night roost (see 'Definitions' below) if there is no direct line of sight between the roost and the encroachment activities. No human encroachment from November 15 through March 15 within ½ mile radius of an active winter night roost if there is a direct line of sight between the roost and the encroachment activities. If periodic visits (such as oil well maintenance work) are required within the buffer zone after development, activity should be restricted to the period between 1000 and 1400 hours from November 15 to March 15.

Hunting Perch:

Diurnal hunting perches (see 'Definitions' below) associated with important foraging areas should also be protected from human encroachment. Preferred perches may be at varying distances from human encroachment and buffer areas will vary. Consult the Colorado Division of Wildlife for recommendations for specific hunting perches.

GOLDEN EAGLE

Nest Site:

No surface occupancy (beyond that which historically occurred in the area) within ¼ mile radius of active nests. Seasonal restriction to human encroachment within ½ mile radius of active nests from December 15 through July 15.

OSPREY

Nest Site:

No surface occupancy (beyond that which historically occurred in the area) within ¼ mile radius of active nests. Seasonal restriction to human encroachment within ¼ mile radius of active nests from April 1 through August 31. Some osprey populations have habituated and are tolerant to human activity in the immediate vicinity of their nests.

FERRUGINOUS HAWK

Nest Site:

No surface occupancy (beyond that which historically occurred in the area) within ½ mile radius of active nests. Seasonal restriction to human encroachment within ½ mile radius of active nests from February 1 through July 15. This species is especially prone to nest abandonment during incubation if disturbed.

RED-TAILED HAWK

Nest Site:

No surface occupancy (beyond that which historically occurred in the area) within 1/3 mile radius of active nests. Seasonal restriction to human encroachment within 1/3 mile radius of active nests from February 15 through July 15. Some members of this species have adapted to urbanization and may

tolerate human habitation to within 200 yards of their nest. Development that encroaches on rural sites is likely to cause abandonment.

SWAINSON'S HAWK

Nest Site:

No surface occupancy (beyond that which historically occurred in the area) within ¼ mile radius of active nests. Seasonal restriction to human encroachment within ¼ mile radius of active nests from April 1 through July 15. Some members of this species have adapted to urbanization and may tolerate human habitation to within 100 yards of their nest.

PEREGRINE FALCON

Nest Site:

No surface occupancy (beyond that which historically occurred in the area) within ½ mile radius of active nests. Seasonal restriction to human encroachment within ½ mile of the nest cliff(s) from March 15 to July 31. Due to propensity to relocate nest sites, sometimes up to ½ mile along cliff faces, it is more appropriate to designate 'Nesting Areas' that encompass the cliff system and a ½ mile buffer around the cliff complex.

PRAIRIE FALCON

Nest Site:

No surface occupancy (beyond that which historically occurred in the area) within ½ mile radius of active nests. Seasonal restriction to human encroachment within ½ mile radius of active nests from March 15 through July 15.

NORTHERN GOSHAWK

No surface occupancy (beyond that which historically occurred in the area) within ½ mile radius of active nests. Seasonal restriction to human encroachment within ½ mile radius of active nests from March 1 through September 15.

BURROWING OWL

Nest Site:

No human encroachment within 150 feet of the nest site from March 15 through October 31. Although Burrowing Owls may not be actively nesting during this entire period, they may be present at burrows up to a month before egg laying and several months after young have fledged. Therefore it is recommended that efforts to eradicate prairie dogs or destroy abandoned towns not occur between March 15 and October 31 when owls may be present. Because nesting Burrowing Owls may not be easily visible, it is recommended that targeted surveys be implemented to determine if burrows are occupied. More detailed recommendations are available in a document entitled "Recommended Survey Protocol and Actions to Protect Nesting Burrowing Owls" which is available from the Colorado Division of Wildlife

Recommended Buffer Zones and Seasonal Restrictions Around Raptor Use Sites

Species and Use	Buffer	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
Bald Eagle													
ACTIVE NEST - No Surface Occupancy	¼ Mile												
ACTIVE NEST - No Human Encroachment	½ Mile												
ACTIVE WINTER NIGHT ROOST without a direct line of sight- No Human Encroachment	¼ Mile												
ACTIVE WINTER NIGHT ROOST with a direct line of sight - No Human Encroachment	½ Mile												
HUNTING PERCH - No Human Encroachment	Contact CDOW												
Golden Eagle													
ACTIVE NEST - No Surface Occupancy	¼ Mile												
ACTIVE NEST - No Human Encroachment	½ Mile												
Osprey													
ACTIVE NEST - No Surface Occupancy	¼ Mile												
ACTIVE NEST - No Human Encroachment	¼ Mile												
Ferruginous Hawk													
ACTIVE NEST - No Surface Occupancy	¼ Mile												
ACTIVE NEST - No Human Encroachment	½ Mile												
Red-tailed Hawk													
ACTIVE NEST - No Surface Occupancy	1/3 Mile												
ACTIVE NEST - No Human Encroachment	1/3 Mile												
Swainson's Hawk													
ACTIVE NEST - No Surface Occupancy	¼ Mile												
ACTIVE NEST - No Human Encroachment	¼ Mile												
Peregrine Falcon													
ACTIVE NEST - No Surface Occupancy	¼ Mile												
ACTIVE NEST - No Human Encroachment	½ Mile												
Prairie Falcon													
ACTIVE NEST - No Surface Occupancy	½ Mile												
ACTIVE NEST - No Human Encroachment	½ Mile												
Northern Goshawk													
ACTIVE NEST - No Surface Occupancy	¼ Mile												
ACTIVE NEST - No Human Encroachment	½ Mile												
Burrowing Owl													
ACTIVE NEST - No Human Encroachment	150 feet												

= time period for which seasonal restrictions are in place.

DEFINITIONS

Active nest – Any nest that is frequented or occupied by a raptor during the breeding season, or which has been active in any of the five previous breeding seasons. Many raptors use alternate nests in various years. Thus, a nest may be active even if it is not occupied in a given year.

Active winter night roost – Areas where Bald Eagles gather and perch overnight, and sometimes during the day in the event of inclement weather. Communal roost sites are usually in large trees (live or dead) that are relatively sheltered from wind and are generally in close proximity to foraging areas. These roosts may also serve a social purpose for pair bond formation and communication among eagles. Many roost sites are used year after year.

Human encroachment – Any activity that brings humans in the area. Examples include driving, facilities maintenance, boating, trail access (e.g., hiking, biking), etc.

Hunting perch – Any structure on which a raptor perches for the purpose of hunting for prey. Hunting perches provide a view of suitable foraging habitat. Trees are often used as hunting perches, but other structures may also be used (utility poles, buildings, etc.).

Surface occupancy – Any physical object that is intended to remain on the landscape permanently or for a significant amount of time. Examples include houses, oil and gas wells, tanks, wind turbines, roads, tracks, etc.

CONTACT

For further information contact:

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