



Green Strategies Bulletin



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Ohio Department of Natural Resources Reaches Agreement With Wind Developer Regarding Wildlife

On Friday, May 8, 2009, the Ohio Department of Natural Resources (ODNR) and JW Great Lakes Wind, LLC signed a cooperative agreement regarding wildlife impacts (the Agreement). A complete copy of the Agreement can be found at: <http://www.bricker.com/Publications/attachments/odnragreement.pdf>. Signed by Governor Strickland, the Agreement seeks to “standardize wildlife monitoring protocols and wildlife impact review methods associated with wind-energy development projects.”

Agreement Between ODNR and Wind Developer

The Agreement was designed to balance the State of Ohio’s interest in promoting the development of wind farms in Ohio with the need to protect and conserve the State’s wildlife and natural resources, especially birds (*i.e.* raptors and migrating birds), bats, and wetlands. The agreement mandates that a wind developer not only notify ODNR of any proposed “economically significant” wind farm (*i.e.* “wind turbines and associated facilities” generating between 5 and 50 megawatts), but do so at least 18 months prior to construction to allow ODNR to provide the wind developer with as much information as possible regarding the wildlife resources in the proposed wind farm’s location. As part of the notification, a wind developer also must provide a detailed summary of the project, including estimated construction dates and maps indicating the project’s boundary and proposed infrastructure.

The Agreement establishes specific protocols for surveying and monitoring bird and bat populations in and around a proposed wind farm. ODNR identifies three “risk levels,” which determine how extensive the wildlife surveying and monitoring requirements will be. Regardless of the risk level, post-construction surveying efforts will be required to assess wildlife behavioral changes as well as mortality rates.

I. Minimum Surveying Effort.

The first risk level requires only minimum surveying efforts and typically includes large tracts of farmland that are not located within 500 meters of: 1) a woodland larger than 10 hectares or 24.71 acres; 2) wetlands larger than 3 hectares or 7.413 acres; or 3) large bodies of water (*i.e.* rivers or lakes). For sites within this category, the following efforts must be undertaken:

- Identification of species of breeding birds species that might be impacted through habitat disturbance or avoidance;
- Surveying of raptor nests (*i.e.* bald eagles) located within a one-mile buffer zone of the proposed wind farm (will be expanded to a two-mile buffer zone for wind farms located within two miles of large bodies of water);
- Monitoring of raptor nests to assess daily movement patterns; and
- Monitoring of bat acoustics for at least one full season (*i.e.* March 15 through November 15), which ODNR indicates can be achieved through “AnaBat” technology.

This document has been prepared as a general reference document for informational purposes. The information contained herein is not intended to be and should not be construed as legal advice. Each circumstance should be considered and evaluated separately, and possibly with involvement of legal counsel.

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II. Moderate Surveying Effort.

The next risk level requires moderate surveying efforts and typically involves farmlands and grasslands with patches of forests and/or wetlands. For sites within this category, all of the minimum surveying efforts must be completed, as well as the following:

- Surveying of passerine migration patterns (*i.e.* nocturnally migrating songbirds such as sparrows);
- Daytime monitoring of bird migration patterns;
- Completion of owl playback surveys for certain species (*i.e.* great horned owl, barred owl, and screech owl);
- Mist-netting to determine species diversity and locations, specifically in relation to the Indiana bat (NOTE: Encounters with Indiana bats and certain other species require immediate notification of ODNR for further review);

Additionally, the following must be surveyed in certain circumstances:

- Nocturnal marsh bird surveys for projects located immediately next to more than 3 hectares (7.413 acres) of contiguous wetland;
- Barn owls if the proposed site is located within specified areas (*i.e.* southeastern Ohio or sites adjacent to greater than 80 hectares, or 197.68 acres, of combined wet meadow, pasture and grassland);
- Sandhill cranes, if they are known to migrate in the vicinity of the proposed wind farm (*i.e.* generally western Ohio);
- Waterfowls if the site includes more than 3 hectares (7.413 acres) of wetlands, rivers, lakes or farmland where waterfowl are known to feed; and
- Shorebirds for projects located within the Lake Erie basin.

III. Extensive Surveying Effort.

The third and final risk level requires extensive surveying efforts and typically involves areas located close to migratory corridors, staging areas, important

bird areas (as identified by Audubon) or the Lake Erie shoreline. For sites within this category, all of the minimum and moderate surveying efforts must be completed. Additionally, the developer must conduct intensive radar monitoring to determine nightly passage rates.

IV. Other Recommendations/ Requirements.

ODNR also recommended a number of design measures expected to reduce the impact of wind development on Ohio wildlife resources, including:

- Minimizing lighting on turbines (*i.e.* using the fewest number of white lights allowed by the Federal Aviation Administration);
- Discontinuing the use of lattice and guyed-wire meteorological towers; and
- Minimizing tree clearing and/or limiting tree clearing to dates recommended by U.S. Fish & Wildlife (*i.e.* October 1 through May 31).

V. Conclusion.

With the enactment of Ohio House Bill 562 last year, the General Assembly established certification requirements for the siting of wind farms in the State of Ohio. As part of the siting process, developers seeking to construct an “economically significant” wind farm must file an application with the Ohio Power Siting Board. As part of the application process, wind developers are expected to provide social and ecological data, including studies identifying how the development, construction and operation of the wind farm will impact major species of vegetation and animal life. See OAC 4906-17-08(B). Agreements between ODNR and wind developers serve to facilitate this process.

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