

**DELAWARE-OTSEGO AUDUBON SOCIETY, INC.**

PO Box 544  
Oneonta, NY 13820

Bernard C. Melewski, Esq. Special Counsel  
c/o the LA Group, PC  
60 Long Alley  
Saratoga Springs, NY 12866

November 25, 2008

Dear Mr. Melewski:

I am writing on behalf of our organization with comments on the Second Supplemental Environmental Impact Statement (SSEIS) for the Jordanville Wind Power Project.

We submitted comments on the original Draft Environmental Impact Statement for this project in July 2006. Many of the concerns and issues we raised at that time remain, and are not adequately addressed or mitigated in the SSEIS. In addition, our review of the updated fall 2006 raptor migration study included in the SSEIS raise additional questions regarding the adequacy and accuracy of avian studies for the project.

Among concerns expressed in our earlier comments was the loss of habitat for at risk species of grassland birds from construction and operation of the project. We estimated that nearly one-quarter of the 6,222 acres of the project area could be negatively affected as grassland bird habitat. With the reduced size of the project, this area will be reduced; however we estimate that over 1200 acres will still be affected—a significant area of potential nesting and foraging habitat for these declining species.

Responses from the project developer to our earlier comments state that agricultural areas in the project area are not suitable for these birds. However, similar lands in Herkimer and surrounding counties support among the highest remaining populations of grassland birds in New York State. For example, southern Herkimer County is within one of the few concentrated areas for the state-threatened Northern Harrier recorded during the 2000-2005 Breeding Bird Atlas. The continuing loss of habitat and resulting population declines for these birds make areas such as that in the vicinity of the turbines even more critical, even if it is not prime habitat.

In our comments on the DEIS, we proposed that this loss and degradation of a significant amount of grassland bird habitat be mitigated by establishing a reserve area equal or greater in size than the habitat impacted by turbines and destroyed by road construction. This reserve would be established near the project area and endowed by the project developer for future management for grassland birds.

In addition, we proposed that landowners who lease land for the project and benefit financially should make changes in agricultural practices to offset bird impacts. Farmers who receive payment for the placement of turbines on their open land should be required to delay mowing until July 15 or later in an area equal to that impacted by turbines and other infrastructure on their property. Annual payments for the placement of turbines should be made contingent on this requirement.

This general concept mitigation was supported by the developer's avian consultant Paul Kerlinger, in his response to our DEIS comments. Speaking in regard to loss of grassland nesting habitat, Kerlinger stated:

*“With the above in mind, I agree in part with the recommendations of DOAS that some sort of “mitigation” strategy could work to produce a net benefit to grassland nesting birds within the Jordanville site. However, instead of the mitigation proposed by DOAS, I propose that the acreage be determined for turbines placed in hay or alfalfa fields (averaged over years and based on crop rotation schedules) and that an area about double that of the permanent footprint of the turbines out to about 80 m and access roads be established away from turbines. This would be a 2:1 mitigation with respect to habitat. The targeted areas would then represent the highest quality grassland-like habitats within the project area. In those areas, farmers should not mow their hay until July 15, which would give all grassland birds a chance to successfully complete their first nesting attempt. This mitigation would not likely be a significant cost to the farmers, and would provide a means of actually increasing the numbers of grassland birds on farms with turbines.”*

Unfortunately, the developer adopted neither approach to mitigation for grassland bird impacts, and the negative impacts from the project on these species remain. **We urge that this dedication of grassland habitat be included in mitigation considered in the SSEIS.**

In comments on the original DEIS we raised serious concerns over threats to migrating raptors through the project area. Again, the downsized project lessens the potential impacts in this regard, but none of the reviews prepared for the project to date adequately recognize the dangers to these birds.

The updated fall 2006 raptor survey indicates an even higher risk than the original avian assessment. In particular this study showed a high number of Golden Eagles in fall migration. Thirty-five Golden Eagles were recorded during 38 days of observation, a high number for this relatively rare species. The original study bears this out, stating:

*“The total of 35 Golden Eagles is higher than expected.” and “It may be that there is a passage of Golden Eagles over this part of New York State that is slightly more concentrated than elsewhere.”*

In fact, this is a high concentration of Golden Eagles for New York State. Other than the Franklin Mountain Hawkwatch discussed in the study, no other location in the state has recorded comparable numbers of this species during fall migration. Despite the conclusions stated in the study report, these data indicate that the project area may be a significant concentration area for this at risk species.

In addition, the survey methods used in the 2006 raptor study likely resulted in a significant undercounting of Golden Eagles and other species. Two observation points were used, with a single observer spending approximately 3.5 hours at each site each day surveyed. Numbers of raptors recorded by the observer were about equal at each site.

Also, the observation points did not adequately cover the project area. In particular the easternmost turbine locations are over two miles from the nearest observation point, and the westernmost edge over a mile distant. This raises the likelihood that significant numbers of birds moved through the project area unobserved.

The use of a single observer in the survey also reduces the accuracy of the study. Observers at the Franklin Mountain Hawkwatch have long recognized the value of additional observers in spotting raptors in a broad vista such as the project site. One observer can easily miss birds not concentrated by a ridge or other land feature. This fits the study description of the project site. Franklin Mountain Hawkwatch often has multiple observers, especially when Golden Eagles flights are anticipated. Data on the number of observers at Franklin Mountain is available and can be incorporated into this survey's data analysis.

The 2006 study suggests that the ratio of Golden Eagles per hour of observation at Franklin Mt. vs. Jordanville, is likely even higher than the calculated value of 3.33, due to differences in hours of observation:

*“This estimate is likely to be conservative because more hours of observation were logged at Franklin Mountain. Those observations were earlier and later in the day rather than in the hours of peak Golden Eagle migration, thereby reducing the hourly rate of Golden Eagle passage at Franklin Mountain as compared to Jordanville.”*

In fact, during the Oct. 13-Nov. 30 observation period of the 2006 survey, the average time of start of observation at Franklin Mt. was 8:05 a.m., vs. “. . . roughly 8:00 a.m.” at Jordanville. The daily average hours of observation at Franklin Mt. during this period was 7.43 vs. 6.34 at Jordanville, but the study states that “*Observers were in the field roughly 8 hours per day . . .*” This would indicate an ending time of approximately 3 p.m. for observation at Jordanville, while the average ending time at Franklin Mt. was 3:45 p.m. The balance of the field time at Jordanville is attributed to “. . . *time needed to move from site to site, time needed for recording additional weather information and checking field sheets, and time for a break.*” If the break and travel time occurred near

mid-day, this would be during the hours of peak Golden Eagle migration noted in the paragraph above, thus increasing the likelihood that Golden Eagles passed unobserved at Jordanville.

Given the survey's limitations and variables: alternating sites over 2 miles apart, the distance of the sites from the edge of the project area, and the drawbacks of a single observer, the survey probably missed at least half of the birds moving through the surveyed area. Considering these shortcomings, the actual number of birds within the project area can conservatively be doubled, and possibly even tripled. In the case of Golden Eagles, this would bring the fall count to 70-100 birds, or 50-75% of the number of Golden Eagles observed on the same dates at Franklin Mountain—a recognized concentration point for the species. The questionable calculations of relative hours at Jordanville vs. Franklin Mt. noted above increase the comparability of the two sites.

Even more worrisome is data from the raptor survey indicating that over one-third of the Golden Eagles were observed at heights within or below the swept area of turbine rotors. **Combining this information with the high numbers of birds migrating through the project area clearly shows a significant threat to the species.**

Concerns we expressed in our original comments about Golden Eagles migrating through the project in spring have not been addressed. The evidence for a concentrated spring movement of the species in this area is supported by numerous observations south and southwest of the project. An adequate study should be conducted through the month of March, at a minimum to assess Golden Eagle spring migration.

The downsized project may reduce the threat somewhat, but with the project area still totaling 80% of the original proposal, and 60% of the turbines remaining, the danger is still present. In addition, the eastern and western boundaries of the project area remain unchanged.

**It is imperative that mitigation for impacts to Golden Eagles be considered in the SSEIS. This could include further downsizing the project, lower tower heights, concentrating towers along an axis parallel to raptor migration routes, or relocating the project to an area with lower numbers of raptors.**

The known presence of significant numbers of Golden Eagles migrating through the project area should be a determining factor in the dates of the post-construction studies during both spring and fall. Post-construction studies should look for avian mortality, and also for behavioral effects such as avoidance of the project area, as well as avoidance of individual turbines.

Our concerns also remain regarding state-threatened Short-eared Owls regularly found during the Fort Plain Christmas Bird Count around the hamlet of Starkville. Additional observations are needed to properly assess the presence of this at risk species in and near the project area. Post-construction studies should also be timed for this species.

Our organization supports wind power as an environmentally preferable alternative to fossil fuel electricity generation (see attached position paper). However, we insist that wind projects should be properly reviewed and sited to minimize negative impacts to birds and other wildlife. In the case of the Jordanville project, this threshold has not been achieved. **We urge that the SSEIS be corrected to adequately address the impacts described above.**

Sincerely,

A handwritten signature in black ink that reads "Andrew Mason". The signature is written in a cursive, flowing style.

Andrew Mason, Conservation Chair

1039 Peck St.  
Jefferson, NY 12093  
(607) 652-2162  
AndyMason@earthling.net

cc: NYS DEC  
NYS Dep't. of Public Service