



United States Department of the Interior

FISH AND WILDLIFE SERVICE

5600 American Boulevard West, Suite 990
Bloomington, Minnesota 55437-1458



IN REPLY REFER TO:

FWS-2015-00281

April 24, 2015

Carol Overland
1110 West Avenue
Red Wing, Minnesota 55066
overland@legalectric.org

Dear Ms. Overland,

We are writing to partially respond to your Freedom of Information Act (FOIA) request dated December 1, 2014 and received by the U.S. Fish and Wildlife Service (FWS) Midwest Region (3) FOIA Office on December 2, 2014 and clarified on February 9, 2015, in which you requested information:

“1) PERTAINING TO THE GETTY WIND PROJECT AND BLACK OAK WIND PROJECT ONLY:

- All records of the Applicant’s consultation with USFWS, comments offered by USFWS regarding the Black Oak and Getty Wind projects.
- USFWS documentation of eagles and other avian species birds protected by the Bald and Golden Eagle Protection Act and the Migratory Bird Treaty Act in the Black Oak and Getty Wind project area, both within the footprint and within a five mile radius. (Maps below are from Avian Study for the project. There is an eagle nest acknowledged by Applicants, represented by red dot in map below on right, and turbines are planned in flight path, notably between the Padua WMA and Trisko WMA. There are 13 turbines within 2 miles of this nest. Other birds in the area include trumpeter swans, loons, etc.).
- Take Permit applications submitted regarding the Getty Wind Project and Black Oak Wind Project, and if none, whether Take Permit will be required.

2) INFORMATION REGARDING HABITAT CONSTRUCTION AND RESTORATION BY USFWS IN THIS SPECIFIC AREA.

- Please provide any and all information USFWS has regarding USFWS habitat work just north of the Padua WMA, and south of Co. Rd. 28, on property owned by the Jennissons. A member of Residents of Getty and Raymond Townships, Barbara Jennisson, notes that USFWS did extensive rehabilitation work building ponds on their land in 1998, above the Padua WMA, and south of Co. Rd. 28, the brown line on the north edge of Section 19.

This is an area where birds congregate in great numbers, yet this area has not been delineated on any of the wind projects' maps. Further to the northeast, there is another bald eagle nest, also not noted on the project maps. We request this USFWS information regarding its restoration work to enter into the PUC's docket for these two projects."

We have enclosed one CD of 113 digital files consisting of 304 pages, which are being released to you in their entirety.

As yet, we have been unable to make a final determination on your request. Documents responsive to your request may include possible confidential information and are currently undergoing the required submitter notification process as per the Department of the Interior's FOIA regulations (see *43 C.F.R. Part 2, Subpart F*). We are continuing to review additional records that are responsive to your request but may contain information withheld from disclosure pursuant to FOIA Exemption 5 (*5 U.S.C. § 552(b)(5) as amended*) and FOIA Exemption 6 (*5 U.S.C. § 552(b)(6) as amended*). These records will be released to you in full or in part pending the review by our Office of the Solicitor.

You may appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal **no later than 30 workdays** from the date of this letter. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

Your appeal must be made in writing. You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or e-mail. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the FWS's response is in error. You must also include with your appeal copies of all correspondence between you and the FWS concerning your FOIA request, including your original FOIA request and the FWS's response. Failure to include with your appeal all correspondence between you and the FWS will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), e-mail address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal.

DOI FOIA/Privacy Act Appeals Office Contact Information:

Department of the Interior
Office of the Solicitor
1849 C Street, N.W.
MS-6556 MIB
Washington, DC 20240

Attn: FOIA/Privacy Act Appeals Office

Telephone: (202) 208-5339
Fax: (202) 208-6677
E-mail: <mailto:FOIA.Appeals@sol.doi.gov>

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of FOIA. See 5 U.S.C. 552(c). This response is limited to those records that are subject to the requirements of FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer.

If you have any questions about our response to your request, you may contact me by phone at 612-713-5466; by e-mail at mark_hogeboom@fws.gov; or by mail at U.S. Fish and Wildlife Service, Attention: Mark Hogeboom, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437-1458.

Sincerely,



Mark Hogeboom
Region 3 FOIA Coordinator

Enclosures