

Appendix C – Agency Scoping Comments



"McGee, Lauren - Washington, DC"
<Lauren.McGee@wdc.usda.gov>

08/03/2011 09:06 AM

To "Jim_Burns@urscorp.com" <Jim_Burns@urscorp.com>

cc

bcc

Subject FW: 11-0282; Turning Point Solar LLC 49.9 MW Energy
Generation Project

From: Mitch, Brian [mailto:Brian.Mitch@dnr.state.oh.us]

Sent: Tuesday, August 02, 2011 10:55 AM

To: McGee, Lauren - Washington, DC

Cc: apolka.totth@agileenergy.com

Subject: 11-0282; Turning Point Solar LLC 49.9 MW Energy Generation Project



ODNR COMMENTS TO Ms. Lauren McGee, 1400 Independence Avenue, Washington, DC 20250

Project: The project involves construction a 49.9 MW solar energy generation project on 771 acres of land in Brookfield, Township, Noble County, Ohio.

The Ohio Department of Natural Resources (ODNR) has completed a review of the above referenced project. These comments were generated by an inter-disciplinary review within the Department. These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), the National Environmental Policy Act, the Coastal Zone Management Act, Ohio Revised Code and other applicable laws and regulations. These comments are also based on ODNR's experience as the state natural resource management agency and do not supersede or replace the regulatory authority of any local, state or federal agency nor relieve the applicant of the obligation to comply with any local, state or federal laws or regulations.

Fish and Wildlife: The ODNR, Division of Wildlife (DOW) has the following comments.

The project is within the range of the Indiana bat (*Myotis sodalis*), a state and federally endangered species. The following species of trees have relatively high value as potential Indiana bat roost trees: Shagbark hickory (*Carya ovata*), Shellbark hickory (*Carya laciniosa*), Bitternut hickory (*Carya cordiformis*), Black ash (*Fraxinus nigra*), Green ash (*Fraxinus pennsylvanica*), White ash (*Fraxinus americana*), Shingle oak (*Quercus imbricaria*), Northern red oak (*Quercus rubra*), Slippery elm (*Ulmus rubra*), American elm (*Ulmus americana*), Eastern cottonwood (*Populus deltoides*), Silver maple (*Acer saccharinum*), Sassafras (*Sassafras albidum*), Post oak (*Quercus stellata*), and White oak (*Quercus alba*). Indiana bat habitat consists of suitable trees that include dead and dying trees of the species listed above with exfoliating bark, crevices, or cavities in upland areas or riparian corridors and living trees of the species listed above with exfoliating bark, cavities, or hollow areas formed from broken branches or tops. If suitable trees occur within the project area, these trees must be conserved. If suitable habitat occurs on the project area and trees must be cut, cutting must occur between September 30 and April 1. If suitable trees must be cut during the summer months of April 2 to September 29, a net survey must be conducted in May or June prior to cutting. If no tree removal is proposed, the project is not likely to impact this species.

The project is within the range of the bald eagle (*Haliaeetus leucocephalus*), a state threatened species. However, the Ohio Biodiversity Database currently has no records of this species near the project area.

The project is within the range of the black bear (*Ursus americanus*), a state endangered species, and the bobcat (*Lynx rufus*), a state endangered species. The Ohio Biodiversity Database also has a record for the bobcat within or near the three potential project sites. However, due to the mobility of these species, the project is not likely to have an impact on these species.

The project is within the range of the Northern harrier (*Circus cyaneus*), a state endangered bird. This is a common migrant and winter species. Nesters are much rarer, although they occasionally breed in large marshes and grasslands. Harriers often nest in loose colonies. The female builds a nest out of sticks on the ground, often on top of a mound. Harriers hunt over grasslands. A statewide survey has not been completed for this species. A lack of records does not indicate the species is absent from the area. Therefore, if this type of habitat will be impacted, construction must not occur in this habitat during the species' nesting period of May 15 to August 1. If this habitat will not be impacted, the project is not likely to impact this species.

The Ohio Biodiversity Database has the following records within or near the three potential project sites. Locations are shown on the attached maps.

Site 1, Cumberland Quad, Cumberland Quad, Muskingum Co.

Pandion haliaetus - Osprey, state threatened

Site 2, Cumberland Quad, Noble Co.

Lynx rufus - Bobcat, state endangered

Site 3, Reinersville Quad, Morgan Co.

Accipiter striatus - Sharp-shinned Hawk, state species of concern

Geological Survey: The ODNR, Division of Geological Survey recommends that the contractor check for potential Abandoned Underground Mines (AUMs), abandoned oil & gas wells, and strip mining at the site.

ODNR appreciates the opportunity to provide these comments. Please contact Brian Mitch at (614) 265-6378 if you have questions about these comments or need additional information.

Brian Mitch, Environmental Review Manager
Ohio Department of Natural Resources
Environmental Services Section
2045 Morse Road, Building E-3
Columbus, Ohio 43229-6693
Office: (614) 265-6378
Fax: (614) 262-2197
brian.mitch@dnr.state.oh.us



oledata.mso



11-0282, site3.jpg



11-0282, site2.jpg



11-0282, site1.jpg



"McGee, Lauren - Washington, DC"
<Lauren.McGee@wdc.usda.gov>

08/08/2011 12:57 PM

To "Jim_Burns@urscorp.com" <Jim_Burns@urscorp.com>

cc Apolka Totth <Apolka.Totth@agileenergy.com>

bcc

Subject FW: Comments on RUS FR Notice of 6-27-11 (Turning Point Solar)

History:

 This message has been replied to.

From: Sheffield, Steven [mailto:ssheffield@osmre.gov]

Sent: Monday, August 08, 2011 8:07 AM

To: McGee, Lauren - Washington, DC

Subject: Comments on RUS FR Notice of 6-27-11

Importance: High

Ms. Lauren McGee, Environmental Scientist
USDA Rural Utilities Service
Engineering and Environmental Staff
1400 Independence Avenue, SW, Room 2244-S
Washington, DC 20250-1571

Subject:

Rural Utilities Service, Department of Agriculture;
Notice of Intent to Hold a Public Scoping Meeting and Prepare an Environmental Assessment;
Turning Point Solar, LLC, Photovoltaic Generating Facility, Noble County, Ohio;
Federal Register (Vol. 76, No. 123; June 27, 2011)

Dear Ms. McGee:

Following review of the subject Federal Register Notice, and after consulting with other staff within the Office of Surface Mining Reclamation and Enforcement (OSM), we offer the following comments.

We understand that the NEPA lead agency is aware that the proposed project site was mined and reclaimed by the Central Ohio Coal Company; however, we are uncertain whether the 771 acres proposed to be disturbed have received a full and final performance bond release. If the proposed project contemplates construction on any portion of the reclaimed mine site that has not yet received final bond release, the project could potentially conflict with the land use currently approved by the regulatory authority under the *Surface Mining Control and Reclamation Act (SMCRA)*.

To avoid any potential land use conflicts between the proposed project and the SMCRA approved land use, the NEPA Lead Agency should coordinate activities with the Ohio Division of

Mineral Resources (ODMR) and the Central Ohio Coal Company. As the SMCRA regulatory authority for coal mining and reclamation activities in Ohio, ODMR is responsible for bond release determinations and land use decisions.

At your convenience, please acknowledge receipt of this transmittal. If you have any questions or need additional information, feel free to contact Ms. Li-Tai Bilbao of the Division of Regulatory Support here at OSM: lbilbao@osmre.gov or (202) 208-2895. Also, please note that these comments reflect the views of OSM staff and not necessarily those of the Department of the Interior.

We appreciate the opportunity to comment on this Notice.

Sincerely,

Steve Sheffield
Acting Chief, Division of Regulatory Support



"McGee, Lauren - Washington, DC"
<Lauren.McGee@wdc.usda.gov>

08/12/2011 12:50 PM

To "Jim_Burns@urscorp.com" <Jim_Burns@urscorp.com>

cc "Tracy_Engle@URSCorp.com"
<Tracy_Engle@URSCorp.com>, Apolka Totth
<Apolka.Totth@agileenergy.com>

bcc

Subject Turning Point Solar - Summary of Conversion w/ SHPO
(8/1/2011)

History:

 This message has been forwarded.

Jim, Sorry that I forgot to send this earlier.

On Monday, August 1, 2011, I received a call from Nathan Young from the Ohio State Historic Preservation Office about the Turning Point Solar project. Right now, his office does not have any comments to submit under NEPA. He did, however, mention that the requirements of Section 106 of the National Historic Preservation Act are different from NEPA, and that RUS has a responsibility to submit a findings of effect letter to his office for concurrence. The findings letter should establish the area of potential effect (APE), include a brief archival records search, describe the amount/intensity of land disturbance being proposed for the project, describe the amount/intensity of previous land disturbance on the site, and provide recommendations of potential effects to important archaeological sites that could be present. (Note: important sites are those eligible for listing in the National Register of Historic Places.) This finding would need to be submitted to the SHPO on RUS letterhead.

When assessing effects, Nathan mentioned that it is important to highlight any areas on the project site that have not previously been disturbed as these areas could have important archaeological sites. It is also important to do a walk-through of the site to see if any intact Indian burial mounds are present. If there are burial mounds, RUS will need to consult in depth with the SHPO and Indian tribes when discussing avoidance/potential mitigation. The finding will also have to assess visual effects to historic properties (e.g., structures). It's my opinion that this latter component is likely to result in no effects as the site is almost completely isolated.

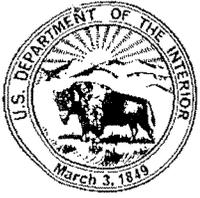
If you have any questions, feel free to give me a call next week. I have not received any additional scoping comments (due date is Aug 15th). We'll wait until the end of the week in case any letters were mailed towards the end of the comment period and just have not arrived yet.

Have a nice weekend –

Lauren McGee | Environmental Scientist
Rural Development | Rural Utilities Service (RUS)
U.S. Department of Agriculture
Mail Stop 1571 | Rm 2244-S
1400 Independence Ave, SW | Washington, DC 20250
Phone: 202-720-1482 | Fax: 202-690-0649
Email: <mailto:lauren.mcgee@wdc.usda.gov>
<http://www.rurdev.usda.gov/UWP-environmental.htm>

"Committed to the future of rural communities."

"Estamos dedicados al futuro de las comunidades rurales."



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
4625 Morse Road, Suite 104
Columbus, Ohio 43230
(614) 416-8993 / FAX (614) 416-8994

**COPY FOR YOUR
INFORMATION**

August 22, 2011

Mr. Mark Plank
USDA Rural Development/Rural Utilities Service
1400 Independence Ave. SW
Mail Stop 1571
Washington, DC 20250-1571

TAILS # 31420-2010-TA-1110

Dear Mr. Plank:

This letter is in response to your letter, dated June 15, 2011, regarding the proposed construction of the Turning Point Solar energy generation project, to be located on approximately 650 acres of reclaimed strip mined land owned by American Electric Power in Noble County, Ohio. The site historically supported 21,327 linear feet of streams prior to strip mining occurring, and may currently support a similar amount of reclaimed streams. Additionally approximately 35 acres of ponds and 5 acres of forest exist on the site. The U. S. Fish and Wildlife Service (Service) submits the following comments for consideration in inclusion into your proposed Draft Environmental Assessment.

There are no Federal wildlife refuges, wilderness areas, or designated critical habitat in proximity to the site. It appears that among the three sites considered for the facility, the proposed location has substantially less forest, which should help to minimize impacts to wildlife in general. Additional specific comments are provided below.

WATER RESOURCE COMMENTS: The Service recommends that proposed developments avoid and minimize water quality impacts and impacts to high quality fish and wildlife habitat, such as forests, streams, and wetlands. Based on the documents you provided it does not appear that a stream or wetland delineation has occurred onsite yet, but that a desktop evaluation of potential water resources has been completed. We encourage you to complete a delineation to verify the current status of historical streams and to identify wetland areas. Natural buffers around streams and wetlands should be preserved to enhance beneficial functions. If streams or wetlands will be impacted, the Huntington District of the U.S. Army Corps of Engineers should be contacted for possible need of a Section 404 permit. We support and recommend mitigation activities that reduce the likelihood of invasive plant spread and encourage native plant colonization. Prevention of non-native, invasive plant establishment is critical in maintaining high quality habitats. All disturbed areas in the project vicinity should be mulched and revegetated with native plant species.

ENDANGERED SPECIES COMMENTS: The project area lies within the range of the **American burying beetle** (*Nicrophorus americanus*) a federally listed endangered species. This insect is a generalist as far as habitat preference is concerned, meaning that it can be found in grasslands, open woodlands and brushlands. American burying beetles were recently released at The Wilds, an approximately 10,000 acre wildlife preserve within approximately 3 miles of the project area, as part of a state-wide reintroduction effort for this species. Additional releases are planned to occur at The Wilds in each of the next 4 years.

Historic use and currently existing habitat at The Wilds is similar in nature to the proposed project area. The beetle release site is approximately 3 miles from the project area, and beetles are anticipated to disperse from the release site. American burying beetles are strong fliers, moving as far as a kilometer in one night. Due to these factors the Service believes it is reasonable to assume that American burying beetles do occur within the project area.

This reintroduction effort is covered under an Endangered Species Act Section 10(a)(1)(A) permit, held by the Service's Ohio Field Office. Incidental take of beetles in this general area may be authorized under this existing permit if a landowner completes and implements a Cooperative Agreement with the Service that will result in a net benefit to the beetle. A sample Cooperative Agreement is attached for your reference. Prior to completing the Cooperative Agreement, a survey to establish baseline habitat conditions and beetle populations must be completed. This survey must be completed by a qualified and permitted surveyor (see attached list).

If the Applicant does not wish to complete a Cooperative Agreement, formal consultation under Section 7 of the Endangered Species Act will be necessary.

We strongly recommend that Turning Point Solar, American Electric Power, and USDA meet to discuss consultation on American burying beetle and the Cooperative Agreement in the near future.

The proposed project lies within the range of the **Indiana bat** (*Myotis sodalis*), a federally listed endangered species. Since first listed as endangered in 1967, their population has declined by nearly 60%. Several factors have contributed to the decline of the Indiana bat, including the loss and degradation of suitable hibernacula, human disturbance during hibernation, pesticides, and the loss and degradation of forested habitat, particularly stands of large, mature trees. Fragmentation of forest habitat may also contribute to declines. During winter, Indiana bats hibernate in caves and abandoned mines. Summer habitat requirements for the species are not well defined but the following are considered important:

- (1) dead or live trees and snags with peeling or exfoliating bark, split tree trunk and/or branches, or cavities, which may be used as maternity roost areas;
- (2) live trees (such as shagbark hickory and oaks) which have exfoliating bark;
- (3) stream corridors, riparian areas, and upland woodlots which provide forage sites.

Should the proposed site contain trees or associated habitats exhibiting any of the characteristics listed above, we recommend that the habitat and surrounding trees be saved wherever possible. If the trees must be cut, further coordination with this office is requested to determine if surveys are warranted. Any survey should be designed and conducted in coordination with the Endangered Species Coordinator for this office. Surveyors must have a valid Federal permit.

MIGRATORY BIRD COMMENTS: The Migratory Bird Treaty Act (16 U.S.C. 703-712; MBTA) implements four treaties that provide for international protection of migratory birds. The MBTA prohibits taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Department of the Interior. While the MBTA has no provision for allowing unauthorized take, the Service recognizes that some birds may be taken during otherwise lawful activities even if all reasonable measures to avoid take are implemented. The Service's Office of Law Enforcement carries out its mission to protect migratory birds not only through investigation and enforcement, but also through fostering relationships with individuals and industries that proactively seek to eliminate their impacts on migratory birds. Although it is not possible under the MBTA to absolve individuals, companies, or agencies from liability (even if they implement avian mortality avoidance or

similar conservation measures), the Office of Law Enforcement 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.

The proposed project area is a reclaimed strip mine area that was last mined in 1991. Based on the aerial photos you provided, it appears that the project area is primarily composed of grassland, though the species composition of the area is unknown. Reclaimed strip mine areas have been shown to provide suitable nesting habitat for migratory grassland bird species in east-central Ohio, supporting breeding populations of grasshopper sparrows, (*Ammodramus savannarum*), Henslow's sparrows (*Ammodramus henslowii*), eastern meadowlarks, (*Sturnella magna*), red-winged blackbirds (*Agelaius phoeniceus*), bobolinks (*Dolichonyx oryzivorus*), savannah sparrows (*Passerculus sandwichensis*), short-eared owls (*Asio flammeus*), song sparrows (*Melospiza melodia*), and field sparrows (*Spizella pusilla*) (Ingold 2002). Grassland birds are among the fastest and most consistently declining birds in North America, with 48% percent of species designated as "of conservation concern" and 55% of species showing significant declines (North American Bird Conservation Initiative 2009). We strongly recommend that the Draft EA evaluate how the proposed action will impact grassland birds that occur in this portion of Ohio, and implement measures to minimize those impacts. We also recommend that grassland areas to be cleared only be cleared during the non-nesting season for grassland birds, generally April 1-July 31.

The project lies within the range of the **bald eagle** (*Haliaeetus leucocephalus*), a species protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d) and the MBTA. The closest bald eagle nest is greater than 15 miles from the project area, however multiple wintering eagle records exist for the Muskingum/Noble County border. Further, **golden eagles** (*Aquila chrysaetos*) are known to occur in this area in the winter. In general, the project area is not likely to provide high quality habitat for either of these species, though they may occur in the vicinity of the project. Based on the project description, at this time we do not anticipate impacts on these species.

These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), the Endangered Species Act of 1973 (ESA), as amended, the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668d), and the Migratory Bird Treaty Act (16 U.S.C. 703-712), and are consistent with the intent of the National Environmental Policy Act of 1969 and the U. S. Fish and Wildlife Service's Mitigation Policy.

We appreciate this opportunity to provide the above comments. If you have questions, or if we may be of further assistance in this matter, please contact Megan Seymour at extension 16 in this office.

Sincerely,



Mary Knapp, Ph.D.
Supervisor

cc: ODNr, DOW, SCEA Unit, Columbus, OH
Ms. Apolka Totth, Turning Point Solar LLC/Agile Energy, Inc., 1001 Bayhill Drive, Suite 100, San Bruno, CA 94066

Mr. Tracy Engle, URS Corporation, 1375 Euclid Avenue, Suite 600, Cleveland, Ohio 44115

Citations: Ingold, D.J. 2002. Use of a reclaimed stripmine by grassland nesting birds in East-Central Ohio. The Ohio Journal of Science 102(3). Available at:
<http://www.freepatentsonline.com/article/Ohio-Journal-Science/90216390.html>

North American Bird Conservation Initiative, U.S. Committee. 2009. The State of the Birds United States of America 2009. U.S. Department of Interior: Washington, DC. 36 pp.

Attachments: USFWS Permittes for American Burying Beetle Surveys in Ohio
Sample Cooperative Agreement



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
4625 Morse Road, Suite 104
Columbus, Ohio 43230
(614) 416-8993 / FAX (614) 416-8994
February 16, 2011

USFWS permittees for American burying beetle surveys in Ohio*

<p>George Keeney Ohio State University, Entomology 318 West 12th Avenue Columbus, OH 43210 (614) 292-9634 keeney.1@osu.edu</p>	<p>Stantec Consulting Services, Inc. Bob Madej 1500 Lakeshore Drive, Suite 100 Columbus, OH 43204 (614) 486-4383 / FAX (614) 486-4387 robert.madej@stantec.com</p>
<p>Third Rock Consultants, LLC Rain Storm 2514 Regency Rd., Suite 104 Lexington, KY 40503 (859) 977-2000 / FAX (859) 977-2001 mforee@thirdrockconsultants.com</p>	

*This list reflects permit data available as of February 16, 2011, and is subject to periodic revision to reflect permit changes

COOPERATIVE AGREEMENT
between the
U.S. FISH AND WILDLIFE SERVICE
and
[Insert Landowner Name]

I. PURPOSE

This Cooperative Agreement between the U.S. Fish and Wildlife Service, Ohio Ecological Services Field Office, Columbus, Ohio, hereafter referred to as the “Service” and [Insert Landowner Name], hereafter referred to as the “Cooperator”, is entered into to facilitate recovery of American burying beetles in Ohio.

II. AUTHORITY

This agreement is entered into under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

III. SCOPE OF WORK

For the period as hereafter set forth, the Service and the Cooperators shall cooperate as necessary for the performance of the work as stated below:

A. The Service shall:

- (1) Provide Endangered Species Act section 10(a)(1)(A) exemptions for American burying beetles occurring on properties owned and/or managed by [Insert Landowner Name].

B. The Cooperators shall:

- (1) In coordination with the Service, manage Cooperators lands to support American burying beetles. [Insert Landowner Name] currently maintains [insert number] acres of land, and agrees to maintain at least [Insert percentage] of [Insert Landowner Name] property in a manner compatible with American burying beetle management.
- (2) Notify the Service of any larger-scale activities (such as surface mining, extensive clear cutting, widespread intensive agriculture, or other activities causing heavy soil compaction) within the beetle management area which may adversely affect the quantity or quality of American burying beetle habitat or which may result in harm or injury to individual American burying beetles.

- (4) Grant Service personnel and others authorized by the Service access to the properties described in B(1) for the purposes of American burying beetle releases, monitoring and possible re-capture.

IV. PERIOD OF PERFORMANCE

The period of performance of this cooperative agreement is from the effective date of signature by each party through December 31, [Insert Year, 5 years is recommended minimum]. See Special Provisions, Paragraph IX.A., for renewal provisions.

V. FINANCIAL ADMINISTRATION

There are no funding obligations on any party as a result of this cooperative agreement.

VI. PROJECT OFFICER

Angela Boyer
U.S. Fish and Wildlife Service
4625 Morse Road, Suite 104
Columbus, Ohio 43230

VII. MODIFICATIONS

Modifications, including the addition of new cooperating landowners, may be proposed at any time during the period of performance by any party. Modifications shall be in writing and signed by the Service Project Officer and any Cooperator affected by the modification.

VIII. TERMINATION

This agreement may be terminated by giving written notice of the termination to the other parties, not less than thirty (30) days in advance of the effective date of termination.

IX. SPECIAL PROVISIONS

A. Renewal

This agreement may be renewed beyond the initial [5-year or other] period, if agreeable to the Service and any Cooperator. Renewals shall be completed in writing, on or before [Insert date 30 days before expiration of agreement].

U.S. Fish and Wildlife Service:

Name

Date

[Insert Landowner Name]:

Name

Date