

Attachment C
Intra-Service Section 7 Biological Evaluation

AMENDMENT TO:
INTRA-SERVICE SECTION 7 BIOLOGICAL EVALUATION

Region 3

September 2020

The following Intra-Service Section 7 Biological Evaluation Form for the Black Oak/Getty Wind Farms (the Project), dated November 14, 2019, references the total 30-year permitted take of up to 36 bald eagles. We propose to issue a 30-year permit to take up to 32 bald eagles, as stated in the Environmental Assessment. Please note this numerical error in the Intra-Service Section 7 Biological Evaluation Form; however, this discrepancy does not change the determination of effect or concurrence associated with the Section 7 consultation.

Intra-Service Section 7 Biological Evaluation Form Region 3

Originating Person: Tom Cooper Date Submitted: November 14, 2019

Telephone Number: 612-713-5338

For assistance with section 7 reviews, go to Region 3's Section 7 Technical Assistance website:
<http://www.fws.gov/midwest/endangered/section7/s7process/>

I. Service Program and Geographic Area or Station Name:

Minnesota/Wisconsin Ecological Services Field Office, Region 3.

II. Location: Location of the project including County, State and TSR (township, section & range):

Table 1. Project Location in Stearns County, Minnesota.

Township Name	Township	Range	Sections
Ashley	126N	35W	25-27, 34-36
Raymond	125N	35W	1-3, 11-14, 23
Sauk Centre	126N	34W	29-33
Getty	125N	34W	4-9, 16-21

III. Species/Critical Habitat: List federally listed, proposed, and candidate species or designated or proposed critical habitat that may occur within the action area:

Northern long-eared bat (*Myotis septentrionalis*; Threatened)

No critical habitat has been designated or proposed within the action area.

IV. Project Description: Describe the proposed project or action, including all conservation elements. If referencing other documents, prepare an executive summary. Include map and photos of site, if possible. (Attach additional pages as needed):

Proposed Action:

The proposed action is issuance of a federal eagle take permit (with associated conditions) to AEP Renewables, currently operating the Black Oak/Getty Wind Farms (the Project) in Stearns County, MN, as Black Oak Wind, LLC. We have generated a draft Environmental Assessment (dEA) to analyze the impact of issuance of an eagle take permit on the human environment.

The proposed action would be to issue a 30-year permit to take up to 36 bald (averaging 6 eagles every 5 years), with associated conditions, as allowed by regulation. A more detailed description of the Proposed Action can be found in Section 2 of the dEA we prepared for the Project.

Project Description: The Project is comprised of two state-permitted projects (Getty Wind Project and Black Oak Wind Farm) that were combined into a single project in 2016 under the ownership of Black Oak Wind, LLC (the Applicant). The Project is located on a total of 14,720 acres (approximately 22 square miles) in Stearns County, Minnesota (Figure 1). The existing Project

began commercial operations in 2016, and consists of 39 wind turbines with a total generating capacity of 82 megawatts. Additional Project infrastructure includes: access roads to the turbines; an underground electrical collection system; an aboveground 69-kilovolt transmission line; and an electrical substation. More detailed information on the Project components as well as operation and maintenance activities for the Project are described in Section 1.2.2 of the Project-specific Eagle Conservation Plan (ECP).

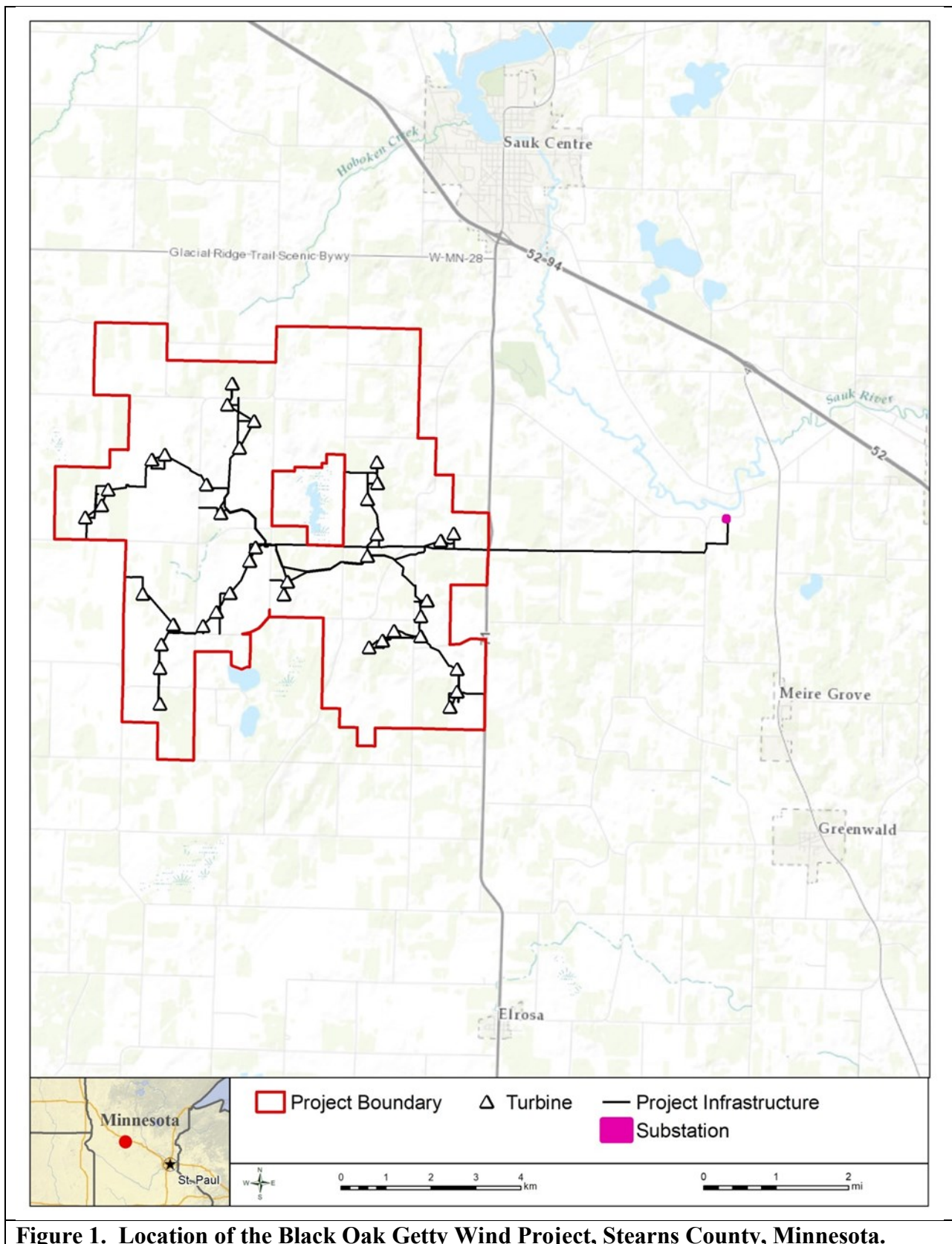


Figure 1. Location of the Black Oak Getty Wind Project, Stearns County, Minnesota.

The Project would be operated in accordance with the measures required by other agencies and jurisdictions, which includes implementation of the Project-specific Avian and Bat Protection Plan (ABPP) in accordance with the final Site Permits for large wind energy conversion systems issued by the Minnesota Public Utilities Commission. In addition, and as described in Appendix A of the Project-specific ECP, the Applicant would monitor eagle fatalities at the Project using independent, third-party monitors in specified years that report directly to the Service over the life of the permit. In the years when third-party monitoring is not conducted during the permit term, operations and maintenance staff would visit each turbine regularly; during visits, the staff would inspect roads, pads, and any other cleared area in the immediate vicinity of turbines.

The Applicant would implement a step-wise adaptive management schedule, as described in Table 7 of the dEA and Section 6 of the Project-specific ECP, which has been designed to ensure the Project stays within permit compliance (take of up to 36 bald eagles over the 30-year permit term). If take of bald eagles is higher than estimated, implementation of the adaptive management plan could result in additional monitoring, operational adjustments, and/or the conservation commitments described in Section 6 of the Applicant's ECP.

The permitted take for the Project does not exceed the Mississippi Flyway eagle management unit threshold or greater than 5% of the Local Area Population, and therefore compensatory (off-setting) mitigation would not be required.

V. Determination of Effects:

A. Description of Effects: Describe how the action(s) will affect the species and critical habitats listed in item III, including how Part IV conservation elements benefit or avoid adverse effects. Your rationale for the Section 7 determinations made below (VB.) should be fully described here.

One federally listed species has potential to occur within the counties where the Project is located; the northern long-eared bat (*Myotis septentrionalis*). This species was not detected during pre-construction acoustic surveys and has not been detected during almost two years of post-construction mortality monitoring.

We determine that impact from permit issuance to the northern long-eared bat is may affect, but not likely to adversely affect.

A detailed summary of potential impacts to bats can be found in Sections 3.4.1, 4.1.4 of our dEA. The northern long-eared bat roosts and forages in upland forests during spring and summer, hibernates in caves and mines in the winter, and migrates between foraging areas and hibernacula during the fall. Potential roosting and foraging habitat in the Project area is limited due to the lack of forest (0.1% of the total Project area). A northern long-eared bat hibernaculum was recorded in 1952 in eastern Stearns County about 30 miles from the Project (Goehring 1954). This hibernaculum was recently resurveyed and was found to be active and contain bats, although not northern long-eared bats (MN DNR, pers comm). Other hibernacula have been identified ≈20 miles from the Project footprint, but lack records of northern long-eared bats. During a recent (2015-2017) multi-year bat study at Camp Ripley (approximately 40 miles northeast of the Project footprint), numerous northern long-eared bats were captured and several roost trees were identified on the base (MN DNR and MN ARNG 2018). Based on this existing information, it appears that northern long-eared bats are likely present in or near the Project area, either during spring or fall migration and/or summer roosting and foraging.

A detailed summary of pre-construction bat survey work conducted in and around the Project can be found in Section 2.1.2 of the ABPP. Based on the results of these site-specific bat surveys, it appears that northern long-eared bats likely do not occur in the Project footprint during the summer months; however, this species could potentially occur at the site during the migration season.

Potentially suitable habitat for the northern long-eared bat is very limited within and near the Project. A desktop review indicated that there are few forest patches within the Project boundary, and all except one are less than 15 acres in size. One forested patch greater than 50 acres in size, along with its associated 1,000-foot buffer, intersects the Project boundary. However, no turbines are within the 1,000-foot buffer of this potential habitat. Acoustic surveys in June 2014 did not document the northern long-eared bat and no turbines are within 1,000 feet of connected forested habitat greater than 15 acres. Potential impacts during the fall migration period would be minimized by the Applicant's commitment to voluntary operational measures including, at a minimum, feathering turbine blades up to the manufacturer set cut-in speed at night during the fall bat migration season whenever evening temperatures exceed 50 degrees Fahrenheit.

Two years of post-construction mortality monitoring have occurred to date, and a third is ongoing (through coordination with the Minnesota Department of Natural Resources and Minnesota Department of Commerce)¹. These reports are available at the MN Department of Commerce e-dockets, Docket# IP6853/WS-10-1240 and IP6866/WS-11-831)². This monitoring allows for monitoring of potential take of northern long-eared bats and to implement adaptive management measures to decrease that take if applicable. The first year of monitoring occurred from March 2017 through March 2018, the second year occurred from April through October 2018, and a third year started in April 2019; to date, no northern long-eared bat mortalities have been documented.

Take of northern long-eared bats through injury or fatality through collision with turbine blades or barotrauma is possible, although take is not prohibited per Section 4d rule for this species (50 Code of Federal Regulations §17.40(o), USFWS 2016). However, the federal action we are analyzing is the proposed issuance of an eagle take permit, not the actual operation of the wind facility. The Wind Farms are operational, and would continue to operate even if the permit were not issued. The application for an eagle take permit is voluntary, and not required under a prosecution or settlement agreement. There are no proposed permit conditions that would result in habitat alternation, and any modifications to turbine operation for the purposes of minimizing risk to eagles may further reduce potential collision risk to bats. Adaptive management as part of adaptive management in the permit conditions may include turbine curtailment, however, this would likely occur during daylight hours, and would have a neutral to minimally beneficial impact on bats.

We determine proposed action may affect, but is not likely to adversely affect the northern long-eared bat.

¹ 2017 Report:

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={70122B62-0000-C113-8357-1ED3C91A6B93}&documentTitle=20183-141073-01>

2018 Report:

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={80398269-0000-CD12-876A-A85CEB339B7A}&documentTitle=20193-151123-01>. Accessed October 23, 2019.

²

<https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showeDocketsSearch&showEdocket=true> Accessed October 23, 2019

B. Determination: Determine the anticipated effects of the proposed project on species and critical habitats listed in item III. Check all applicable boxes and list the species (or attach a list) associated with each determination. **For assistance with making appropriate Section 7 determinations, go to Region 3's Section 7 Technical Assistance website: <http://www.fws.gov/midwest/endangered/section7/s7process/>**

Determination

No Effect: This determination is appropriate when the proposed project will not directly or indirectly affect (neither negatively nor beneficially) individuals of listed/proposed/candidate species or designated/proposed critical habitat of such species. No concurrence from ESFO required.

May Affect but Not Likely to Adversely Affect: This determination is appropriate when the proposed project is likely to cause insignificant, discountable, or wholly beneficial effects to individuals and designated critical habitat. Concurrence from ESFO required.

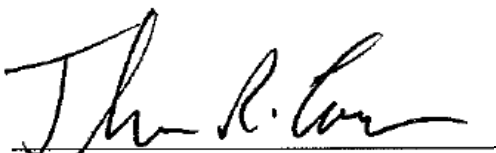
Northern long-eared bat
(*Myotis septentrionalis*)

May Affect and Likely to Adversely Affect: This determination is appropriate when the proposed project is likely to adversely impact individuals of listed species or designated critical habitat of such species. Concurrence from ESFO required.

Not Likely to Jeopardize candidate or proposed species/critical habitat: This determination is appropriate when the proposed project is not expected to jeopardize the continued existence of a species proposed for listing or a candidate species, or adversely modify an area proposed for designation as critical habitat. Concurrence from ESFO required.

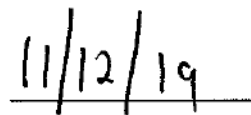
Likely to Jeopardize candidate or proposed species/critical habitat: This determination is appropriate when the proposed project is reasonably expected to jeopardize the continued existence of a species proposed for listing or a candidate species, or adversely modify an area proposed for designation as critical habitat. Concurrence from ESFO required.

Signature



[Supervisor at originating station]

Date



Reviewing Ecological Services Office Evaluation (check all that apply):

A. **Concurrence** _____

Nonconcurrence _____

B. Formal consultation required _____
List species or critical habitat unit

C. Conference required _____
List species or critical habitat unit

Name of Reviewing ES Office _____

Signature

BETSY GALBRAITH
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GALBRAITH
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Date _____