



May 19, 2011

Mr. Jerome Ford
U.S. Fish & Wildlife Service
Attn: Eagle Conservation Plan Guidance
4401 North Fairfax Drive; Mail Stop 4107
Arlington, VA 22203-1610

TRANSMITTED VIA E-MAIL

RE: Eagle Conservation Plan Guidance

Dear Mr. Ford:

On behalf of the Solar Energy Industries Association (SEIA) and its 1,000 members, I would like to express our appreciation for the U.S. Fish and Wildlife Service's (USFWS) ongoing efforts to support the deployment of solar energy projects. The United States has some of the richest solar resources in the world and we should not miss an opportunity to create jobs and generate clean, reliable energy with this inexhaustible, domestic resource. USFWS can simultaneously encourage renewable energy development and protect eagles and their habitat. SEIA and its members would like to meet with USFWS to discuss these critical issues and develop strategies consistent with the dual purpose of protecting wildlife and increasing solar power generation.

Thank you for this opportunity to submit comments on these guidelines for the wind industry. We believe that these guidelines should not apply to the solar industry. We are eager to work with the USFWS to create eagle conservation guidance that facilitates solar power project development.

Best Regards,

A handwritten signature in blue ink that reads "Daniel M. Adamson".

Daniel M. Adamson
Vice President of Regulatory Affairs

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These Guidelines Should Not Be Applied to the Solar Industry

SEIA appreciates the U.S. Fish and Wildlife Service's (USFWS) efforts to develop Eagle Conservation Plan Guidance. When developed in collaboration with stakeholders and narrowly defined to achieve the conservation goal without unnecessary or inappropriate burdens on regulated entities, guidance of this nature can be beneficial to all parties. To achieve this goal, however, the Guidance should set forth clear standards that will result in improved efficiency for government action, reduced costs and delays to project developers, and clarity on procedures for the involvement of third parties.

As discussed in these comments, SEIA appreciates the intent of the Guidance to achieve these objectives. As currently proposed, the Guidance does not provide an effective mechanism for screening out projects affecting eagles and also includes numerous recommended measures that are expensive, burdensome, and unnecessary. While the draft Guidance applies to wind project development, SEIA is concerned that the Guidance will severely hamper, rather than aid, renewable energy development in general, and may specifically adversely affect solar energy projects now and in the future. This is because, as USFWS states, many of the concepts and approaches outlined in this Guidance "can be readily exported to other situations."¹ Thus, SEIA is concerned that many, if not most, of the costly and burdensome guidelines the USFWS is recommending for the wind industry could be applied to the solar industry as well. In fact, SEIA has already heard anecdotes from member companies that USFWS Field Offices have been applying this wind Guidance to their solar power projects. USFWS should ensure that no Regional or Field Offices are applying any aspects of this wind Guidance to solar power projects.

Application of the USFWS Eagle Conservation Plan Guidance, formulated in large part to address the impacts of wind power facilities, to the solar industry is inappropriate for many reasons. First, the solar industry employs different equipment and technologies, and utilizes land differently than the wind industry. Second, the solar industry has fundamentally different impacts than other energy industries. Both of these factors make it doubtful that solar power plants will directly impact eagles. For instance, eagle mortality due to direct strikes into panels or mirrors is extremely unlikely. Indeed, extensive deployment of solar power is a key element of the overall effort to address climate change, a phenomenon that threatens both eagles and their habitat. SEIA appreciates that the USFWS is extremely busy and developing guidance can be a lengthy process. However, guidelines that may be applicable to one industry are often inappropriate or impossible to implement for another industry. Thus applying the same Guidance to both wind and solar projects is unreasonable.

SEIA and its members would appreciate the opportunity to meet with USFWS to discuss these important issues before a decision is made to develop guidelines that would be applied to solar projects. Below are just a few examples of the many concerns that SEIA has with this Guidance.

¹ U.S. Fish & Wildlife Service, "Draft Eagle Conservation Plan Guidance," at p. 8 (Jan. 2011). SEIA is also concerned that USFWS may apply this Eagle Guidance to condors and raptors generally.

USFWS Should Make a Threshold Determination Prior to Applying any Guidance

The Bald and Golden Eagle Protection Act states that anyone who “knowingly, or with wanton disregard for the consequences of his act take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or in any manner any bald eagle commonly known as the American eagle or any golden eagle, alive or dead, or any part, nest, or egg thereof” may be subject to punishment under the Act.² As such, USFWS should have to make a threshold determination of a project’s adverse impact on eagles prior to applying any Eagle Guidance to a renewable energy project. Without a threshold finding, USFWS has no way of knowing whether the proposed Guidance is applicable or appropriate for a given project. Moreover, without an initial understanding of a project’s impact, USFWS cannot determine whether the Guidance will even be effective at monitoring and protecting eagles and their environment. We believe that threshold criteria of this nature would make it clear that solar projects are unlikely to affect eagles. In the rare situation where some impact could occur, any guidance that would apply to solar projects should make it clear that compliance would satisfy all legal requirements for take authorization and absolve the applicant of all liability under the Bald and Golden Eagle Protection Act. In addition, whether in the draft Guidance for wind projects, or guidance for “other situations” the problems discussed below that result in excessive cost and delay should be avoided.

Pre- and Post-Construction Monitoring Is Unnecessarily Burdensome

The Eagle Conservation Plan Guidance provides that most wind projects undertake an initial site assessment; perform site-specific surveys; predict initial eagle fatalities; develop and apply advanced conservation practices and compensatory mitigation; and evaluate post-construction impacts. These multiple steps are extremely expensive and burdensome and most of this cost would be expended at the outset of a project’s timeline, requiring developers to spend significant money with little or no confidence that USFWS will issue a take permit. In addition, this Guidance would further extend an already extremely long permitting process for renewable projects by requiring three years of pre-construction studies and two to five years of post-construction studies for each project, a regulatory burden faced by no other industry. Costly and lengthy monitoring should only be required in situations where the facts dictate.

Furthermore, USFWS expects all projects, regardless of their size or their category, to undertake the pre- and post-construction monitoring. Thus, a small renewable energy project would be required to perform the same initial site assessment as a much larger utility-scale renewable power plant. Also, a “category 3” project that is defined as posing minimal risk to eagles would still have to pay for and conduct the same pre-construction and post-construction surveys as a category 1 or 2 project that poses a high or moderate risk to the eagle population. Pre- and post- construction monitoring and surveying should be tailored to the size and characteristics of a project and should be implemented only for those projects that could seriously harm the eagle population.

²

16 U.S.C. § 668 (2011).

Finally, as USFWS has acknowledged, “effects [of energy facilities on eagles] and how to address them at this time is limited.”³ Thus, it is unclear whether these multiple studies and surveys would be effective or provide a scientifically accurate picture of the proposed energy installation’s impact on eagles. As such, this Guidance and the costly and burdensome steps therein should be applied only after the USFWS has made a threshold determination that the application of the Guidance is necessary. SEIA is eager to work together with USFWS and other interested parties to develop the specifics of such a threshold determination. Establishing a reasonable threshold for application of the Guidance will focus the efforts of USFWS, the renewable industry and others on areas where significant impacts may occur.

³

Guidance at p. 11.