



U.S. Department
of Transportation
**Federal Aviation
Administration**

Airspace Policy Group

Airspace Service
800 Independence Avenue SW,
Washington, DC 20591

JUN 26 2019

Mr. Jeffrey Loman
P.O. Box 142
L'Anse Indian Reservation, MI 49946

Dear Mr. Loman:

Obstruction Evaluation Case Number: 2018-AWA-12-OE
Aeronautical Study Numbers: 2018-WTE-6439 through 6507-OE
Wind Turbines: Herman, Michigan

We have completed our examination of your petition for discretionary review of the subject determinations issued by the Federal Aviation Administration's Obstruction Evaluation Group (OEG). The determinations address proposed wind turbines approximately 26.85 – 31.51 nautical miles southeast of the airport reference point of the Houghton county Memorial airport, Hancock, Michigan. The height of the structures are 499 feet above ground level. On December 14, 2018, the FAA's OEG issued Determinations of No Hazard for these structures.

On December 17, 2018, the FAA received your petition for discretionary review. Twenty-eight of the sixty-nine cases (Aeronautical Study Numbers 2018-WTE-6439, 6455, 6457, 6458, 6460-6463, 6473-6487, 6500, 6504-6507-OE) do not exceed the obstruction standards in Title 14 of the Code of Federal Regulations (14 CFR) Part 77, Subpart C. Therefore, the agency issued findings that the proposed structures do not exceed the obstruction standards and would not be a hazard to air navigation. (See 14 CFR §77.17). Determinations issued pursuant to 77.17 are not subject to the agency's discretionary review process.

This letter addresses the Determinations issued pursuant to Part 77 that are subject to the agency's discretionary review process.

In your petition, you request government-to-government consultations and identify impacts to the L'Anse Indian Reservation environment. Pursuant to our regulations at 14 CFR part 77, the FAA conducts aeronautical studies of proposed structures or buildings to determine the effect on the safe and efficient use of navigable airspace, air navigation facilities or equipment. In doing so, the FAA consider factors relevant to navigable airspace including the impact on arrival, departure, and en route procedures. The FAA does not approve, license, permit or fund the proposed structure or building, but only determines if it would be a hazard to air navigation. The FAA's role is purely advisory; our determinations under Part 77 are not legally binding and we do not have direct or indirect jurisdiction to require changes to the proposal in response to public or agency concerns, whether aeronautical, environmental, or historic preservation in nature. Therefore, determinations under Part 77 are not an undertaking within the meaning of Section 106, and Section 106 consultation procedures do not apply.

You also state that the FAA did not consider cumulative impacts of the wind turbines to natural and cultural resources. As previously stated, the FAA's role is to consider cumulative impacts to the navigable airspace, air navigation facilities, or equipment. The criteria for FAA aeronautical studies have been carefully designed to identify any aviation activity on which a proposed structure might have a deleterious effect. The FAA's OEG follows procedures in accordance with the provisions of 14 CFR part 77, along with guidance contained in FAA Order 7400.2, paragraphs 6-3-3, Determining Adverse Effect, and 6-3-5, Substantial Adverse Effect. Specifically, in accordance with FAA Order 7400.2, Paragraphs 6-3-6 (e), Responsibility, and 6-3-10, Evaluating Effect on Air Navigation Facilities, the FAA identifies the presence of any electromagnetic and/or physical effect a proposed obstruction may have on, among other factors, navigational facilities, ground-based primary and secondary radar, and make recommendations to eliminate adverse effect.

As part of this examination, we have reviewed the determination with respect to the effect the structure would have on instrument flight rules operations, visual flight rules operations, aircraft operating in the traffic pattern, and radar impacts. The Department of Defense and Department of Homeland Security participated in the aeronautical study process, and did not identify any radar impacts or object to the proposed wind farm. Any analysis includes potential radar impacts and any cumulative effects of this impact.

Any land use issues or concerns should be addressed with the local State entities that issue licenses or building permits. These entities may require coordination with the U.S. Fish and Wildlife Service during any economic impact analysis.

Additionally, you state that the lighting is unnecessary for aeronautical safety and will adversely impact vessels on Lake Superior. The role of the FAA is to recommend marking and/or lighting as needed, in accordance with the FAA's Advisory Circular 70/7460-1, Obstruction Marking and Lighting, to ensure the safety of air traffic. The FAA's obstruction evaluation process uses very specific criteria to determine the effects a structure would have on aeronautical activities. In November 2005, the FAA completed a lighting study specifically for wind turbines. This study concluded that sequential red flashing lights on wind turbines and wind farms provided the best conspicuity for pilots during varied weather conditions and daytime/nighttime conditions. FAA policy is to recommend lighting on the perimeter of the wind farm, and on any wind turbines that are more than one-half mile apart. As noted previously, the Department of Homeland Security participates in the aeronautical study process. The United States Coast Guard is part of the Department of Homeland Security.

In conclusion, we find the OEG team followed all of the current procedures in issuing the subject determinations. Your petition failed to provide any new facts or information that would change the basis on which the determinations were made. Accordingly, your request for discretionary review is denied, and the above referenced Determinations of No Hazard to Air Navigation is final. The determinations will expire on DEC 26 2020.

Sincerely,

Maurice Hoffman
Maurice Hoffman
Director of Airspace Service
Air Traffic Organization